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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**CLASS ACTION**

This Document Relates To:  
*City of St. Clair Shores*, 15-1228 (E.D. Va.)  
*Travalio*, 15-7157 (D.N.J.)  
*George Leon Family Trust*, 15-7283 (D.N.J.)  
*Charter Twp. of Clinton*, 15-13999 (E.D. Mich.)  
*Wolfenbarger*, 15-326 (E.D. Tenn.)

**FIRST AMENDED CONSOLIDATED  
SECURITIES CLASS ACTION  
COMPLAINT**

Judge: Hon. Charles R. Breyer  
Courtroom: 6, 17th Floor

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1 **I. PRELIMINARIES**

2 1. Court-appointed Lead Plaintiff Arkansas State Highway Employees' Retirement  
3 System ("ASHERS" or "Lead Plaintiff"), together with named plaintiff Miami Police Relief and  
4 Pension Fund ("Miami Police") (collectively, "Plaintiffs"), by their undersigned counsel, allege  
5 the following upon personal knowledge as to themselves and their own acts, and upon information  
6 and belief as to all other matters.

7 2. Plaintiffs' information and belief as to allegations concerning matters other than  
8 themselves and their own acts are based upon, among other things: (1) review and analysis of  
9 documents filed publicly by Volkswagen Aktiengesellschaft ("VW AG" or the "Company") with  
10 government regulators; (2) press releases and other public statements issued by VW AG,  
11 Volkswagen Group of America, Inc. ("VWGoA"), Volkswagen Group of America, Inc. d/b/a  
12 Volkswagen of America, Inc. ("VWoA"), and Audi of America, Inc. ("AoA"); (3) transcripts of  
13 VW AG investor conference calls; (3) VW AG, VWGoA, VWoA, and AoA advertisements and  
14 marketing materials; (4) research reports concerning VW AG by financial analysts; (5) information  
15 from government and regulatory investigations into VW AG and its subsidiaries and divisions;  
16 (6) news reports and other publicly available sources of information concerning VW AG,  
17 VWGoA, VWoA, and AoA; (7) complaints filed against VW AG, VWGoA, VWoA, and AoA in  
18 this consolidated proceeding, including the Consolidated Consumer Class Action Complaint (ECF  
19 No. 1230), Consolidated Amended Reseller Dealership Class Action Complaint (ECF No. 1231),  
20 and Consolidated Amended Competitor Dealership Class Action Complaint (ECF No. 1232), as  
21 well as the complaints filed in *United States v. Volkswagen AG*, 16-cv-00295-CRB (N.D. Cal. filed  
22 Jan. 4, 2016), *Federal Trade Commission v. Volkswagen Group of America, Inc.*, 16-cv-1534  
23 (N.D. Cal. filed Mar. 29, 2016), and related complaints filed by several State Attorneys General  
24 and private plaintiffs; (8) the criminal plea agreements between the United States and VW AG and  
25 between the United States and James Robert Liang; (9) the Second Superseding Indictment ("SSI")  
26 the United States filed against Richard Dorenkamp, Heinz-Jakob Neußer, Jens Hadler, Bernd  
27 Gottweis, Oliver Schmidt, and Jürgen Peter; (10) other related documents filed in *United States v.*

1 *Liang*, No. 2:16-cr-20394-SFC-APP (E.D. Mich.); and (11) the Criminal Complaint filed against  
2 Oliver Schmidt in *United States v. Schmidt*, 2:16-mj-30588-DUTY (E.D. Mich. filed Dec. 30,  
3 2016).

4 3. Lead Counsel’s investigation into the factual allegations contained herein is  
5 continuing, and many of the relevant facts are known only by the Defendants or are exclusively  
6 within their custody or control. Lead Plaintiff believes that substantial additional evidentiary  
7 support will exist for the allegations set forth herein after a reasonable opportunity for further  
8 investigation or discovery.

9 4. At times and when appropriate, this Complaint refers to the corporate defendants  
10 collectively as “Volkswagen” “or VW” given the unity in which the entities operated. Materials  
11 referenced below originally published in German have been translated by Lead Counsel.  
12 Throughout this Complaint, all emphasis is added unless otherwise indicated.

13 5. A glossary of defined and key terms, entities, and individuals is attached to this  
14 Complaint, beginning at page A-1.

## 15 **II. INTRODUCTION**

16 6. This is a federal securities class action brought by Plaintiffs, ASHERS and Miami  
17 Police, individually and on behalf of a proposed class consisting of all persons and entities who  
18 purchased or otherwise acquired Volkswagen Ordinary Share American Depositary Receipts  
19 (“ADRs”) (Ticker: VLKPY; CUSIP: 928662303) and Volkswagen Preference Share ADRs  
20 (Ticker: VLKAY; CUSIP: 928662402) from November 19, 2010 through January 4, 2016,  
21 inclusive (the “Class Period”).

22 7. This case is about an audacious, intentional fraud orchestrated by Volkswagen’s  
23 former CEO, Martin Winterkorn, his closest confidants, and other of the Company’s most senior  
24 executives. Motivated by greed and ambition, Winterkorn and the other Defendants repeatedly lied  
25 to investors, consumers and regulators, and endangered the environment and the public health by  
26 installing “defeat devices” in Volkswagen’s purportedly “clean diesel” cars. Those **defeat devices**,  
27 installed in 11 million vehicles, including approximately 585,000 sold in the United States, had no

1 legal or proper function; **their sole purpose and design was to cheat.** The adverse effects of that  
2 cheating – on the environment, on the cars’ owners and drivers, and most critically for this case,  
3 on Volkswagen and its investors – have been tremendous.

4 8. Volkswagen, its subsidiaries, and its executives repeatedly lied, made misleading  
5 statements, and omitted material information during the Class Period when they reported financial  
6 results that were inflated by at least \$18 billion. The Company also defrauded investors by  
7 consistently assuring them that Volkswagen’s diesel cars met all applicable emissions standards,  
8 including those in all 50 states of the United States and in the European Union. Despite  
9 Defendants’ repeated statements concerning the importance of their diesel program to  
10 Volkswagen’s growth and their purported fealty to “environmental friendliness,” they cynically  
11 engaged in a years-long scheme of deception and pollution. Beginning in September 2015 the  
12 admissions and revelations concerning Volkswagen’s emissions scandal became public and  
13 investors saw \$63 billion of the Company’s market capitalization destroyed.

14 9. Liability here is clear. There can be no dispute that Volkswagen cheated, or that the  
15 Company’s senior executives knew about it. In fact, Defendants have already made remarkable  
16 admissions concerning the “Dieselgate” fraud, including:

- 17 • Volkswagen admitted in September 2015 to the California Air Resources  
18 Board (“CARB”) that its diesel cars **“were designed and manufactured  
19 with a defeat device to bypass, defeat, or render inoperative elements  
20 of the vehicles’ emissions control system.”**
- 21 • Defendant Martin Winterkorn (“Winterkorn”), Volkswagen’s former CEO,  
22 said that he was **“endlessly sorry”** and that the Company had **“broken the  
23 “trust” that “millions of people across the world” had in “our brands,  
24 our cars, and our technology.”**
- 25 • Defendant Michael Horn (“Horn”), until recently VWGoA’s President and  
26 CEO, said that **“our company was dishonest. With the EPA, and the  
27 California Air Resources Board, with all of you. And in my German  
28 words, we have totally screwed up.”**

10. On January 11, 2017, VW AG pleaded guilty to criminal and civil charges of  
conspiracy to commit wire fraud and to violate the Clean Air Act, importing cars by means of false

1 statements, and obstruction of justice for its role in orchestrating the emissions-cheating scandal.  
2 To resolve the charges, VW AG agreed to pay \$4.3 billion in penalties—one of the largest such  
3 penalties in history. In addition, federal prosecutors announced similar criminal charges against  
4 six VW AG executives—Richard Dorenkamp, Heinz-Jakob Neußer, Jens Hadler, Bernd Gottweis,  
5 Oliver Schmidt, and Jürgen Peter—for their roles in the scheme. One of those executives, Oliver  
6 Schmidt—a top emissions compliance manager for Volkswagen in the United States—was  
7 arrested in Florida on a charge of conspiracy to defraud the United States. The five other executives  
8 reportedly reside in Germany and have been advised not to travel to the United States. These  
9 criminal charges are in addition to the criminal plea agreement that James Robert Liang—another  
10 former top VW AG engineer—entered into in September 2016 for lying to US regulators and the  
11 public regarding Volkswagen’s “clean diesel” cars.

12         11. Critically, in VW AG’s criminal plea agreement with the United States, VW AG  
13 “admits, agrees, and stipulates that the factual allegations set forth in . . . the Statement of Facts  
14 [attached to the plea agreement and attached as Exhibit 1 to this Complaint (the “SOF”)] are true  
15 and correct, that it is responsible under the laws of the United States for the acts of its employees  
16 described in [the SOF], and that the facts set forth in [the SOF] accurately reflect [VW AG]’s  
17 criminal conduct and provide a factual basis for the guilty plea. [VW AG] agrees that it will neither  
18 contest the admissibility of, nor contradict, the Statement of Facts contained in Exhibit [1 to this  
19 Complaint] in any proceeding.” (*United States v. Volkswagen AG*, Rule 11 Plea Agreement ¶1.E,  
20 No. 16-CR-20394 (E.D. Mich. filed Jan. 11, 2017).) In the SOF itself, “VW AG admits, accepts,  
21 and acknowledges that under U.S. law it is responsible for the acts of its employees as set forth in  
22 [the] Statement of Facts, which acts VW AG acknowledges were within the scope of the  
23 employees’ employment and, at least in part, for the benefit of VW AG.” (SOF, p. 2-1.) VW AG  
24 further admits in the SOF that from approximately May 2006 to approximately November 2015,  
25 through six “Supervisors A-F and other VW employees”:



- 1 • “VW AG . . . agreed to deceive U.S. regulators and U.S. customers about  
2 whether the Subject Vehicles and the Porsche Vehicles complied with U.S.  
emissions standards.” (SOF ¶31.)
- 3 • “Supervisors A-F and other VW employees . . . knew that the Subject  
4 Vehicles and the Porsche Vehicles did not meet U.S. emissions standards .  
5 . . .” (*Id.*)
- 6 • “Supervisors A-F and other VW employees: . . . knew that VW was using  
7 software to cheat the U.S. testing process by making it appear as if the  
Subject Vehicles and the Porsche Vehicles met U.S. emissions standards  
8 when, in fact, they did not . . . .” (*Id.*)
- 9 • “Supervisors A-F and other VW employees . . . attempted to and did conceal  
these facts from U.S. regulators and U.S. customers.” (*Id.*)<sup>1</sup>

10 12. These admissions and reversals stand in stark contrast with the steady drumbeat of  
11 statements by Volkswagen and its US subsidiaries before and throughout the Class Period. In every  
12 single one of VW AG’s periodic reports to investors during the Class Period—reports that were  
13 signed by Winterkorn and/or Diess—it reported grossly inflated financial results including inflated  
14 profits and assets that failed to account for liabilities it was required to accrue and, similarly,  
15 inflated the residual value of the affected leased vehicles that Volkswagen would own at the end  
16 of customers’ leases. The Volkswagen entities put out countless statements flatly misrepresenting  
17 that their diesel vehicles met the “emissions standards that apply in California and all 50 U.S.  
18 states.” The Company’s statements also boldly and repeatedly misrepresented that “the decisive  
19 advantages for the Volkswagen Group” included “its environmentally friendly model range.”

20 13. In addition, Winterkorn also personally misled the market numerous times during  
21 the Class Period by declaring, among other things, that it was his aim “to make the Volkswagen  
22 Group the leading automaker by 2018—economically and ecologically.”

23 14. Winterkorn himself is at the center of this story, beginning with Volkswagen’s  
24 introduction of the “defeat device” software in the Company’s MY 2009 2.0 liter diesel cars. In its  
25 development of that engine, Volkswagen was caught between Winterkorn’s goal of becoming the

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26 <sup>1</sup> “VW” is defined in the admitted Statement of Facts to refer collectively to VW AG, Audi AG,  
27 and Volkswagen Group of America, Inc. (SOF ¶4.)

1 largest automaker in the world (his “Strategy 2018”), which the Company hoped to achieve by  
2 selling more diesel vehicles (particularly in the United States), and the engineering realities of  
3 diesel engines and emissions standards. While its diesel engines promised better on-road  
4 performance, Volkswagen struggled to design engines that could meet governing emissions  
5 standards for nitrogen oxides (“NOx”). The marketing of these cars would focus on their ability to  
6 deliver huge environmental benefits without needing to compromise on performance. In  
7 Volkswagen parlance, these “clean diesel” cars would catapult Volkswagen to become the largest  
8 carmaker in the world.

9         15. However, Volkswagen’s engineers were unable to produce diesel engines that  
10 provided the uncompromising performance and environmental friendliness that the Company’s  
11 marketers sought. VW AG has admitted that “Supervisors B, C, and F, and others, . . . realized that  
12 VW could not design a diesel engine that would both meet the stricter U.S. NOx emissions  
13 standards that would become effective in 2007 and attract sufficient customer demand in the U.S.  
14 market.” (SOF ¶33.) Defendant Winterkorn, a manager known for his acute attention to detail and  
15 engineering background, empowered two of his long-trusted and closest lieutenants, Ulrich  
16 Hackenberg (“Hackenberg”) and Wolfgang Hatz (“Hatz”), to come up with a solution. That  
17 solution became the “defeat device”—lines of software code that caused the vehicles to operate in  
18 “dyno calibration” mode when they detected an emissions test. While operating in “dyno  
19 calibration” mode, the emissions-control system functioned at full capacity, but substantially  
20 reduced the engine’s performance. However, during normal on-road vehicle operation, the cars  
21 operated in a “road calibration” mode that produced full power and torque, but reduced the  
22 effectiveness of the emissions-control system. This “solution” allowed the cars to meet  
23 Volkswagen’s performance goals while cheating the emissions-testing process (in “dyno” mode)  
24 to create the impression that they met the applicable limits, enabling Volkswagen to secure  
25 necessary regulatory certifications.

26         16. The deception here was profound: not only did the cars emit NOx at up to 40 times  
27 the legal limit, but the defeat device code is itself illegal and cars with defeat devices cannot be

1 legally sold. Nor can the environmental effects, and ensuing liability, be understated. NOx  
2 emissions are the principal component of smog, and cause adverse health effects that include chest  
3 pain, exacerbation of bronchitis, emphysema, asthma, and premature death. Defendants cast aside  
4 any concern for the general public or their own customers and left their shareholders to suffer  
5 losses as a result of the billions of dollars in liability that Volkswagen has already incurred. In fact,  
6 Volkswagen viewed emissions regulations as a nuisance that took away the “pleasure” of driving,  
7 and was notably resistant to even trying to meet US standards. For example, in 2007 Hatz  
8 dismissively said during a presentation that the CARB emissions standards were “not realistic”  
9 and were “nearly impossible” to meet.

10 17. Volkswagen continued to sell, market, and make misrepresentations concerning the  
11 affected diesel vehicles throughout the Class Period, even after people both inside and outside  
12 Volkswagen raised concerns to the Company’s senior management reinforcing that the defeat  
13 devices were being used to illegally game the regulatory emissions process. An internal VW AG  
14 presentation from 2006 outlined to senior executives how Volkswagen could cheat on emissions  
15 tests, because VW AG executives already knew it would be impossible to economically produce  
16 cars that met emissions standards. Robert Bosch GmbH (“Bosch”), the supplier of the defeat-  
17 device code, warned Volkswagen’s most senior executives in 2007 that the software was illegal.  
18 In 2011, an internal whistleblower alerted Winterkorn confidant and senior VW AG executive  
19 Neußer (who has since been criminally indicted) to the illegal manipulation of emissions data  
20 through the use of defeat devices. And both Winterkorn and Horn received written memos  
21 concerning the defeat devices and regulatory scrutiny in 2014.

22 18. Significantly, at least one of the memos Winterkorn received was from Gottweis,  
23 Volkswagen’s so-called “fireman,” whose job was to “sound the alarm” when crises emerged.  
24 Gottweis was the head of “the Product Safety Committee (GSP), one of the most important bodies  
25 at Volkswagen,” and was a “longstanding confidant” of Winterkorn.<sup>2</sup> Nevertheless, Winterkorn

26 \_\_\_\_\_  
27 <sup>2</sup> *Süddeutsche Zeitung*, “Ermittler filzen Villa von Winterkorn,” Jan. 27, 2017. *See also Der*  
*Tagesspiegel*, “Martin Winterkorn in Erklärungsnot,” Jan. 15, 2017 (calling Gottweis a “formerly

1 and the rest of the Management Board routinely rebuffed employees' concerns regarding the  
2 misconduct because the Board believed that Volkswagen could out-wit or manage regulators, and  
3 knew that complying with emissions rules would make Winterkorn's Strategy 2018 impossible.

4 19. In addition, Winterkorn and Horn's knowledge of the fraud is consistent with the  
5 fact that they—particularly Winterkorn—are known to have taken advantage of Volkswagen's  
6 crippled corporate-governance structure, where there is little ability to question bosses or hold  
7 them accountable to those outside the organization. A member of VW AG's Supervisory Board  
8 admitted that the emissions scandal arose out of a "tolerance for breaking the rules." VW AG's  
9 governance structure, combined with its toxic corporate culture, led by the notably mercurial and  
10 obsessive micromanager Winterkorn, created an environment where this fraud could be fostered  
11 and allowed to fester. Winterkorn's fingerprints, through his close relationships with Hatz,  
12 Hackenberg, Gottweis, and Neußer, and his desire to check every detail of his vehicles' design and  
13 manufacture, are all over Defendants' fraudulent scheme. Indeed, after commissioning the Jones  
14 Day law firm to conduct an investigation into the scandal, Volkswagen abruptly reversed course  
15 upon reviewing the findings, and refused to release results, citing "**unacceptable risks for**  
16 **Volkswagen.**"

17 20. Defendants' disregard for both investors and regulators is also reflected in how  
18 wantonly Volkswagen tried to cover its tracks. As discussed below, Volkswagen has now admitted  
19 that senior executives actively engaged in document destruction. There are multiple reports that  
20 the very lawyer who was responsible for preserving the documents related to the emissions scandal  
21 directed employees to destroy relevant materials immediately before issuing the communication  
22 to preserve them.

23  
24  
25 close confidant of former CEO Martin Winterkorn" and the "former head of the product safety  
26 committee (GSP), one of the most important committees at Volkswagen"); *New York Times*,  
27 "Volkswagen Memos Suggest Company Misled U.S. Regulators," Feb. 18, 2016 (calling Gottweis  
"a confidant of Mr. Winterkorn").

1           21. Even more to that point, in May 2014, US regulators were alerted to a study  
2 commissioned by the International Council on Clean Transportation (“ICCT”) and conducted by  
3 West Virginia University’s Center for Alternative Fuels, Engines & Emissions (“WVU”). The  
4 WVU study indicated during road tests that Volkswagen’s “clean diesel” vehicles’ NOx emissions  
5 were up to 40 times greater than the legal limit. After learning of these results, the regulators asked  
6 Volkswagen to investigate the causes.

7           22. To give the appearance of cooperation, in December 2014, Volkswagen agreed to  
8 perform a recall to purportedly adjust the diesel cars’ emissions output. But instead of admitting  
9 to the use of defeat devices, Volkswagen took the remarkable step of refining the defeat device  
10 software to improve its ability to detect whether the car was being driven on the road or being  
11 tested on a dynamometer. It told the public and the regulators that the recall would simply improve  
12 the cars’ “engine management software.”

13           23. But the regulators were not satisfied and continued to press Volkswagen about why  
14 the cars’ emissions remained above legal limits. Ultimately, in September 2015, Volkswagen  
15 admitted to the US Environmental Protection Agency (“EPA”) and CARB that the subject 2.0 liter  
16 vehicles had used illegal defeat devices. On Friday, September 18, 2015, both the EPA and CARB  
17 issued public letters indicating that Volkswagen admitted to systematically defrauding investors  
18 and the public for years by deliberately cheating US emissions tests and making its diesel vehicles  
19 appear cleaner than they actually were. Experts immediately estimated that Volkswagen could face  
20 up to \$18 billion in penalties under the Clean Air Act alone.

21           24. As further evidence of its scienter, VW AG has since admitted that in August and  
22 September 2015, VW AG and Audi AG employees destroyed documents and files related to US  
23 emissions issues that they believed would be covered by an upcoming litigation hold. VW AG  
24 employees also requested that their counterparts at “Company A” (Bosch) destroy sensitive  
25 documents related to US emissions issues. VW AG has also admitted that the employees who  
26 participated in this document destruction did so to protect both VW and themselves from the legal  
27 consequences of their actions. Within VW AG and Audi AG, thousands of documents were deleted

1 by approximately 40 VW AG and Audi AG employees, including by high-level VW AG  
2 executives. (SOF ¶¶ 73-81.)

3 25. On Sunday, September 20, 2015, Winterkorn made the admission quoted above,  
4 and Volkswagen announced that it would stop selling certain of the “clean diesel” cars in the US;  
5 Deutsche Bank issued an analyst report stating that “this appears to be intentional cheating.” Then,  
6 on Monday, September 21, 2015 the US Department of Justice (“DoJ”), the US House of  
7 Representatives, and the German government all initiated investigations into Volkswagen’s defeat  
8 device admission. The bad news continued on September 22, 2015, when Volkswagen revealed  
9 that as many as 11 million vehicles worldwide contained defeat devices used to evade emissions  
10 tests and that the Company would take a \$7.3 billion charge to earnings in connection with the  
11 scandal.

12 26. In the trading days following these revelations of Volkswagen’s emissions scandal,  
13 the price of Volkswagen’s securities dropped precipitously—its ordinary shares (including ADRs)  
14 suffered a market capitalization decline of over €23 billion, and its preference shares (including  
15 ADRs) suffered a €9.5 billion loss of market capitalization.

16 27. The fallout from Defendants’ admissions continued and has been severe. To date,  
17 investigations and lawsuits, including criminal inquiries, have been launched by the DoJ, the US  
18 Federal Trade Commission (“FTC”), the EPA, CARB, multiple state attorneys general, various  
19 foreign governments, and consumers, car dealers, and car manufacturers. Indeed, the Company  
20 recently pleaded guilty and paid \$4.3 billion to resolve US criminal and civil charges arising out  
21 of false statements VW AG made concerning its “clean diesel” cars. Volkswagen has replaced  
22 virtually all of its prior management, firing or suspending at least 11 of its senior executives,  
23 including Winterkorn, Horn, Hatz, Hackenberg, and Neußer.

1 28. These further disclosures have decimated the value of Volkswagen's securities. As  
2 noted above, all told, the revelation of Defendants' fraud has erased \$63 billion from  
3 Volkswagen's market capitalization.<sup>3</sup>

4 29. As the market had come to expect, when VW AG belatedly issued its 2015 annual  
5 financial results on April 22, 2016, the Company recorded a charge of over \$18 billion (€16.2  
6 billion) to cover certain of the costs associated with its recall of millions of cars, legal claims, and  
7 related costs arising out of the diesel scandal. This charge caused VW AG to report an operating  
8 loss of approximately €4.1 billion and a net loss of €5.5 billion for 2015. When VW AG announced  
9 its results for the nine months ended September 30, 2016, it disclosed that it recognized additional  
10 provisions of \$1.8 billion (€2.0 billion) primarily as a result of increased provisions for legal risks.  
11 Additional charges, penalties, and liabilities are still likely to increase the cost to Volkswagen's  
12 investors.

13 30. This action seeks redress for investors in Volkswagen ADRs for the severe harms  
14 they have suffered as a result of Defendants' knowingly or recklessly false and misleading  
15 statements and omissions about Volkswagen cars' emissions compliance and "environmental  
16 friendliness" and VW AG's financial results.

### 17 **III. JURISDICTION AND VENUE**

18 31. This Complaint asserts claims under Sections 10(b) and 20(a) of the Exchange Act,  
19 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated under the Exchange Act,  
20 including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Rule 10b-5").

21 32. This Court has jurisdiction over the subject matter of this action under Section 27  
22 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331, because this is a civil action arising  
23 under the laws of the United States.

24  
25  
26 <sup>3</sup> This figure gives effect to the impact across all of Volkswagen's ordinary and preference shares  
27 and assumes conversion from euros to US dollars at an exchange rate of 1.00:1.13 (a loss of  
€55.645 billion).

33. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b), (c), and (d). Many of the acts and transactions that constitute the alleged violations of law occurred in or affected persons in this District.

34. Finally, this First Amended Consolidated Securities Class Action Complaint is being filed as an original action in this District and as the Consolidated Securities Class Action in the MDL No. 2672 proceedings, which have been consolidated under 28 U.S.C. § 1407 before Judge Charles R. Breyer, presiding in the San Francisco Division of this District. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the United States mail and interstate telephone communications.

35. All of the transactions in the securities that are at issue in this action took place entirely within the United States.

36. As explained on VW AG’s website, an ADR is a US security representing an ownership interest in a foreign company’s equity and VW AG’s ADRs “trade in the US”:

An American Depositary Receipt (“ADR”) is a U.S. dollar denominated form of equity ownership in a non-U.S. company. It represents the foreign shares of the company held on deposit by a custodian bank in the company’s home country and carries the corporate and economic rights of the foreign shares, subject to the terms specified on the ADR certificate.

Volkswagen Aktiengesellschaft has two sponsored ADR programs, representing the preference and ordinary shares. Both are sponsored by J.P. Morgan and trade in the US on the over-the-counter (OTC) market.

Type	Ticker	Cusip	Ratio (ADR vs. underlying)
Preferred	VLKPY	928 662 402	5:1
Ordinary	VLKAY	928 662 303	5:1

37. Since 1988, VW AG has had two sponsored ADR programs representing its preference and ordinary shares. Both are sponsored by J.P. Morgan and trade in the United States on OTC Markets Group Inc.’s OTCQX market, which is the highest tier of the over-the-counter market and is open only to companies that meet high financial standards, are current in their



1 disclosures, and are sponsored by a professional third-party investment bank, ADR bank, or law  
2 firm. At all times during the Class Period, all Volkswagen ADRs represented ownership interests  
3 in preference or ordinary shares of VW AG that were held on deposit by J.P. Morgan. VW AG  
4 registered the ADRs with the United States Securities and Exchange Commission on Form F-6  
5 registration statements dated February 10, 1998, July 2, 1998, and December 3, 2003.

6 38. The VW ordinary ADRs purchased by Lead Plaintiff ASHERS were sold in the  
7 United States by Deutsche Bank Securities, Inc., a US-incorporated and US-domiciled broker-  
8 dealer (“DBSI”), to CastleArk Management LLC, a US-organized and US-domiciled investment  
9 adviser, for the account of ASHERS and were delivered by DBSI in the United States through The  
10 Depository Trust Company, the principal US securities clearing and settlement system (“DTC”),  
11 to State Street Bank & Trust Company, a US-incorporated and US-domiciled bank, as custodian  
12 of ASHERS’s account. Thus, the securities at issue were present at all relevant times in the United  
13 States; all parties to the transactions in the securities were US persons; ASHERS incurred  
14 irrevocable liability within the United States to take and pay for the securities; DBSI incurred  
15 irrevocable liability within the United States to deliver the securities; title to the securities was  
16 transferred in the United States; and the transactions cleared and settled through DTC at 55 Water  
17 Street, New York, New York.

18 39. The VW preference ADRs purchased by Plaintiff Miami Police were sold in the  
19 United States by UBS Financial Services Inc., a US-incorporated and US-domiciled broker-dealer  
20 (“UBSFSI”), to NFJ Investment Group LLC, a US-organized and US-domiciled investment  
21 adviser, for the account of Miami Police and were delivered by UBSFSI in the United States  
22 through DTC to UBSFSI, as custodian of Miami Police’s account. Thus, the securities at issue  
23 were present at all relevant times in the United States; all parties to the transactions in the securities  
24 were US persons; Miami Police incurred irrevocable liability within the United States to take and  
25 pay for the securities; UBSFSI incurred irrevocable liability within the United States to deliver the  
26 securities; title to the securities was transferred in the United States; and the transactions cleared  
27 and settled through DTC at 55 Water Street, New York, New York.

1           40.     On information and belief, (a) all Volkswagen ADRs were present at all relevant  
2 times in the United States; (b) all purchases or other acquisitions of Volkswagen ADRs during the  
3 Class Period were made in accounts at US financial institutions that are participants in DTC; (c) in  
4 all purchases or other acquisitions of Volkswagen ADRs during the Class Period, either (i) the  
5 purchaser incurred irrevocable liability within the United States to take and pay for the securities,  
6 or (ii) the seller incurred irrevocable liability within the United States to deliver the securities, or  
7 (iii) title to the securities was transferred in the United States; and (d) all transactions in the  
8 Volkswagen ADRs during the Class Period occurred in the United States and cleared and settled  
9 through DTC in New York.

#### 10 **IV. PARTIES**

11           41.     Lead Plaintiff Arkansas State Highway Employees' Retirement System  
12 ("ASHERS") is a public pension fund established for the payment of retirement and disability  
13 benefits for employees of the Arkansas State Highway and Transportation Department. As set forth  
14 in the accompanying certification, ASHERS purchased Volkswagen ordinary ADRs during the  
15 Class Period and suffered damages as a result of the conduct complained of in this Complaint. On  
16 January 5, 2016, this Court entered Pretrial Order No. 4 (ECF No. 545), appointing ASHERS as  
17 Lead Plaintiff.

18           42.     Plaintiff Miami Police Relief and Pension Fund ("Miami Police") is a defined  
19 contribution retirement plan providing retirement benefits to active and retired Miami police  
20 officers. As set forth in the accompanying certification, Miami Police purchased Volkswagen  
21 preference ADRs during the Class Period and suffered damages as a result of the conduct  
22 complained of in this Complaint.

23           43.     Defendant Volkswagen Aktiengesellschaft ("VW AG" or the "Company"), through  
24 itself and its divisions, is a multinational automotive manufacturing company headquartered in  
25 Wolfsburg, Lower Saxony, Germany. VW AG is one of the largest automobile manufacturers in  
26 the world and is the parent company of the Volkswagen Group, which comprises twelve brands,  
27 including Volkswagen, Audi, Seat, Skoda, Bentley, Bugatti, Lamborghini, Porsche, Ducati,

1 Scania, Man, and Volkswagen Commercial Vehicles. VW AG is the ultimate parent and  
2 controlling company of defendants VWGoA, VWoA, and AoA. VW AG was involved in the day-  
3 to-day operations of, and exercised power and control over, VWGoA, VWoA, and AoA including  
4 by, among other things, appointing their boards of directors and executive officers and directing  
5 their public statements and regulatory actions.

6 44. VW AG engineered, designed, developed, manufactured, and installed the defeat-  
7 device software on its diesel cars with the knowledge and understanding that they would be sold  
8 throughout the United States and the world. VW AG also developed, reviewed, and approved the  
9 marketing and advertising campaigns designed to sell the illegal cars.

10 45. Defendant VWGoA is a New Jersey corporation headquartered in Herndon,  
11 Virginia. VWGoA is a wholly owned subsidiary of VW AG and houses the US operations of many  
12 of VW AG's brands, including Volkswagen, Audi, Bentley, Bugatti, and Lamborghini. VWGoA  
13 has approximately 6,000 employees in the United States and sells its vehicles through a 1,000  
14 dealer network in all 50 states. VWGoA also operates a manufacturing plant in Chattanooga,  
15 Tennessee. In 2014 alone, VWGoA sold 552,729 vehicles in the United States from its US dealer  
16 network in all 50 states, including 95,240 "turbocharged direct injection" ("TDI") "clean diesel"  
17 vehicles.

18 46. Defendant VWoA is also a New Jersey corporation headquartered in Herndon,  
19 Virginia. VWoA is an operating unit of VWGoA and is a subsidiary of VW AG. VWoA's  
20 operations in the United States include research and development, parts and vehicle processing,  
21 parts distribution, sales, marketing and service, and financial services.

22 47. Defendant Audi of America, Inc. ("AoA") is a New Jersey corporation  
23 headquartered in Herndon, Virginia. AoA markets and distributes Audi brand cars in all 50 states.  
24 On information and belief, AoA is a wholly-owned subsidiary of Audi AG. VW AG is Audi AG's  
25 controlling shareholder, with ownership of approximately 99.55% of the share capital of Audi AG.

26 48. Defendant Martin Winterkorn ("Winterkorn") was Chief Executive Officer  
27 ("CEO") and Chairman of the Management Board of VW AG from January 1, 2007 until his

1 resignation on September 23, 2015, in the wake of the diesel-emissions scandal. Notably,  
2 Winterkorn was widely regarded as a detail-oriented, micromanaging CEO who retained control  
3 over engineering details that many other CEOs would fully relinquish to deputies. Winterkorn is  
4 being investigated by the German government for fraud in connection with the diesel scandal, and  
5 hand-picked the engineers who helped design the defeat devices.

6 49. Winterkorn's professional career in the automotive industry was focused on quality  
7 assurance and technical development, experience that Winterkorn used to help develop and  
8 conceal the illegal diesel software. Winterkorn's career in the car industry began in 1977 as a  
9 specialist assistant in the Process Engineering division at Robert Bosch GmbH ("Bosch"). In 1981,  
10 Winterkorn joined Audi AG as an assistant to the Member of the Board for Quality Assurance. At  
11 the beginning of 1988, he was promoted to departmental head of Central Quality Assurance, and  
12 in 1990 Head of Audi Quality Assurance. In 1993, Winterkorn became Head of Group Quality  
13 Assurance at VW AG. In January 1996, Winterkorn became Member of the Board of Management  
14 for Technical Development at the Volkswagen car brand. From July 2000, Winterkorn was a  
15 Member of the Board of Management of VW AG responsible for Research and Development.  
16 Winterkorn became Chairman of the Board of Management of Audi AG on March 1, 2002, and  
17 became responsible for Technical Development at Audi AG on January 1, 2003. In his capacity as  
18 Chairman of the Board of Management of Audi AG, Winterkorn was also a member of the Board  
19 of Management of VW AG. Winterkorn became CEO of VW AG on January 1, 2007. After he  
20 became CEO, Winterkorn launched VW AG's "Strategy 2018" with the goal to bypass General  
21 Motors and Toyota by the year 2018 to become the world's largest automaker.

22 50. Winterkorn was involved in the day-to-day operations of, and exercised power and  
23 control over, VW AG, VWGoA, VWoA, and AoA, including by, among other things, directing  
24 their public statements and regulatory actions. Winterkorn controlled VW AG, which in turn  
25 controlled VWGoA, VWoA, and AoA.

26 51. Winterkorn earned significant compensation throughout the Class Period as VW  
27 AG's CEO. Between 2010 and 2015, Winterkorn received nearly €80 million in compensation:

1 €9.3 million in 2010, €17.5 million in 2011, €14.5 million in 2012, €15 million in 2013, €15.9  
2 million in 2014, and €7.3 million in 2015 (until his September 15, 2015 resignation).

3 52. Winterkorn is subject to the personal jurisdiction of the Court because he has  
4 availed himself of the laws of the United States through his management and control over  
5 VWGoA, VWoA, and AoA, as well as the manufacture, distribution, testing, and sale of hundreds  
6 of thousands of diesel vehicles imported and sold across the United States. Further, Winterkorn  
7 has frequently travelled to the United States to attend and make presentations at various car shows  
8 across the country in order to promote the sales of Volkswagen cars with the purported clean diesel  
9 technology.

10 53. Defendant Michael Horn (“Horn”) was the President and CEO of VWGoA, as well  
11 as president of the VWoA brand, from January 2014 until his resignation on March 9, 2016. Horn  
12 also served as the Global Head of After Sales at VW AG and VWGoA from March 2009 to  
13 December 2013. Horn joined Volkswagen in 1990 and held many roles over his 25-year tenure  
14 with the Company, including Head of Volkswagen sales North West Europe, Head of Sales and  
15 Marketing Luxury Class Vehicles, and Head of Sales for Europe. Horn was involved in the day-  
16 to-day operations of, and exercised power and control over, VWGoA and VWoA, including by,  
17 among other things, directing their public statements and regulatory actions.

18 54. Defendant Herbert Diess (“Diess”) is a Member of the Board of Management of  
19 VW AG and Chairman of the Board of Management of the Volkswagen Passenger Cars Brand.  
20 He assumed that position in July 2015. Before July 2015, Diess held high-level positions at other  
21 vehicle manufacturers in Europe. Since July 2015, Diess was involved in the day-to-day operations  
22 of, and exercised power and control over, VW AG, VWGoA, VWoA, and AoA including by,  
23 among other things, directing their public statements and regulatory actions. Diess controlled VW  
24 AG, which in turn controlled VWGoA, VWoA, and AoA.

25 55. Diess is subject to the personal jurisdiction of the Court because he has availed  
26 himself of the laws of the United States through his management and control over VWGoA,  
27 VWoA, and AoA, as well as the manufacture, distribution, testing, and sale of hundreds of

1 thousands of diesel vehicles imported and sold across the United States. Further, Diess has  
2 frequently travelled to the United States to attend and make presentations at various car shows  
3 across the country in order to promote the sales of Volkswagen cars with the purported clean diesel  
4 technology.

5 56. Collectively, Winterkorn, Horn and Diess are referred to herein as the “Officer  
6 Defendants.”

## 7 **V. BACKGROUND**

### 8 **A. Volkswagen’s History and Ownership Structure**

9 57. VW AG was established in Germany in 1937 to produce a “people’s car” that was  
10 intended to be affordable for ordinary German workers. After being largely destroyed during  
11 World War II, the Company resumed operations in the British Occupation Zone under the  
12 ownership of the West German government and the State of Lower Saxony. VW AG went on to  
13 become a central driver and symbol of West Germany’s postwar economic revival.

14 58. In 1960, West Germany partially privatized VW AG and enacted the “Volkswagen  
15 Law” that regulated the privatization. The Volkswagen Law originally provided that major  
16 shareholder resolutions would require an 80% vote. The State of Lower Saxony held a voting share  
17 of 20.2%, which gave it the ability to veto major decisions and prevent takeovers by other  
18 shareholders.

19 59. In response to legal challenges by the European Union from 2007 to 2013, the  
20 Volkswagen Law was amended in 2008 to remove restrictions on share ownership but still require  
21 an 80% vote for major decisions, and was further amended in 2013 to abolish the 80% vote  
22 requirement. However, the Company remains insulated from the possibility of a takeover and from  
23 control by its outside shareholders because of its highly concentrated ownership, as discussed  
24 below.

25 60. In addition to its close ties to the State of Lower Saxony, VW AG has always had  
26 a close relationship with Porsche Automobil Holding SE (“Porsche”), a German automaker  
27 founded in 1931 by Ferdinand Porsche, who also co-founded VW AG and designed the original

1 VW cars. Porsche acquired 30.9% of VW AG in 2007 and then increased its stake to 50.76% in  
2 2009 in an attempt to acquire VW AG. However, Porsche experienced financial difficulties and  
3 was unable to complete the acquisition. Under an agreement between VW AG and Porsche in  
4 2009, VW AG agreed to Porsche's 50.7% ownership of VW AG in exchange for VW AG's  
5 management taking control of Porsche. In effect, instead of Porsche taking control of VW AG,  
6 VW AG took control of Porsche. However, the Porsche family and the related Piëch family own  
7 and control Porsche and thus obtained majority control of VW AG as a result of these transactions.  
8 Also in connection with the 2009 transactions between VW AG and Porsche, Qatar Holding LLC,  
9 the state investment agency of Qatar, acquired 17% of VW AG from Porsche.

10 61. Thus, as of 2016, VW AG was owned 50.7% by Porsche, 20.0% by the State of  
11 Lower Saxony, 17.0% by Qatar Holding LLC, and only 12.3% by outside, public shareholders.  
12 This concentration of majority share ownership in the hands of three shareholders—one of which,  
13 owned and controlled by the Porsche and Piëch families, itself accounts for a majority—  
14 contributes to a Volkswagen corporate culture of secrecy and lack of accountability.

15 62. That culture is reinforced by VW AG's insular corporate-governance structure.  
16 Under German law, VW AG has two boards: a Board of Management, which consists of VW AG's  
17 Chairman and other senior executive officers and is responsible for managing VW AG's business,  
18 and a Supervisory Board, which is responsible for monitoring the Company's management,  
19 approving important corporate decisions, and appointing the members of the Board of  
20 Management. The Supervisory Board currently has 20 members. Under the German Co-  
21 Determination Act, half of the members of the Supervisory Board are representatives of the  
22 German labor unions representing the Company's German workers. The Supervisory Board's ten  
23 other members are the Company's chairman, four members of the Porsche and Piëch families, two  
24 representatives of the State of Lower Saxony, two representatives of Qatar Holding LLC, and the  
25 chief executive officer of Swedish bank SEB, which is an adviser to Scania, one of VW AG's  
26 twelve brands. Thus, with only one possible exception (the SEB CEO), the entire Supervisory  
27

1 Board consists of representatives of VW AG's unions and controlling shareholders. Not one  
2 member is a representative of outside, public shareholders.

3 **B. VW AG Used Its Purportedly**  
4 **“Clean Diesel” Vehicles to Grow Earnings and**  
5 **Market Share Globally and in the United States**

6 63. VW AG is the largest automobile manufacturer in Europe, accounting for a quarter  
7 of the cars sold there. In 2008, it became the third-largest automaker in the world; in 2012, it  
8 became the second-largest; and in the first half of 2015, it briefly became the largest, before its  
9 sales fell as a result of its emissions-cheating scandal, bringing it back down to second place world-  
10 wide.

11 64. VWGoA was formed in 1955, and has been active in the US car market since then.  
12 In the mid-2000s, however, Volkswagen had a small market share of less than 2% in the United  
13 States, selling fewer than 240,000 vehicles in North America in each of 2005 and 2006.  
14 Furthermore, for MY 2007, strict US government emissions regulations forced Volkswagen to  
15 drop most diesel vehicles from its US lineup.<sup>4</sup>

16 65. A new lineup of “clean diesel” engines that were purportedly compliant with US  
17 emissions standards returned to the US market starting with MY 2009, introduced in August 2008.  
18 In 2010, Volkswagen announced goals of doubling its US market share from 2% to 4% by 2014  
19 and of becoming the world's largest automaker by 2018. As noted above, it achieved the latter  
20 goal three years early.

21 66. Sales of “clean diesel” cars in the United States were a central part of Volkswagen's  
22 growth strategy. VW AG has admitted that “the new EA 189 2.0 liter diesel engine (later known  
23 as the Generation 1 or ‘Gen 1’) for use in the United States . . . would be the cornerstone of a new

24 \_\_\_\_\_  
25 <sup>4</sup> Throughout this Complaint, all references to specific model-year vehicles are to the model years  
26 for vehicles released in the United States. Although diesel vehicles sold elsewhere in the world  
27 were also equipped with defeat-device software as discussed in this Complaint, the model years  
28 assigned to those vehicles at times differed from the US model years based on marketing  
conventions or minor technical differences.



1 project to sell passenger diesel vehicles in the United States. Selling diesel vehicles in the U.S.  
2 market was an important strategic goal of VW AG. This project became known within VW as the  
3 ‘US’07’ project.” (SOF ¶32.) Volkswagen sold 43,869 “clean diesel” vehicles in the United States  
4 in 2009, 58,784 in 2010, 76,564 in 2011, 99,121 in 2012, 111,285 in 2013, and 98,500 in 2014.  
5 By 2015, Volkswagen had a 70% market share of US diesel vehicle sales, and almost one-quarter  
6 of its US sales were diesels. VW AG has admitted that “defeat device software . . . [was] installed  
7 on all of the approximately 585,000 Subject Vehicles and the Porsche Vehicles sold in the United  
8 States from 2009 through 2015.” (SOF ¶72.)

9 **C. Volkswagen Was Required to Comply with Emissions**  
10 **Standards in the United States and Europe**

11 67. During the Class Period, various regulatory standards were in place in the United  
12 States and the European Union to limit the amount of pollutants that vehicles discharged into the  
13 atmosphere, and to further the public health. For instance, the prevailing US regulatory schemes  
14 established by the US Environmental Protection Agency (“EPA”) were known as “Tier 2” and  
15 “Tier 3.” The Tier 2 standards were phased in between 2004 and 2009, and full compliance was  
16 required by 2009. The Tier 2 emission standards are structured into 8 permanent and 3 temporary  
17 certification levels of different stringency, called “certification bins,” and included an average fleet  
18 standard for nitrogen oxide (“NOx”) emissions. One of the certification bins in Tier 2 is known as  
19 “Bin 5,” and requires vehicles certified under that category to emit less than 0.05 grams of NOx  
20 per mile during their intermediate life, and 0.07 grams of NOx per mile during their full useful  
21 life.

22 68. The Tier 3 standards were enacted in March 2014 and are to be phased in from 2017  
23 through 2025. While the Tier 3 requirements are more stringent than the Tier 2 standards, the  
24 structure of Tier 3 is similar to that of Tier 2—manufacturers must still certify vehicles in one of  
25 several categories, and must meet a fleet-average emission standard for their vehicles in a given  
26 model year.

1           69. In addition to the federal regulations, Volkswagen must also comply with the  
2 emission regulations of all US States, which may apply to the EPA for waivers to enact standards  
3 stricter than the EPA's. Compliance with California's emission standards is critically important  
4 given that they are generally the most stringent of all prevailing standards. Thus, if Volkswagen  
5 failed to comply with California's standards—many of which have been adopted by numerous  
6 other States—the Company would be unable to sell its vehicles in those states.

7           70. In November 1998, the California Air Resources Board ("CARB"), California's  
8 regulatory agency that oversees among other things automotive emissions, adopted the Low  
9 Emission Vehicle II emissions standards, which were phased in from 2004 to 2010. California's  
10 emissions standards are the most stringent of any state in the United States, and numerous states  
11 have adopted CARB's standards as their own. Manufacturers, such as Volkswagen, were permitted  
12 to certify vehicles to these standards until model year 2019. Under the Low Emission Vehicle II  
13 standards, carmakers were required to comply with at least one of several emissions categories,  
14 including: (1) Low Emission Vehicles ("LEV II"); (2) Ultra Low Emission Vehicles ("ULEV II");  
15 (3) Super Ultra Low Emission Vehicles ("SULEV II"); and (4) Partial Zero Emission Vehicles  
16 ("PZEV").

17           71. Approximately 13 years later, in January 2012, CARB adopted the more stringent  
18 Low Emission Vehicle III emissions standards, which are to be phased in over the 2015–2025  
19 model years. Carmakers were permitted to certify vehicles to these standards before model year  
20 2015, and by model year 2020, all vehicles must comply with Low Emission Vehicle III emissions  
21 standards. The Low Emission Vehicle III standards expanded upon and tightened the Low  
22 Emission Vehicle II standards in several respects, but maintained the rubric of emissions categories  
23 under LEV III, ULEV III, SULEV III, and zero emission cars.

24           72. Meanwhile, the relevant standards in the European Union during the Class Period  
25 were the Euro-5 and Euro-6 emissions standards. The Euro-5 standard was implemented in  
26 September 2009, and the Euro-6 standard was implemented in September 2014.

1           **D.     VW AG and Its Divisions Secretly Use Illegal**  
2           **“Defeat Devices” to Cheat on Emissions Testing**

3           73.     There are two main types of internal combustion engines—diesel and gasoline—  
4 and there are generally trade-offs to each. Diesel engines have long been popular in Europe, where  
5 more than half of all vehicles sold are diesels, because they typically provide better fuel economy  
6 and efficiency than cars that run on gasoline. As opposed to a gasoline engine, which uses spark  
7 plugs to ignite gasoline vapors and propel the vehicle, a diesel engine subjects a mixture of liquid  
8 fuel and air to a high-temperature “pressure-cooker” environment, where the mixture  
9 spontaneously combusts. Under those circumstances, the gas expands forcefully, producing  
10 significantly more torque than a gasoline engine—leading to more power.

11           74.     While both diesel and gasoline are refined from crude oil, diesel fuel is a more  
12 dense energy source than gasoline and therefore able to achieve greater fuel economy. The trade-  
13 off is that while diesel cars get better mileage, traditional diesel engines emit far more harmful  
14 emissions and particulate matter than gasoline, many of which are costly and difficult to treat or  
15 otherwise contain, such as NOx.

16           75.     NOx is a family of highly reactive gasses that interact with volatile organic  
17 compounds in the atmosphere to form ozone, a principal component of smog, as well as acid rain.  
18 Breathing ozone can cause chest pain, coughing, throat irritation, and congestion; can worsen  
19 bronchitis, emphysema, and asthma; and can lead to premature death. High NOx levels also lead  
20 to severe harm to marine ecosystems, and can cause plant and marine animal death. Approximately  
21 50% of NOx emitted comes from automobiles and other vehicular sources, and controlling these  
22 emissions can add significantly to the cost of the cars and reduce their power, acceleration, and  
23 torque.

24           76.     As described above, to control emissions of NOx, particulate matter, and other  
25 pollutants, US federal and state laws require vehicles to be certified as compliant with emissions  
26 standards before they can be sold. Vehicles that are equipped with “defeat devices” cannot be  
27 certified or sold. As defined in the relevant federal regulations, a “defeat device” is an “auxiliary  
28 emission control device” that reduces the effectiveness of the emission-control system under

1 conditions that may reasonably be expected to be encountered in normal vehicle operation and use,  
 2 unless limited exceptions apply. An “auxiliary emission control device” is a design element that  
 3 senses temperature, vehicle speed, engine revolutions per minute, or other parameters for the  
 4 purpose of activating, modulating, delaying, or deactivating the vehicle’s emission control system.

5 77. As VW AG has admitted, “at least in or about 2006, VW AG employees working  
 6 under the supervision of Supervisors B, C, and F” (believed to be Krebs, Hadler, and Dorenkamp,  
 7 respectively) “were designing the new EA 189 2.0 liter diesel engine (later known as the  
 8 Generation 1 or ‘Gen 1’) for use in the United States that would be the cornerstone of a new project  
 9 to sell passenger diesel vehicles in the United States.” (SOF ¶32.) However, “Supervisors B, C,  
 10 and F, and others, . . . realized that VW could not design a diesel engine that would both meet the  
 11 stricter U.S. NOx emissions standards that would become effective in 2007 and attract sufficient  
 12 customer demand in the U.S. market.” (SOF ¶33.)<sup>5</sup>

13 \_\_\_\_\_  
 14 <sup>5</sup> The six “Supervisors A-F” referred to in the admitted Statement of Facts are believed to be:

15 (1) “Supervisor A”—Heinz-Jakob Neußer, who was the supervisor in charge of (a) the VW Brand  
 16 Engine Development department from in or about October 2011 until in or about July 2013, (b)  
 17 Engine Development for all of VW AG from in or about October 2012 to in or about September  
 18 2015, and (c) Development for VW Brand from July 2013 to September 2015 (SOF ¶7; *cf.* SSI  
 19 ¶24);

20 (2) “Supervisor B”—Rudolf Krebs, who was a supervisor in charge of the VW Brand Engine  
 21 Development department from in or about May 2005 to in or about April 2007 (SOF ¶8; *cf.*  
 22 [www.ndr.de/der\\_ndr/presse/mitteilungen/VW-Zeugenaussagen-belasten-frueheren-Leiter-der-Motorenentwicklung-vorerst-keine-Beweise-gegen-damalige-Vorstaende,pressemeldungndr17130.html](http://www.ndr.de/der_ndr/presse/mitteilungen/VW-Zeugenaussagen-belasten-frueheren-Leiter-der-Motorenentwicklung-vorerst-keine-Beweise-gegen-damalige-Vorstaende,pressemeldungndr17130.html));

23 (3) “Supervisor C”—Jens Hadler, who was a supervisor in charge of the VW Brand Engine  
 24 Development department from in or about May 2007 to in or about March 2011 (SOF ¶9; *cf.* SSI  
 25 ¶25);

26 (4) “Supervisor D”—Friedrich Eichler, who was a supervisor in charge of the VW Brand Engine  
 27 Development department from in or about October 2013 to at least January 11, 2017 (SOF ¶¶10,  
 28 63; *cf.* [www.bild.de/geld/wirtschaft/volkswagen/manager-gab-betrug-schon-frueher-zu-43930990.bild.html](http://www.bild.de/geld/wirtschaft/volkswagen/manager-gab-betrug-schon-frueher-zu-43930990.bild.html));

(5) “Supervisor E”—Bernd Gottweis, who was a supervisor with responsibility for VW AG’s  
 Quality Management and Product Safety department who reported to the supervisor in charge of  
 Quality Management from in or about 2007 to in or about October 2014 (SOF ¶11; *cf.* SSI ¶26);  
 and

1 78. VW AG has also admitted that “[i]nstead of bringing to market a diesel vehicle that  
 2 could legitimately meet the new, more restrictive U.S. NOx emissions standards, VW AG  
 3 employees acting at the direction of Supervisors B, C, and F and others, including Company A  
 4 employees, designed, created, and implemented a software function to detect, evade, and defeat  
 5 U.S. emissions standards.” (SOF ¶33.) VW AG admitted that “Company A” is “an automotive  
 6 engineering company based in Berlin, Germany, which specialized in software, electronics, and  
 7 technology support for vehicle manufacturers. VW AG owned fifty percent of Company A’s  
 8 shares and was Company A’s largest customer.” (SOF ¶6.) Company A is believed to be Bosch.

9 79. VW AG also admitted:

10 While employees acting at their direction designed and implemented the defeat  
 11 device software, Supervisors B, C, and F, and others knew that U.S. regulators  
 12 would measure VW’s diesel vehicles’ emissions through standard U.S. tests with  
 13 specific, published drive cycles. Accordingly, VW AG employees acting at the  
 14 direction of Supervisors B, C, and F, and others designed the VW defeat device to  
 15 recognize whether the vehicle was undergoing standard U.S. emissions testing on  
 16 a dynamometer (or “dyno”) or whether the vehicle was being driven on the road  
 17 under normal driving conditions. The defeat device accomplished this by  
 18 recognizing the standard drive cycles used by U.S. regulators. If the vehicle’s  
 19 software detected that it was being tested, the vehicle performed in one mode,  
 20 which satisfied U.S. NOx emissions standards. If the defeat device detected that the  
 21 vehicle was not being tested, it operated in a different mode, in which the  
 22 effectiveness of the vehicle’s emissions control systems was reduced substantially,  
 23 causing the vehicle to emit substantially higher NOx, sometimes 35 times higher  
 24 than U.S. standards.

19 (SOF ¶34.)

20 80. With regard to its 3.0 liter diesel vehicles, VW AG also admitted that for “Audi and  
 21 Porsche diesel vehicles sold in the United States for model years 2009-2016 . . . Audi engineers  
 22 designed and installed software designed to detect, evade and defeat U.S. emissions standards,  
 23 which constituted a defeat device under U.S. law.” (SOF ¶39.) “Specifically”:

24 \_\_\_\_\_  
 25  
 26 (6) “Supervisor F”—Richard Dorenkamp, who was a supervisor within the VW Brand Engine  
 27 Development department from in or about 2003 until in or about December 2012 (SOF ¶12; cf.  
 28 SSI ¶23).

1 Audi AG engineers calibrated a defeat device for the 3.0 liter Subject Vehicles and  
2 the Porsche Vehicles that varied injection levels of a solution consisting of urea and  
3 water (“AdBlue”) into the exhaust gas system based on whether the vehicle was  
4 being tested or not, with less NOx reduction occurring during regular driving  
5 conditions. In this way, the vehicle consumed less AdBlue, and avoided a  
6 corresponding increase in the vehicle’s AdBlue tank size, which would have  
7 decreased the vehicle’s trunk size, and made the vehicle less marketable in the  
8 United States. In addition the vehicle could drive further between service intervals,  
9 which was also perceived as important to the vehicle’s marketability in the United  
10 States.

11 (SOF ¶40.)

12 81. This misconduct resulted in NOx emissions during normal operation of up to 9  
13 times the EPA limits. As a result, these vehicles also violated prevailing EPA, CARB, and Euro-5  
14 emissions standards. The study conducted by the ICCT/WVU detected the excess emissions in two  
15 of the subject “clean diesel” vehicles. That study was referred to Volkswagen, the EPA, and  
16 CARB.

17 82. The public health consequences of Volkswagen’s vehicles’ heightened NOx  
18 emissions levels are stark. Indeed, the AP reported on October 5, 2015 that “Volkswagen’s  
19 pollution-control chicanery has not just been victimless tinkering, killing between five and 20  
20 people in the United States annually in recent years.” The AP’s statistical and computer analysis  
21 estimated that, over seven years, Volkswagen’s illegal emissions caused between 16 and 94 deaths  
22 in the United States (with more coming as the number of diesels on the road increased), at a cost  
23 of “well over \$100 million.” Likewise, according to a report published on October 29, 2015 by  
24 research scientists at Harvard University and the Massachusetts Institute of Technology, illegally  
25 high NOx emissions produced by Volkswagen’s diesel vehicles equipped with defeat devices are  
26 projected to cause approximately 60 deaths in the United States by the end of 2016. That report  
27 also estimated “mortality costs from 2008 until the end of 2015 due to the excess VW NOx  
28 emissions . . . at \$450 [million], . . . while future costs if there is no recall (but no further sales  
from September 2015) are forecast to be \$910 [million].”

**VI. DEFENDANTS' FRAUDULENT SCHEME**

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83. For years leading up to and throughout the Class Period, Defendants fraudulently misrepresented and concealed from investors material facts concerning VW AG's regulatory compliance, financial results, and commitment to producing "environmentally friendly" vehicles. For example, VW AG repeatedly misrepresented to investors that its vehicles—including the defeat device-equipped diesel vehicles at issue here—complied with emissions standards in all 50 US states and the Euro-5 standards in Europe. The Company's reported financial results were also materially false and misleading, given that they failed to properly reflect the liabilities (warranty or other customer claims for compensation, regulatory fines, and civil and criminal penalties) flowing from the Company's emissions cheating, which should have been accounted for as provisions under International Accounting Standard ("IAS") 37 and disclosed during the Class Period. Those provisions would have correspondingly reduced VW AG's earnings in each reporting period throughout the Class Period. The failure to accrue such provisions had the effect of inflating VW AG's reported profit and distorting other important financial metrics during the Class Period.

84. As Defendants have now repeatedly admitted, Volkswagen engaged in massive, widespread misconduct through the installation and use of defeat-device software in approximately 11 million vehicles with purported "clean diesel" engines—including approximately 585,000 in the United States and 8.5 million in Europe. These defeat devices were designed to (and did) mask the engines' failure to meet emissions standards. As a result, contrary to Defendants' representations, VW AG failed to comply with regulations, its cars did not comply with emissions standards for any US state or Europe, and the Company significantly overstated its financial results by failing to properly record provisions arising out of the liabilities owing to its use of illegal defeat devices.

85. Had VW AG accurately reported the cars' levels of NOx emissions, it could not have legally marketed or sold the cars in the United States. Similarly, the installation of the defeat

1 devices in Europe was also illegal and contributed to the cars' purported ability to meet European  
2 emissions standards.

3 86. Significantly, Volkswagen's top executives knew that the Company's "clean  
4 diesel" vehicles passed emissions tests only because they were outfitted with defeat-device  
5 software, and when actually driven, produced NOx and other emissions far in excess of permissible  
6 levels. In fact, the scandal was intentionally engineered by VW AG's senior management,  
7 including Defendant Winterkorn, to increase market share in the United States—where  
8 Volkswagen has long struggled—in order to become the world's largest car maker by 2018.  
9 Defendants' fraud was further facilitated by a demanding corporate culture to sell cars and keep  
10 management happy at all costs, with reported results far more important than legal and regulatory  
11 compliance.

12 87. As discussed below, Volkswagen's top executives, including Defendants  
13 Winterkorn and Horn and their closest colleagues, knew or at the very least were severely reckless  
14 in not knowing that Volkswagen's TDI cars used defeat-device software to pass emissions testing,  
15 but otherwise produced emissions at elevated levels in violation of EPA and CARB regulations.

16 88. Before the start of the Class Period, in 2006, a top VW AG technology executive  
17 prepared a PowerPoint presentation to show how the Company could cheat on emissions tests in  
18 the United States. The PowerPoint was prepared because VW AG executives knew that there was  
19 no possible way for the Company to produce diesel cars that were affordable, had an acceptable  
20 level of performance, and were able to comply with emission standards. After reviewing the  
21 presentation, VW AG executives consistently rejected proposals to improve the emissions  
22 equipment so that it would comply with emission rules. In fact, the entire Management Board, led  
23 by Defendant Winterkorn, repeatedly rebuffed lower-ranking employees who submitted technical  
24 proposals for upgrading the emissions controls because the upgrades would cost too much, and  
25 would provide no noticeable benefit to customers.

26 89. Indeed, as VW AG has already admitted, "Supervisor F" [Dorenkamp] "authorized  
27 VW AG engineers to use the defeat device in the development of the US'07 project"



1 (Volkswagen’s 2.0 liter “clean diesel” cars), “despite concerns expressed by certain VW AG  
2 employees about the propriety of designing and activating the defeat device software. In or about  
3 the fall of 2006, lower level VW AG engineers, with the support of their supervisors, raised  
4 objections to the propriety of the defeat device, and elevated the issue to Supervisor B [Krebs].  
5 During a meeting that occurred in or about November 2006, VW AG employees briefed Supervisor  
6 B on the purpose and design of the defeat device. During the meeting, Supervisor B decided that  
7 VW should continue with the production of the US’07 project with the defeat device, and  
8 instructed those in attendance, in sum and substance, not to get caught.” (SOF ¶36.)

9 90. Further, as the United States alleges in its Second Superseding Indictment, “[o]n or  
10 about March 21, 2007, DORENKAMP, his co-conspirators and other VW employees met with  
11 CARB in El Monte, California. CARB had requested that VW specifically discuss the AECDS  
12 [auxiliary emissions control devices] associated with the emissions control systems in the EA 189  
13 diesel engine design. Throughout the meeting, DORENKAMP and other VW employees knew  
14 they planned to include a defeat device in the EA 189 diesel engine but concealed the existence of  
15 the defeat device from CARB.” (SSI ¶61; attached as Exhibit 2.)<sup>6</sup>

16 91. The United States alleges that “[i]n the fall of 2007, DORENKAMP participated in  
17 a meeting with HADLER and other, during which DORENKAMP argued for continuation of the  
18 EA 189 towards production, even while some of his colleagues were against it. HADLER  
19 approved the continued development of the EA 189 with the defeat device following the meeting.”  
20 (SSI ¶62.)

21 92. The United States further alleges that “[o]n or about October 12, 2007, . . . drafts  
22 of slide presentations were exchanged with HADLER, DORENKAMP, and others in preparation  
23 for a senior executive technical meeting at which HADLER would be presenting on the project’s  
24 status. Included in the presentation were back-up slides, two of which contained explicit and  
25 repeated references to software changes describing the defeat device through engineering terms,

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26 <sup>6</sup> “VW” is defined in the Second Superseding Indictment to refer collectively to VW AG, Audi  
27 AG, and Volkswagen Group of America, Inc. (SSI ¶13.)

1 including ‘precon recognition,’ and ‘emissions tight mode.’ On October 13, 2007, HADLER  
2 provided substantive edits to the PowerPoint presentation.” (SSI ¶63.)

3 93. The United States further alleges that “[o]n or about October 17, 2007, another  
4 version of a backup slide containing software changes that made numerous references to explicit  
5 engineering terms for the defeat device was exchanged with HADLER, DORENKAMP, and  
6 others. In response, HADLER wrote (in German) that ‘we shall please never present this anywhere  
7 and will also not distribute it.’” (SSI ¶64.)

8 94. Bosch, the supplier of the defeat devices, warned VW AG’s “top circles,” which  
9 are believed to have included Winterkorn, as early as 2007 not to use the devices for illegal  
10 purposes, and that Volkswagen’s intended use of the devices was illegal. Further, an internal  
11 Volkswagen whistleblower warned the Company in 2011 that the Company was illegally  
12 manipulating reported emissions data. The whistleblower specifically alerted VW AG  
13 Management Board member Neußer, who was then-VW AG’s head of development, was  
14 subsequently the Company’s brand manager, and was a close confidant of Winterkorn.<sup>7</sup> Finally,  
15 Defendants have admitted that Winterkorn received multiple memoranda in 2014, including one  
16 in May 2014 from Gottweis, a quality-control expert known as VW AG’s “fireman,” regarding the  
17 Company’s unlawful use of defeat-device software.

18 95. Regardless of the repeated warnings by multiple internal and outside parties,  
19 Winterkorn knew of Volkswagen’s cheating due to his hands-on management style, well-known  
20 attention to detail, experience in engineering and quality assurance, and close relationships with  
21 the engineers directly responsible for the TDI engines at issue, and, based on information and  
22 belief, orchestrated the fraud himself.

23 \_\_\_\_\_  
24 <sup>7</sup> Neußer has been a member of the Board of Management for the Development Division of the  
25 Volkswagen brand since 2013, and served as the head of Volkswagen Group’s powertrain  
26 development since 2012. The *New York Times* has reported that Neußer is “[b]y far the most  
27 prominent person indicted so far,” “one of the select few executives who presented new models at  
28 car shows,” the former boss of “10,000 people at Volkswagen’s vast development complex in  
Wolfsburg, Germany,” and “known inside Volkswagen for his loyalty to Martin Winterkorn,  
Volkswagen’s chief executive until he resigned when the scandal broke.” Jack Ewing,  
“Volkswagen’s Diesel Scandal: Who Has Been Charged?,” *New York Times*, Jan. 13, 2017.

1           96. Further, in May 2014, ICCT and WVU published a study showing that, during  
2 normal driving conditions, two of the Company’s “clean diesel” vehicles were emitting NOx at  
3 levels that exceeded allowable limits. That study was referred to Volkswagen, the EPA and CARB.  
4 Significantly, once ICCT/WVU and government regulators such as EPA and CARB discovered  
5 abnormalities in Volkswagen’s cars’ emissions tests, Defendants continued to mislead the  
6 regulators by blaming faulty testing procedures in an attempt to keep their misconduct hidden. In  
7 effect, Volkswagen doubled down on its fraud, hoping that it would simply slip through the cracks,  
8 might lead to only a minimal fine or minor recall, or would simply be ignored altogether by the  
9 authorities.

10           97. It was only after US regulators refused to certify Volkswagen’s current lineup of  
11 diesel vehicles that Defendants were forced to admit that they installed defeat devices in  
12 Volkswagen’s TDI cars. At that point, and after privately telling regulators that “**these vehicles**  
13 **were designed and manufactured with a defeat device to bypass, defeat, or render**  
14 **inoperative elements of the vehicles’ emissions control system,**” Defendants finally admitted  
15 the truth publicly. Defendant Winterkorn, then VW AG’s CEO, apologized that Volkswagen had  
16 “broken the trust of our customers and the public.” Winterkorn further announced that  
17 “Volkswagen has ordered an external investigation of this matter,” and that the Company would  
18 “do everything necessary in order to reverse the damage this has caused.” At the same time, a  
19 Volkswagen spokesperson stated that “We have admitted to it to the regulator. **It is true.**” On  
20 September 25, 2015, Berthold Huber, Deputy Chairman of VW AG’s Supervisory Board also  
21 stated, “[t]he test manipulations are a moral and political disaster for Volkswagen.”

22           98. Likewise, VWGoA President and CEO Michael Horn admitted that “**our company**  
23 **was dishonest. With the EPA, and the California Air Resources Board, with all of you. And**  
24 **in my German words, we have totally screwed up.**” Winterkorn again apologized, stating that  
25 he was “endlessly sorry that we have **disappointed this trust**” that “millions of people across the  
26 world” had in “our brands, our cars, and our technology.”  
27

1           99. Importantly, after Volkswagen hired the Jones Day law firm to conduct a  
2 purportedly independent investigation into the Company’s misconduct, Volkswagen refused to  
3 release the results at the time they were promised, citing “**unacceptable risks for Volkswagen.**”  
4 This is despite the fact that a senior Volkswagen lawyer ordered the destruction of “incriminating  
5 material” from the Company’s systems before issuing a litigation hold pertaining to the diesel  
6 matter.

7           **A. Volkswagen’s Emissions Cheating Grew**  
8           **out of a Culture of Fear and Control**

9           100. Volkswagen’s emissions cheating and the current diesel scandal grew out of the  
10 Company’s culture. Both before and throughout Winterkorn’s tenure at Volkswagen, the corporate  
11 environment at the Company was one in which failures were not tolerated, and pressure came from  
12 Volkswagen’s top leadership to produce bottom-line results despite technical obstacles, or else  
13 face serious consequences.

14           **1. Winterkorn Was a Demanding,**  
15           **Detail-Focused Micromanager, Which He**  
16           **Learned from His Mentor, Former CEO Piech**

17           101. In early 2007, when Winterkorn was installed as VW AG’s CEO, it was at the  
18 direction of Supervisory Board Chairman Ferdinand Piech. *Fortune* magazine has called Piech—  
19 VW AG’s CEO from 1992 to 2002 and Chairman of the Supervisory Board from 2002 until early  
20 2015—“a brilliant engineer and a ruthless, terrifying manager who dominated VW” and “infused  
21 VW with an ambition and drive that made the most of its political heft, presiding over a culture  
22 that was, if not above the law, then not above stretching it, by many accounts.”

23           102. Bob Lutz, a longtime high-ranking executive at numerous car companies including  
24 BMW, Ford, Chrysler, and General Motors, wrote a November 4, 2015 article in *Road & Track*  
25 how the “immensely powerful” Piech “ran everything” at Volkswagen through “a reign of terror  
26 and a culture where performance was driven by fear and intimidation. He just says, ‘You will sell  
27 diesels in the U.S., and you will not fail. . . .’ The guy was absolutely brutal.” As Lutz describes,  
28 the corporate culture at Volkswagen that Piech fostered “gets short-term results, but it’s a culture

1 that's extremely dangerous. . . . It's fast and it's efficient, but at huge risk." Similarly, the *Kolner*  
2 *Stadt-Anzeiger* reported on January 24, 2016 that "there was no room for even well founded  
3 objections," and "[t]he culture of fear cultivated by the self-important company leaders is  
4 enormously detrimental to the entire company."

5 103. Winterkorn was Piech's protégé and, much like Piech, Winterkorn was a  
6 demanding, detail-oriented micromanager who ran VW AG by instilling fear in employees and  
7 demanding bottom-line results regardless of any obstacles. Winterkorn himself has touted his  
8 imperious management style and attention to technical detail. In VW AG's 2010 annual report, the  
9 Company included a conversation between Winterkorn and German astronaut Hans Wilhelm  
10 Schlegel, in which the two compared their "share[d] passion for scientific analysis combined with  
11 hands-on expertise." The report described Winterkorn as "someone who is au fait with every last  
12 technical detail," and quoted Winterkorn as stating that

13 [t]he Volkswagen Group is so successful today because this notion of 'digging  
14 deeper' has become part of our corporate culture. . . . **As an automotive manager,**  
15 **it is not enough simply to enjoy driving cars—you have to understand them**  
16 **right down to every last detail. Many things in our Group today only work**  
17 **because my Board of Management colleagues and I are extremely well versed**  
**in all aspects of the business. If developers say that a solution is not possible**  
**from a technical, timing, or financial point of view, I am able to challenge**  
**them. And everyone knows that.**

18 Winterkorn further stated that he could "identify with" managers who "keep [their] finger[s] on  
19 the pulse of events."

20 104. According to a January 23, 2016 report by *Reuters*, an internal Company report  
21 confirmed that the pressure at Volkswagen was such that "[w]ithin the company there was a culture  
22 of 'we can do everything,' so to say something cannot be done, was not acceptable." In other  
23 words, as reported in German publication *Magazin* on November 8, 2015, "[t]he reason for the  
24 manipulations is said to have been the fact that it was impossible to meet the goals set by the VW  
25 CEO Martin Winterkorn, who has since resigned, with legal means. . . . A culture of fear is said to  
26 have prevailed."

1 105. Stories of Winterkorn's attention to detail and micromanaging are legion. As  
2 *Fortune* reported in its March 15, 2016 issue:

3 Winterkorn might have been a notch less imperious than [Piech], but he still  
4 displayed an almost theatrical officiousness: . . . He was known for carrying a  
5 micrometer to check the minutest measurements of cars. VW routinely transported  
6 twice as many vehicles to auto shows as it planned to display because Winterkorn  
7 was known for vetoing a particular selection if he detected the slightest  
8 imperfection.

9 Like his mentor [Piech], Winterkorn had outsize ambitions. One of his first acts as  
10 CEO was to unveil a plan to overtake both General Motors and Toyota by 2018 to  
11 become the world's No. 1 automaker, "not just in units, but in profitability,  
12 innovation, customer satisfaction, everything," as he put it. Winterkorn wanted  
13 *everything*.

14 106. As a micromanager with a deep engineering background, Winterkorn focused  
15 particularly closely on even small details of engineering issues that arose at Volkswagen.

16 107. Another key contributor to the emissions-cheating scandal was the Company's  
17 unusual corporate structure. Consistent with the German "codetermination" law, labor  
18 representatives hold half the seats on VW AG's Supervisory Board. Because of the labor  
19 representatives' strong power at the Company, VW AG's management has at times been unable  
20 to implement reforms, such as job cuts, that would enable the Company to increase its profit  
21 margins.

22 108. As a securities analyst from Natixis wrote in a November 24, 2015 report titled "No  
23 salvation without a reform of the governance," "[t]he story of the fraud is punctuated by examples  
24 of poor strategic decisions and management methods that independent, balanced governance  
25 would have prevented or at least curbed. . . . The denial of this fraud for more than a year moreover  
26 reflects an authoritarian, centralised climate in the group, which discouraged adversarial debate."  
27 Nataxis continued, "**we believe that the method of management (visibly an authoritarian  
28 climate existed with Mr. Winterkorn, CEO, and Mr. Piech, chairman) and the lack of  
independent governance are to blame.**" Similarly, an analyst from Evercore ISI reported on  
November 13, 2015 that "[f]or the last two decades, VW has proven multiple times that

1 shareholder value is at the bottom of its preference list. The interests from the Union and Lower  
2 Saxony weighed more, especially during times when CEOs needed support to build their empire.”

3 **2. Volkswagen’s Culture Has Given**  
4 **Rise to Numerous Past Scandals**

5 109. As the *New York Times* wrote on September 25, 2015, “given Volkswagen’s  
6 history, culture and corporate structure, the real mystery may be why something like this didn’t  
7 happen sooner.” Indeed, the *Times* quoted corporate-governance expert Charles Elson of the  
8 University of Delaware as saying, “[t]he governance of Volkswagen was a breeding ground for  
9 scandal,” and “[i]t was an accident waiting to happen.” A longtime former Company executive  
10 told the *Times* that “a scandal, especially one involving emissions, was all but inevitable at  
11 Volkswagen. [The executive] cited the company’s isolation, its clannish board and a deep-rooted  
12 hostility to environmental regulations among its engineers.” Indeed, Volkswagen’s use of defeat  
13 devices to flout environmental regulations goes back decades. In 1974, the Company paid a  
14 \$120,000 fine to the EPA after using defeat devices to disable cars’ pollution-control systems in  
15 violation of the Clean Air Act.

16 110. The pressure-filled culture at Volkswagen, rife with secrecy and disregard for  
17 regulatory and legal compliance, has manifested itself in numerous scandals over the years. As the  
18 *Daily Mail* reported on September 24, 2015, the culture at Volkswagen “made arrogant bosses feel  
19 invincible in the face of competition and regulation.” For example, in 2005, the “perks and  
20 prostitution” scandal arose out of some of the same structural factors—the need to maintain labor’s  
21 support while finding ways to significantly improve profit margins, along with a culture of fear  
22 and flagrant disregard for the rules—that led to the current emissions scandal. A German member  
23 of Parliament and member of the works council who was prosecuted in the scandal’s wake pointed  
24 his finger squarely at the Company: “My conduct at the time is incomprehensible to me and  
25 contradicts all my personal values. **I can only explain it by the general atmosphere at**  
26 **Volkswagen at the time.**”

1           111. Also in 2005, Volkswagen faced a corruption scandal after a senior executive  
2 promised to build a factory in India in exchange for a €2 million bribe. In 2006, Volkswagen was  
3 implicated along with other carmakers amid accusations that auto executives were taking bribes  
4 from suppliers. And in 2009, law enforcement raided Porsche's headquarters as part of an  
5 investigation into market manipulation by Porsche executives.

6           112. In other words, as *Fortune* magazine reported about the Company's emissions  
7 cheating, "VW's misbehavior did not come out of nowhere," and "[t]he company's immense  
8 power, it seems, meant never having to say it was sorry, at least not in Europe" where Volkswagen  
9 "has long steamrolled regulators." That article continued, "VW is driven by a ruthless,  
10 overweening culture. . . . It's a culture that mandated success at all costs. . . . [O]ne has to wonder  
11 how the brass could have been blind to conduct that was so central to achieving the company's  
12 goals."

13           113. German media outlets have reported on the abuses that arose out of Winterkorn's  
14 demanding management style. *Frankfurter Allgemeine Zeitung* reported on September 23, 2015  
15 that Winterkorn "created a climate of pressure to perform and intimidation in the Group in which  
16 fraud thrives," making "shortcuts and cheating more likely"; while *Der Spiegel* reported on  
17 November 7, 2015 that "dictatorship and megalomania" have "led to disaster" and a "culture of  
18 fraud" at Volkswagen, where Piech and Winterkorn have led "with the power of a dictator who  
19 does not tolerate any opposition and with the vision to make it to the top."

20           114. German newspaper *Der Spiegel* even described Winterkorn's management style as  
21 "North Korea without labor camps," a characterization confirmed by automotive expert Ferdinand  
22 Dudenhoeffer ("Dudenhoeffer"), director of the Center for Automotive Research at the University  
23 of Duisberg-Essen, in *Die Presse* on October 3, 2015. As a result, according to an interview with  
24 Dudenhoeffer published in *Der Westen* on October 20, 2015, "VW is basically ungovernable," and  
25 "[w]hat is important at VW is not whether this or that manager is qualified for the leadership role.  
26 Volkswagen has been rocked by affairs for more than 15 years. . . . VW is missing the internal  
27 control. . . . This is not a case of negligence or a sloppy job." Dudenhoeffer also told *Die Presse*



1 that Winterkorn “concentrated all power in his person, and when you pool all power than you feel  
2 like god and act like god. In addition he was a know it all and had his hands in everything.”

3 115. The climate at Volkswagen, where results were demanded at any cost, fostered and  
4 rewarded cutting corners. On December 10, 2015, Hans Dieter Poetsch, the Chairman of VW AG’s  
5 Supervisory Board since October 2015, admitted that the emissions scandal occurred in light of  
6 the Company’s ambition for global dominance and “a tolerance for breaking the rules.” According  
7 to Poetsch, “[i]t proves not to have been a one-time error, but rather a chain of errors that were  
8 allowed to happen.”

9 **3. Winterkorn Installed Close Associates Who**  
10 **Were Part of the Defeat Devices’ Development as**  
11 **Top Executives**

12 116. As German newspaper *Bild am Sonntag* (“*Bild*”) reported on February 14, 2016,  
13 Winterkorn was a “car man who normally took care of every detail” at Volkswagen. To help take  
14 care of those details, Winterkorn installed as his top lieutenants engineers with whom he had long,  
15 close relationships. Specifically, Winterkorn named as VW AG’s heads of research and  
16 development Ulrich Hackenberg, formerly Audi’s chief engineer, and Wolfgang Hatz, formerly a  
17 top engine developer at Porsche, and put Hackenberg and Hatz in charge of the Volkswagen  
18 Research and Development group and engine development. Both have since been fired from the  
19 Company.

20 117. Until his recent firing, Hackenberg was a member of the Volkswagen brand’s Board  
21 for Development from 2007, and was a member of the Audi AG Management Board from 2013,  
22 overseeing Audi’s technical development. Similarly, until his recent firing, Hatz was a member of  
23 the Porsche AG Management Board in charge of Research and Development since 2011, and also  
24 the head of engine and transmission development for the entire Volkswagen Automotive Group.

25 118. It was reportedly during Winterkorn’s reign at Audi, **as early as 1999**, that the idea  
26 took root to use defeat devices to evade increasingly strict emissions standards. *Handelsblatt*  
27 reported on April 19, 2016 that Jones Day’s investigation into the emissions cheating scandal has  
28 shown that in 1999, when Winterkorn served as Audi’s CEO, engine developers doubted that they

1 could meet stricter emissions limits legally, and were already contemplating installing illegal  
2 software to ostensibly comply with those rules. Audi experts therefore devised software that could  
3 alter certain emissions features during testing. Internally, the device was called “acoustic mode”  
4 and “acoustic function.” But the illegal plan was not implemented until years later, when  
5 Winterkorn was CEO of VW AG. Then, the software used to develop an engine that could evade  
6 emission standards.

7 119. In fact, VW AG has admitted in its plea agreement with the United States that “[i]n  
8 designing the defeat device, Volkswagen engineers borrowed the original concept of the dual-  
9 mode, emissions cycle-beating software from Audi. On or about May 17, 2006, a VW engineer,  
10 in describing the Audi software, sent an email to employees in the VW Brand Engine Development  
11 department that described aspects of the software and cautioned against using it in its current form  
12 because it was ‘pure’ cycle-beating, i.e., as a mechanism to detect, evade and defeat U.S. emissions  
13 cycles or tests. The VW AG engineer wrote (in German), ‘within the clearance structure of the  
14 pre-fuel injection the acoustic function is nearly always activated within our current US’07-data  
15 set. This function is pure [cycle-beating] and can like this absolutely not be used for US ’07.’”  
16 (SOF ¶35 (alteration in original).)

17 120. According to press reports, Hackenberg and Hatz were Winterkorn’s “top aides  
18 during his tenure at Audi,” and once at Volkswagen, had daily responsibility for developing  
19 Volkswagen’s clean-diesel strategy. As the *Wall Street Journal* reported on October 5, 2015, Hatz  
20 and Hackenberg, along with VW AG development head Hanz-Jakob Neußer, “are at the center of  
21 [Volkswagen’s] probe into the installation of engine software designed to fool regulators.” Indeed,  
22 Hatz and Hackenberg were two of the first Volkswagen executives suspended once the Company’s  
23 emissions cheating became public, and Hackenberg subsequently resigned. *WirtschaftsWoche*  
24 reported on December 4, 2015 that just after the scandal broke, on September 21, 2015,  
25 “Winterkorn—who until then had a close male bond with Hackenberg—is said to have prompted  
26 his longtime companion to take responsibility for the woes . . . so his friend Winterkorn could  
27 declare an end to the disaster . . . and continue to rule.”

1           121. German media have reported on Winterkorn’s close relationship with Hackenberg,  
2 who worked at Winterkorn’s behest and had vast authority at Audi and at VW AG. *Süddeutsche*  
3 *Zeitung* reported on June 24, 2013 that Winterkorn had brought Hackenberg to Volkswagen,  
4 describing him as “[a] man who is very close to Winterkorn. Probably closer than most. . . . The  
5 63-year old, this much can be said, is likely the most important intimate of VW group CEO Martin  
6 Winterkorn. The men value each other a lot. ‘Hacki,’ as Winterkorn calls the colleague  
7 affectionately, has been his problem solver for a long time.” *WirtschaftsWoche* similarly reported  
8 on September 24, 2015 that “[w]ithout ‘Hacki’s’ blessing no model and definitely no engine went  
9 into production,” and that “[t]he down to earth Westphalian is said to be at least as detail-obsessed  
10 as Winterkorn.”

11                           **4. Volkswagen Admits that a Cultural**  
12                           **Overhaul Is Needed to Prevent Future Scandal**

13           122. VW AG’s longstanding, ingrained culture of fear, control, and secrecy is well  
14 known, and insiders and observers alike have expressed their hope that the emissions cheating  
15 scandal will lead to more transparency and improved controls. For example, commenting on the  
16 Company’s culture since Winterkorn was replaced by new CEO Matthias Müller (“Müller”), VW  
17 AG Management Board member Andreas Renschler told *Dow Jones Business News* in a February  
18 23, 2016 interview that “[t]he difference is like night and day. . . . We all realize that the crisis  
19 gives us a huge opportunity to change the company.” In a March 1, 2016 presentation by VW AG  
20 Management Board member Frank Witter, Volkswagen itself identified the need for a “New  
21 structure—Launching a more entrepreneurial & decentralized Group structure” and “New  
22 mindset—Profoundly changing the way we do things” as two of the Company’s five top priorities,  
23 both of which are presently “in progress,” along with “New destination—Re-evaluating what we  
24 do & re-defining our targets,” which is targeted for mid-2016. The presentation also identified as  
25 key focus areas for VW AG moving forward, among other things, overhauling corporate culture  
26 to “create [a] modern corporate culture” with “[m]ore responsibility,” “strengthen[ing] trust of  
27 customers authorities and media,” strengthening corporate responsibility, “[r]evamp[ing]

1 management style,” and a “[n]ew clearer mission statement focused on transparency, authenticity  
2 and openness.”

3 123. VW AG has admitted in a December 10, 2015 press release that the centralized  
4 control under Winterkorn was a key factor in the emissions scandal:

5 Parallel to overcoming the crisis, Volkswagen is also instituting a comprehensive  
6 new alignment that affects the structure of the Group, as well as its way of thinking  
7 and its strategic goals.

8 Volkswagen will be managed in a more decentralized fashion in the future, and its  
9 brands and regions will be granted more independence. The Group’s Board of  
10 Management is fully focused on its core task: advancing the major, global issues  
11 for the future, as well as synergies, controls, and strategy. . . . All these structural  
12 changes ultimately aim to reduce managerial complexity and ensure that the Group  
13 can be effectively led over the long term.

14 124. The December 10 press release also stated that, as opposed to the Winterkorn  
15 regime, “[a]ccording to Mueller, the future will be about more open discussions, closer  
16 cooperation, and a willingness to allow mistakes if they are understood as an opportunity to learn.  
17 [Mueller] stated, ‘We don’t need yes-men, but managers and engineers who make good arguments  
18 in support of their convictions and projects . . . . People who follow their instincts and are not  
19 merely guided by the possible consequences of impending failure.’”

20 125. In the wake of the scandal, Volkswagen has also put in place structural changes  
21 designed to enhance compliance and accountability, further admitting that almost all of  
22 Winterkorn’s senior management team needed to be replaced:

23 At an organizational level, . . . the Integrity & Law area will be represented as its  
24 own department on the Group’s Board of Management in the future—a clear  
25 indication that these issues are extremely important to Volkswagen.

26 **B. Volkswagen’s Growth Plans  
27 Rely Heavily on “Clean Diesel”**

28 126. By 2005, it was clear to automakers that consumers’ interest in reducing  
environmental impact could significantly affect car companies’ future growth and market share.  
Many automakers had begun or were planning to develop and market fuel-efficient hybrid  
vehicles, such as Toyota’s Prius, that produced low levels of environmentally harmful emissions

1 in comparison with other cars that were popular with consumers. Those increasingly popular  
2 hybrids, however, were perceived as boring and did not offer the exciting driving experience that  
3 many consumers wanted and had grown accustomed to.

4 127. At the same time, Volkswagen sought to increase its US presence—its US market  
5 share in 2005 was only 2%—and capture much of the market for environmentally friendly cars,  
6 and to do so by avoiding the lagging performance that plagued hybrids. Moreover, diesel vehicles  
7 were and are historically much more widespread in Germany and throughout Europe than in the  
8 United States, with 50% of all new vehicles licensed in the European Union in 2014 being diesels.  
9 Volkswagen was looking to develop cars that it could sell widely in the United States and Europe.  
10 Against that backdrop, Volkswagen started down a path that it acknowledges led to the current  
11 emissions scandal: the Company made “a strategic decision to launch a large-scale promotion of  
12 diesel vehicles in the Unites States in 2005.”

13 128. To reach that goal, and in an effort to produce and market powerful but  
14 environmentally friendly cars, Volkswagen spent millions of dollars to develop a “clean diesel”  
15 engine that would offer high performance alongside fuel efficiency and low emissions levels.  
16 However, at no point were Volkswagen’s engineers able to successfully design a true, high-  
17 performance “clean diesel” engine. Rather, there was a tradeoff between emissions reduction and  
18 performance that the engineers could not work around. Steps to decrease emissions also negatively  
19 affected performance and imposed significant financial costs, while maintaining “fun-to-drive”  
20 aspects meant that emissions levels remained at unacceptably high levels.

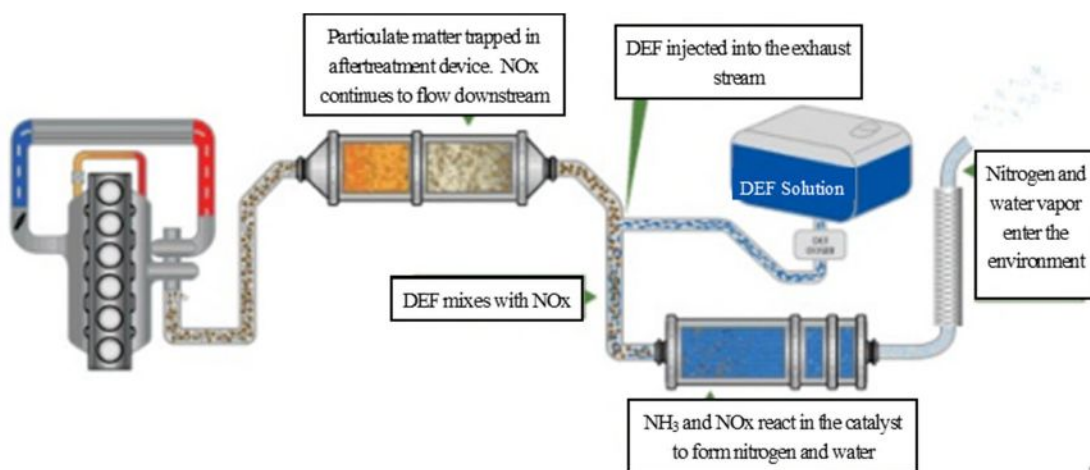
21 **C. Reducing Harmful Emissions from Diesel**  
22 **Engines Poses Fundamental Obstacles**

23 129. As industry experts recognize, there are fundamental difficulties in producing a  
24 fuel-efficient, high-performance, low-emissions diesel engine. Don Hillebrand, the director of  
25 energy systems research at Argonne National Laboratory and the former president of the Society  
26 for Automotive Engineers, explained in a *Livescience* article on September 24, 2015: “You have  
27 power, you have energy, you have emissions: You get to choose two of them.” As is now clear,

1 the choice that Volkswagen made was for power and energy, at the cost of unacceptably high  
2 emissions levels.

3 130. There are different methods of reducing NO<sub>x</sub> emissions levels in diesel vehicles,  
4 and Volkswagen was initially divided over the method it would use. In 2005, when the Company  
5 started its push to develop high-performance, environmentally friendly diesel engines, the  
6 Volkswagen brand was headed by CEO Wolfgang Bernhard, a German auto industry veteran  
7 whom VW AG's then-CEO, Bernd Pischetsrieder, hired from Daimler. Volkswagen's Audi brand  
8 was headed by Defendant Winterkorn. Winterkorn, on one hand, and Bernhard, on the other, had  
9 dramatically different views on how best to develop a high-performance and environmentally  
10 friendly diesel engine.

11 131. Bernhard believed that Volkswagen's engines should utilize a selective catalytic  
12 reduction ("SCR") system to treat exhaust gases and reduce harmful NO<sub>x</sub> emissions. In particular,  
13 Bernhard promoted Volkswagen's use of an SCR system developed primarily by Daimler that  
14 involved injecting "diesel exhaust fluid" ("DEF"), containing urea, into the exhaust stream and  
15 converting NO<sub>x</sub> into nitrogen gas, water, and carbon dioxide. Mercedes marketed that system  
16 under the name "BlueTec." Bernhard licensed the BlueTec technology for use by Volkswagen. A  
17 diagram showing the SCR treatment process follows:



1           132. Bernhard and other Volkswagen managers advocated using SCR technology  
2 because they believed it would allow Volkswagen to keep pace with NOx emissions standards as  
3 they became stricter.

4           133. By late 2006, Bernhard and the engineers he supervised had developed a prototype  
5 diesel engine incorporating BlueTec. Volkswagen was at that point committed to producing clean  
6 diesel engines with BlueTec and, on January 2007, announced that the Company would introduce  
7 a new model of the Jetta that featured a 2.0-liter BlueTec diesel four-cylinder engine. According  
8 to Volkswagen, the new Jetta, which would be available to consumers in the spring of 2008, would  
9 meet emissions standards in all 50 US states.

10           134. As *Automotive News Europe* reported on September 27, 2015, the SCR system was  
11 effective but expensive, and posed pragmatic obstacles. The BlueTec system would cost \$350 per  
12 vehicle—a sum that VW AG finance officials said was too much at a time when a Company-wide  
13 cost-cutting exercise was underway. BlueTec also required the installation of a DEF tank in each  
14 vehicle, and it required regular DEF refills at a dealer or service station. An additional draw back  
15 was that SCR adds weight to vehicles and takes up significant space, making it difficult to use in  
16 compact cars like Volkswagen’s Golf and Jetta—among Volkswagen’s best-selling models in the  
17 United States.

18           135. Much of Volkswagen’s leadership was put off by the cost of the BlueTec system  
19 and the fact that it was developed by a competitor. As *Süddeutsche Zeitung* reported on October  
20 4, 2015, Volkswagen insiders stated that “[w]hoever spoke up was shouted down” with regard to  
21 implementing SCR in Volkswagen’s diesel vehicles, as “[t]hat was the culture of ex-boss Martin  
22 Winterkorn—and that of the technicians.” An internal power struggle to chart Volkswagen’s clean  
23 diesel strategy developed.

24           **D. Winterkorn Takes over Volkswagen and Installs**  
25           **His Closest Aides, Hackenberg and Hatz, as the**  
26           **Company’s Top Engineers**

27           136. As a result of that struggle, neither Bernhard nor BlueTec would last at Volkswagen  
28 for long. In December 2006, VW AG Chairman Piech pushed out Pischetsrieder. Bernhard left the

1 Company shortly afterwards. By early 2007, as Volkswagen continued its efforts to grow US sales  
2 through diesel vehicles, Piech had replaced Pischetsrieder as VW AG's CEO with Audi's  
3 Winterkorn. Winterkorn's stated goals were to triple Volkswagen's annual US sales figures over  
4 a 10-year period, and he was focused on expanding diesel-car ownership in the United States  
5 beyond the 5% of the US market that diesel vehicles then represented.

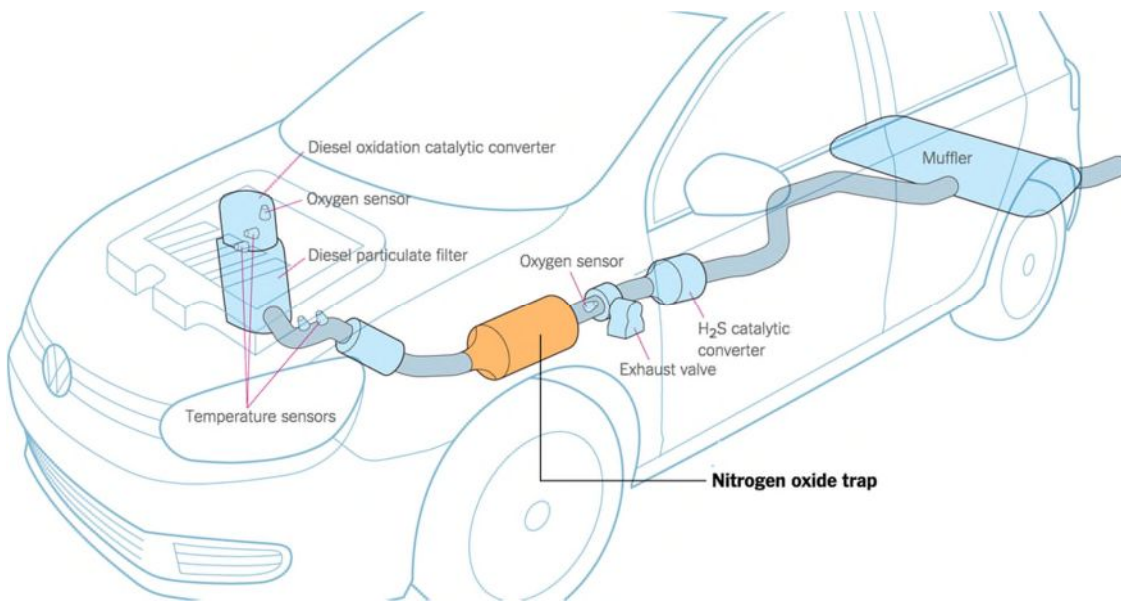
6 137. Winterkorn brought with him from Audi his two longtime, trusted colleagues, Hatz  
7 and Hackenberg, whom he installed as Volkswagen's top engineers. Winterkorn also brought  
8 Frank Tuch, the former head of quality control at Porsche, to serve as VW AG's chief quality  
9 officer and head of the Company's Group Quality Assurance beginning in September 2010.  
10 Winterkorn admired Tuch's work at Porsche, and as reported in *Automotive News Europe* on  
11 August 9, 2010, believed that Tuch would "bring us forward in the USA" by helping Volkswagen  
12 and Audi improve their performance both on the road and in industry surveys such as quality  
13 studies by J.D. Power and Associates. Tuch worked closely with Winterkorn, as the two met every  
14 Monday to discuss quality issues and often test drove Volkswagen vehicles together, as the *New*  
15 *York Times* reported on October 21, 2015.

16 138. Volkswagen's new top engineers had long opposed emissions-reducing measures  
17 that would detract from driving performance. As Hatz stated during a 2007 presentation on  
18 automotive technology hosted by VW AG in San Francisco, "[w]e will do what is possible, **but**  
19 **we should keep the pleasure**" so that cars are "**fun to drive.**" Hatz added, "[i]t's not just about  
20 transport; our business, it's also about pleasure."

21 139. Shortly afterwards in August 2007, with Hatz and Hackenberg overseeing  
22 Volkswagen's engineering decisions and at Hatz's insistence, the Company canceled its BlueTec  
23 licensing contract in what *Businessweek* described on October 21, 2015 as "a classic case of not-  
24 invented-here syndrome." In place of the SCR system, Hatz was tasked with designing and  
25 implementing a strategy focused on the use of NOx "traps" to reduce NOx emissions to permissible  
26 levels.



1           140. As *Businessweek* has reported, that decision “boxed Volkswagen engineers in as  
 2 they tried to meet emissions targets and protect the driving experience and fuel efficiency.” In  
 3 contrast to the SCR system, NOx traps are cheaper and easier to implement, but also reduce fuel  
 4 economy by as much as 4% and are far less effective at reducing emissions. NOx traps function  
 5 as molecular sponges, trapping and absorbing NOx molecules as they are emitted. A burst of diesel  
 6 fuel is then pumped into the NOx trap, which leads to the release of NOx. The NOx then moves  
 7 into a catalytic converter that converts the molecules into water and nitrogen, as follows:



18           141. Notably, Volkswagen decided to introduce SCR technology into certain vehicle  
 19 models during the Class Period. For example, beginning with the 2012 model year, the Passat was  
 20 equipped with SCR technology, and an SCR system was introduced in numerous models beginning  
 21 in 2015. However, Volkswagen still continued to equip those cars with defeat devices. That way,  
 22 the SCR systems could function with lower amounts of urea than actually needed to adequately  
 23 reduce NOx emissions, and consumers would not need to refill their DEF tanks between service  
 24 checks.

1           **E. Volkswagen Cannot Develop a High-**  
2           **Performance Clean Diesel Engine and Is Forced**  
3           **to Delay the Introduction of the Jetta**

4           142. It quickly became apparent that the Company was unable to produce a high-  
5 performance diesel engine that would meet emissions standards. Indeed, in 2006, the Company  
6 was already considering cheating on emissions tests in order to sell vehicles that produced  
7 emissions at unacceptably high levels. On April 26, 2016, the *New York Times* reported that  
8 investigators into Volkswagen's emissions scandal uncovered a PowerPoint presentation prepared  
9 by a top Volkswagen technology executive in 2006 laying out in detail how Volkswagen could  
10 cheat on emissions tests in the United States. The *Times* reported that people inside Volkswagen  
11 knew that its diesel engines were polluting significantly more than allowed, yet **"company**  
12 **executives repeatedly rejected proposals to improve the emissions equipment."** In fact, the  
13 entire Management Board led by Defendant Winterkorn **"repeatedly rebuffed lower-ranking**  
14 **employees who submitted technical proposals for upgrading the emissions controls . . .**  
15 **because of cost."**

16           143. In other words, the *Times* reported that in 2006, before the start of the Class Period,  
17 the VW AG Management Board, including Winterkorn, had actual knowledge that Volkswagen's  
18 diesel cars were unable to comply with emissions standards, yet refused to upgrade the systems  
19 because it would be too expensive. The more expensive equipment "would have made Volkswagen  
20 vehicles hundreds of dollars more expensive, without providing a benefit that customers could  
21 perceive. In the United States, even a modestly higher sticker price would have made it more  
22 difficult for Volkswagen to compete with rivals like Toyota and Honda."

23           144. Specifically, according to the *New York Times*'s April 26 article, VW AG engineers  
24 realized that the emissions equipment in their newest diesel engine would wear out too quickly if  
25 it were calibrated to meet US pollution standards. A technology expert at VW AG offered a  
26 solution in the PowerPoint presentation, which included a graph that explained the process for  
27 testing the amount of pollution spewing from a car. The pattern of those tests, the presentation  
28 said, was entirely predictable and a piece of code embedded in the software that controlled the

1 engine could recognize that pattern, activating equipment to reduce emissions just for testing  
2 purposes. The software evolved over the years and was later upgraded to detect other tell-tale signs  
3 of regulatory tests.

4 145. Hatz himself admitted, during the 2007 San Francisco presentation, that “[w]e can  
5 do quite a bit and we will do a bit, but ‘impossible’ we cannot do. . . . From my point of view, the  
6 C.A.R.B. is not realistic.” Hatz described proposed CARB emissions standards as “nearly  
7 impossible for us,” and lamented that “[p]erhaps we have just small Korean and Japanese cars in  
8 this country.”

9 146. VW AG has admitted that “[t]hroughout 2007, various technical problems arose  
10 with the US’07 project that led to internal discussions and disagreements among members of the  
11 VW AG team that was primarily responsible for ensuring vehicles met U.S. emissions standards.  
12 Those disagreements over the direction of the project were expressly articulated during a  
13 contentious meeting on or about October 5, 2007, over which Supervisor C [Hadler] presided. As  
14 a result of the meeting, Supervisor C authorized Supervisor F [Dorenkamp] and his team to proceed  
15 with the US’07 project despite knowing that only the use of the defeat device software would  
16 enable VW diesel vehicles to pass U.S. emissions tests.” (SOF ¶37.)

17 147. With Volkswagen’s announced spring 2008 deadline for introducing the new Jetta  
18 TDI looming, pressure was mounting on the Company and its engineers to manufacture an engine  
19 to satisfy market demand and the Company’s strategy. But under Hatz and Hackenberg,  
20 Volkswagen could not do so. Accordingly, on November 8, 2007, VWGoA sent a letter to its  
21 dealers announcing that the launch of the new Jetta TDI was being pushed back to the summer of  
22 2008 due to a “technical issue that was found during the later stages of durability testing.”

23 148. Industry publications recognized at the time that the announced delay was due to  
24 Volkswagen’s inability to develop a diesel engine that met emissions standards. For example, on  
25 November 9, 2007, *Cars.com* reported that “[p]art of Volkswagen’s trouble lies in the 50-state test.  
26 The U.S. has some of the strictest emissions standards for diesel vehicles, and in order for  
27 automakers to sell their cars in all 50 states, it must meet emissions standards set forth in every

1 state, including California and its stringent Air Resources Board.” And *Autoblog.com* noted on  
2 November 8, 2007 that “[t]he complexity that must be involved to achieve this feat is likely  
3 considerable, especially without the use of a urea injection system.”

4 149. *Cars.com* further reported that “all eyes are on Volkswagen and its new Jetta,” and  
5 that “[c]onsumer interest certainly seems piqued.” Reports also stated that Volkswagen dealers  
6 were disappointed due to the high consumer anticipation for the new Jetta TDI, and that one dealer  
7 said that three out of every five calls he received at the time were about the Jetta TDI.

8 150. Market observers, including analysts, have long understood that Volkswagen’s  
9 ability to grow its US business through diesel sales was a tremendous opportunity for Volkswagen,  
10 but also that technological obstacles might prove insurmountable. RBS reported on April 28, 2011,  
11 as part of a “SWOT” (strengths/weaknesses/opportunities/threats) analysis, that a key opportunity  
12 for Volkswagen was to “convert the US to diesel,” while a threat was the “reversal of trend towards  
13 diesel.” RBS went on to report on October 17, 2011 that since 2007, “VW has . . . made developing  
14 the US business a cornerstone of its global strategy,” “especially with the TDI diesel option.”  
15 Deutsche Bank reported on January 16, 2013 that “Rising Diesel sales in the US have become a  
16 driver for VW as overall Diesel sales grew 30% last year,” and “VW group has almost 75% of the  
17 US Diesel market share.”

18 151. Tightening emissions standards in the United States, however, were an obstacle to  
19 Volkswagen’s ability to grow its US operations. In a September 20, 2011 analyst report, Morgan  
20 Stanley asked, “What About US Fuel Standards?” Morgan Stanley recognized that “one of the  
21 biggest challenges VW faces in the US is that of tightening emissions legislation (where VW was  
22 one of the few notable exceptions to OEMs recently supporting proposals for tighter standards),”  
23 and that “emissions remain a serious headwind to the recovery potential of VW’s US business.”  
24 And on October 9, 2012, Credit Suisse reported that “[e]fficient and low emissions vehicles will  
25 be increasingly important going forward,” and that the then-new TDI Golf was “designed from  
26 day one to meet GLOBAL fuel emissions standards.”  
27

1           152. The market continued to focus on Volkswagen’s environmental compliance and  
2 ability to meet emissions standards throughout the Class Period. Analysts were consistently  
3 impressed with Volkswagen’s purported technological accomplishments and the potential for  
4 future growth driven by clean diesel vehicle sales. On July 3, 2014, Barclays reported that  
5 “[e]missions standards have tightened globally and will continue to do so,” and auto companies  
6 “believe non-compliance (penalized by fines) is not an option due to the negative impact on brand.”  
7 Barclays specifically observed that tightening NOx emissions standards “create opportunities for  
8 new combustion engineering approaches that can minimize engine emissions and thereby reduce  
9 the need for costly after-treatment solutions.” Moreover, Barclays applauded Volkswagen for  
10 “see[ing] environmental leadership as a key differentiator and a core competence.”

11           **F. Under Pressure to Bring**  
12           **Clean Diesel Vehicles to Market,**  
13           **Volkswagen Installs Defeat-Device Software**

14           153. Volkswagen’s culture of control and results at any cost led to Volkswagen’s  
15 decision to use illegal defeat-device software to pass emissions testing and sell its diesel vehicles  
16 in the United States. Unable to find or develop any legitimate solution to design a TDI engine that  
17 met emissions standards, Volkswagen moved forward with a scheme that enabled its cars to pass  
18 emissions testing through obfuscation and subterfuge: Volkswagen started installing defeat-device  
19 software in its purportedly “clean diesel” vehicles.

20           154. Volkswagen’s vehicles, like all modern cars, include and are largely run through  
21 sophisticated computer systems—including electronic diesel control (“EDC”) systems. In 2006,  
22 German automotive parts supplier Bosch—the world’s largest supplier of automotive products  
23 such as controls, electronics, brakes, and fuel systems—introduced the EDC17, an EDC system  
24 that Bosch described as “important for effective, low-emission combustion.”

25           155. Bosch supplied Volkswagen with EDC17 systems, which Volkswagen installed in  
26 its diesel vehicles. Although many automakers purchased the EDC17 from Bosch, the actual  
27 software system varied from maker to maker and engine to engine. As Bosch’s promotional  
28 materials explained, “[b]ecause the computing power and functional scope of the new EDC17 can

1 be adapted to match particular requirements, it can be used very flexibly in any vehicle segment  
2 on all the world’s markets. In addition to controlling the precise timing and quantity of injection,  
3 exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options  
4 such as the control of particulate filters or systems for reducing nitrogen oxides.”

5 156. Bosch accordingly worked with manufacturers, including Volkswagen, to tailor the  
6 EDC17 for specific engines. Volkswagen worked with Bosch to design the software so that its  
7 cars—which did not meet applicable emissions standards—would nevertheless pass emissions  
8 testing. The defeat-device software that Volkswagen installed was used primarily in conjunction  
9 with its EA189 model engine, installed in approximately 11 million vehicles worldwide—  
10 including 5 million Volkswagen brand vehicles, 2.1 million Audis, 1.2 million Skodas, and 1.8  
11 million light commercial vehicles. Specific models that used the EA189 engine were the  
12 Volkswagen Jetta, Jetta SportWagen, Golf, and Beetle, as well as the Audi A3.

13 157. In all, Volkswagen altered the illegal software to use with four different engine  
14 types, including the EA189. In other words, Volkswagen made several changes to its defeat-device  
15 software, which Volkswagen intentionally and actively updated numerous times to allow different  
16 engine types to cheat and thereby pass emissions testing. As *Reuters* reported on October 17, 2015,  
17 a US official investigating Volkswagen explained that “VW would have had to reconfigure the  
18 software for each generation of engines.” And Defendant Horn himself admitted to the US  
19 Congress on October 8, 2015 that, “[s]ince the standards are different, my understanding is that  
20 the defeat device is in those (European) cars as well.” As *Reuters* reported on October 7, 2015,  
21 “[s]ome industry experts and analysts said several versions of the defeat device raised the  
22 possibility that a range of employees were involved. Software technicians would have needed  
23 regular funding and knowledge of engine programs, they said.”

24 158. Significantly, VW AG attempted to improve the defeat-device software to avoid  
25 detection. VW AG has admitted that “[f]ollowing the launch of the Gen 1 2.0 Liter Subject  
26 Vehicles in the United States, Supervisors C [Hadler] and F [Dorenkamp], and others, worked on  
27 a second generation of the vehicles (the ‘Gen 2’), which also contained software designed to detect,

1 evade and defeat U.S. emissions tests. The Gen 2 2.0 Liter Subject Vehicles were launched in the  
2 United States in or around 2011.” (SOF ¶46.) “In or around 2012, hardware failures developed in  
3 certain of the 2.0 Liter Subject Vehicles that were being used by customers on the road in the  
4 United States. VW AG engineers hypothesized that vehicles equipped with the defeat device  
5 stayed in ‘dyno’ mode (i.e., testing mode) even when driven on the road outside of test conditions.  
6 Since the 2.0 Liter Subject Vehicles were not designed to be driven for longer periods of time in  
7 ‘dyno’ mode, VW AG engineers suspected that the increased stress on the exhaust system from  
8 being driven too long in ‘dyno’ mode could be the root cause of the hardware failures.” (SOF ¶47.)

9 159. VW AG further admitted that “[i]n or around July 2012, engineers from the VW  
10 Brand Engine Development department met, in separate meetings, with Supervisors A [Neußer]  
11 and E [Gottweis] to explain that they suspected that the root cause of the hardware failures in the  
12 2.0 Liter Subject Vehicles was the increased stress on the exhaust system from being driven too  
13 long in ‘dyno’ mode as a result of the use of software designed to detect, evade and defeat U.S.  
14 emissions tests. To illustrate the software’s function, the engineers used a document. Although  
15 they understood the purpose and significance of the software, Supervisors A and E each instructed  
16 the engineers who presented the issue to them to destroy the document they had used to illustrate  
17 the operation of the defeat device software.” (SOF ¶48.) As alleged in ¶¶17-19, 94, 244-47, and  
18 282,<sup>8</sup> both Neußer and Gottweis were senior executives and confidants of Defendant Winterkorn.

19 160. VW AG also admitted that “VW AG engineers . . . then sought ways to improve  
20 [the defeat device’s] operation in existing 2.0 Liter Subject Vehicles to avoid the hardware failures.  
21 To solve the hardware failures, VW AG engineers decided to start the 2.0 Liter Subject Vehicles  
22 in the “street mode” and, when the defeat device recognized that the vehicle was being tested for  
23 compliance with U.S. emissions standards, switch to the ‘dyno mode.’ To increase the likelihood  
24 that the vehicle in fact realized that it was being tested on the dynamometer for compliance with  
25 U.S. emissions standards, the VW AG engineers activated a ‘steering wheel angle recognition’  
26

27 <sup>8</sup> References to “¶ \_\_” are to paragraphs in this Complaint unless otherwise specified.

1 feature. The steering wheel angle recognition interacted with the software by enabling the vehicle  
2 to detect whether it was being tested on a dynamometer (where the steering wheel is not turned),  
3 or being driven on the road.” (SOF ¶49.)

4 161. VW further admitted that “[c]ertain VW AG employees again expressed concern,  
5 specifically about the expansion of the defeat device through the steering wheel angle detection,  
6 and sought approval for the function from more senior supervisors within the VW AG Engine  
7 Development department. In particular, VW AG engineers asked Supervisor A [Neußer] for a  
8 decision on whether or not to use the proposed function in the 2.0 Liter Subject Vehicles. In or  
9 about April 2013, Supervisor A authorized activation of the software underlying the steering wheel  
10 angle recognition function. VW employees then installed the new software function in new 2.0  
11 Liter Subject Vehicles being sold in the United States, and later installed it in existing 2.0 Liter  
12 Subject Vehicles through software updates during maintenance.” (SOF ¶50.)

13 162. Indeed, *Bild* reported on October 3, 2015 that VW AG’s present internal  
14 investigation has shown that the Company first decided to install illegal defeat-device software in  
15 its vehicles in 2008, shortly before it commenced mass production of the EA189 engine. VW AG  
16 made that decision “because there was no way at the time to reconcile meeting emission standards  
17 within the targeted cost of the engine. . . . Otherwise, the company would have to abandon the  
18 introduction of the engine, development of which was begun in 2005.”

19 163. The *Wall Street Journal* likewise reported on October 5, 2015 that, as early as 2006,  
20 senior VW AG engineers recognized and publicly stated that the Company could not produce high-  
21 performance diesel vehicles that met applicable emissions standards. Further, regulators suspected  
22 and were concerned about Defendants’ possible use of defeat devices as early as 2008. On October  
23 4, 2015, *Süddeutsche Zeitung* reported that it was in possession of documents showing that US  
24 authorities have been questioning Volkswagen cars’ emissions since at least 2008. Specifically,  
25 according to *Süddeutsche Zeitung*, CARB issued an “Executive Order” in June 2008 demanding a  
26 statement from VW AG that no defeat device was installed in the engines of Volkswagen’s cars.  
27



1 Otherwise, the letter states, CARB would withdraw its certification of the vehicles and assess a  
2 penalty of \$5,000 per car.

3 164. To understand how VW AG used defeat-device software to pass emissions testing,  
4 and for that matter why regulators for years did not identify Volkswagen's cheating, it is helpful  
5 to understand the regulatory certification process.

6 165. The EPA, CARB, and other US and European regulatory agencies do not conduct  
7 emissions testing themselves, which would allow for stricter oversight but would arguably threaten  
8 an increased burden on both regulators and automakers. Instead, automakers conduct their own  
9 emissions testing, and then send those results to the regulators, who will generally rubber stamp  
10 the makers' results and certify the vehicles.

11 166. As a result, there are both incentives and opportunities for cars to be certified—and  
12 ultimately approved for sale—even if their actual emissions levels are above those reported to the  
13 regulators. With virtually no risk that the regulators will conduct their own testing, automakers  
14 may report results secure in the belief that the results will not be challenged. In addition, testing  
15 conditions may vary between a carmaker's lab and the regulators', providing an explanation for  
16 certain variation in results. And automakers have been known to employ a bevy of tricks to  
17 manipulate testing results, such as low-resistance tires and covering cracks between panels to  
18 reduce wind resistance.

19 167. Moreover, emissions testing is conducted in laboratory conditions, rather than in  
20 real-world driving conditions. Even if results from testing in a lab are more theoretical than based  
21 in practice or fact, test results for different vehicles under the same lab conditions should be easy  
22 to compare to each other. Lab conditions can eliminate factors such as weather and traffic that  
23 threaten to distort results. However, whatever the reasons for using lab tests rather than real-world  
24 tests to determine emissions levels, the results that carmakers report to regulators necessarily vary  
25 from the actual emissions the vehicles will produce on the road.

26 168. To test a vehicle's emissions, automakers put the car on rollers and attach it to a  
27 dynamometer, which is a device used to provide a simulated experience mimicking certain

1 specified driving conditions (e.g., stop-and-go urban traffic, high-speed driving). The maker  
2 measures and reports emissions levels under those conditions. Regulators provide automakers with  
3 the testing specifications in advance, and the makers report results after running the tests.

4 169. That emissions-testing regime enabled VW AG's emissions-cheating scandal by  
5 creating ideal circumstances for the Company to produce manipulated results, which it could then  
6 self-report to regulators without fear of reprisal. VW AG's engineers tailored the EDC17 software  
7 in the Company's TDI engines to recognize, based on factors including wheel movement  
8 (including that only the front two wheels were moving, not the rear wheels), engine runtime, and  
9 steering wheel positioning, when a car with that software was undergoing testing. Specifically,  
10 when the car was undergoing emissions testing, lines of code written into the control software  
11 produced by Bosch would cause the car's engine to switch into a "dyno calibration" mode or "dyno  
12 mode." In dyno mode, the car would produce lower emissions levels (that met EPA and CARB  
13 standards) by, among other things, adjusting air-fuel ratios and exhaust flows. However,  
14 Volkswagen's cars could operate at that level only with significantly reduced power and  
15 performance. Independent testing has shown that the cars in dyno mode had approximately 10.5%  
16 less power than otherwise.

17 170. When testing ended—i.e., when the cars were actually on the road—the software  
18 switched the cars back to "road calibration" mode, and the cars produced heightened levels of NOx  
19 emissions, up to **40 times** the allowable limit under federal law.

20 171. Volkswagen concealed from the EPA, CARB, and all other regulators that its  
21 EDC17 systems included lines of code that could detect when the vehicles were being tested and  
22 change the cars' performance and emissions levels at those times. As discussed above, the software  
23 thus constitutes an illegal defeat device under US law.

24 172. Critically, VW AG has admitted that "VW employees met with the EPA and CARB  
25 to seek the certifications required to sell the Subject Vehicles to U.S. customers. During these  
26 meetings, some of which Supervisor F [Dorenkamp] attended personally, VW employees  
27 misrepresented, and caused to be misrepresented, to the EPA and CARB staff that the Subject

1 Vehicles complied with U.S. NOx emissions standards, when they knew the vehicles did not.  
2 During these meetings, VW employees described, and caused to be described, VW's diesel  
3 technology and emissions control systems to the EPA and CARB staff in detail but omitted the  
4 fact that the engine could not meet U.S. emissions standards without using the defeat device  
5 software.” (SOF ¶41.) VW AG also admitted that “Supervisors A-F, and others, knew that if they  
6 had told the truth and disclosed the existence of the defeat device, VW would not have obtained  
7 the requisite Certificates for the Subject Vehicles and could not have sold any of them in the United  
8 States.” (SOF ¶42.)<sup>9</sup>

9 173. At the same time, the Company defrauded investors by misrepresenting  
10 Volkswagen's compliance with the law and its cars' ability to meet emissions standards, and by  
11 overstating the Company's profits by failing to properly reserve for provisions arising out of the  
12 diesel scandal, among other things.

13 174. The environmental and financial impact of Volkswagen's emissions cheating has  
14 been felt both in the United States and throughout the world. Although Volkswagen's sales of  
15 585,000 TDI vehicles with defeat devices in the United States were only a portion of the  
16 Company's 11 million such sales worldwide, the US sales were of particular importance.  
17 Expanding diesel sales in the United States was a central focus for Volkswagen as it pursued  
18 aggressive growth plans. Moreover, due to the legal and regulatory regime in the United States,  
19 including stringent NOx emissions standards as well as laws providing significant redress to  
20 wronged consumers and others, Volkswagen has incurred billions of dollars of liability based on  
21 its US TDI sales alone.

22 175. The full impact of Volkswagen's emissions cheating, however, can be understood  
23 only in the context of Volkswagen's sales of millions of cars with illegal defeat devices in Europe  
24 and around the world. Volkswagen was able to obtain approvals for and sell over 8 million cars  
25

26 <sup>9</sup> “Certificates” is defined in the admitted Statement of Facts to refer to certificates of conformity  
27 and executive orders issued by the EPA and CARB authorizing vehicles to be sold in the United  
28 States. (SOF ¶25.)

1 with defeat devices throughout Europe by taking advantage of European emissions-testing  
2 procedures that largely rely on manufacturers to provide honest information regarding compliance  
3 with each member country's testing regime and standards. As in the United States, European  
4 emissions testing relies on manufacturers to self-report results, and testing is conducted only under  
5 controlled conditions, not under real-world, in-use conditions. Further, European manufacturers  
6 like Volkswagen can themselves decide in which country to have their vehicles tested, with  
7 resulting approvals valid throughout the European Union. According to Peter Mock, ICCT's  
8 managing director for Europe, "[t]he possibility for vehicle manufacturers to cherry-pick national  
9 type-approval authorities and technical service companies to witness vehicle emissions testing  
10 creates a potential conflict of interest," as national approval authorities may seek to attract  
11 manufacturers by having more loosely administered testing regimes.

12         176. In that environment, VW AG was able to tailor its engine software to conceal true  
13 emissions levels without detection. Indeed, Bosch was concerned that VW AG was going to use  
14 the EDC17 system Bosch supplied in an illegal manner, to produce artificially low emissions levels  
15 in testing. According to a September 27, 2015 report in *Bild*, in **2007—eight years** before VW  
16 AG's emissions cheating became public—Bosch sent a letter to VW AG's "top circles" informing  
17 the Company that using the software for the planned application of reducing emissions during  
18 testing was illegal. According to Bosch, the software it provided was intended only for internal  
19 testing purposes, not for regular, on-road driving. But VW AG **affirmatively modified** the module  
20 to detect when a vehicle was undergoing laboratory emissions testing and then **shut down** when  
21 the vehicle was on the road. The *Bild* article reported that "[t]he circle of those in the know at VW  
22 must have been larger than assumed so far if even the supplier knew about the ploy."

23         177. Bosch has denied any actual knowledge of or responsibility for VW AG's use of  
24 the defeat device embedded in Bosch's software, stating in a September 24, 2015 press release that  
25 "[a]s is usual in the automotive supply industry, Bosch supplies these components to the  
26 automaker's specifications. How these components are calibrated and integrated into complete  
27 vehicle systems is fundamentally the responsibility of each automaker."

1  
2 **G. Volkswagen Markets and**  
3 **Sells Its “Clean Diesel” Cars**

4 178. Having worked with Bosch to design and implement defeat devices in its cars,  
5 thereby enabling Volkswagen to pass emissions tests even when its cars produced unacceptably  
6 high levels of NOx emissions, Volkswagen then put its business strategy to work. Beginning in  
7 2008 with the model-year 2009 Volkswagen Jetta and Touareg models and the 2009 Audi Q7,  
8 Volkswagen began marketing and selling noncompliant diesel vehicles (branded as “clean diesel”  
9 or “TDI”) while conducting a massive, years-long advertising and public relations campaign  
10 championing its purportedly successful “clean diesel” design. Volkswagen’s advertisements  
11 touted its “clean diesel” vehicles, powered by 2.0 liter TDI four-cylinder engines, as  
12 environmentally responsible and fun to drive, “confirming Volkswagen’s role as a pioneer in diesel  
13 technology.”

14 179. VW AG has since admitted that “Supervisors A [Neußer] and C [Hadler] and others  
15 marketed, and caused to be marketed, the Subject Vehicles to the U.S. public as ‘clean diesel’ and  
16 environmentally-friendly, when they knew the Subject Vehicles were intentionally designed to  
17 detect, evade, and defeat U.S. emissions standards.” (SOF ¶44.)

18 180. In language on its website that it has since taken down, Volkswagen prominently  
19 stated: “This ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel realities no  
20 longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and  
21 extreme efficiency. We’ve ushered in a new era of diesel.”  
22  
23  
24  
25  
26  
27

## 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](#)



181. VW AG and its subsidiaries specifically represented that their cars' NOx traps were "[t]he most effective measure to reduce nitrogen oxides (NOx) with an internal combustion engine." Such boasting was part of a broad marketing scheme designed to grow the Volkswagen Group's US market share by expressly focusing on the low environmental impact of its TDI cars.

182. In 2008 and 2009, Volkswagen and its subsidiaries claimed that their vehicles had the "world's cleanest diesel engines" that complied with the world's "most demanding emissions laws." Volkswagen brochures stated that the "[c]lean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle."

183. VW AG also boasted to the auto industry that it had successfully produced a high-performance, low-emissions, fuel-efficient diesel engine. In 2008, a group of VW AG engineers gave a presentation titled "Volkswagen's New 2.0 l TDI Engine Fulfills the Most Stringent Emission Standards" at an industry conference in Vienna, and published papers touting their purported achievement in a technical journal focused on engine technologies.

184. Similarly, in an October 9, 2009 interview, VWGoA's then-Vice President of Sales and Aftersales, Mark Barnes, told *Business Insider* that VW AG and VWGoA's 2.0 liter TDI

1 engine was better for the environment than hybrid cars, because it had a “fantastic power train”  
2 that “gives very good fuel economy” and “it’s also good for the environment because it puts out  
3 25% less greenhouse gas emissions than what a gasoline engine would[,] . . . cuts out the particulate  
4 emissions by 90% and the emissions of nitrous oxide are cut by 95%[,] . . . [and is c]lean enough  
5 to be certified in all 50 states.”

6 185. In response to the question, “How do you re-brand something that’s dirty like diesel  
7 as something that’s green?,” Barnes responded:

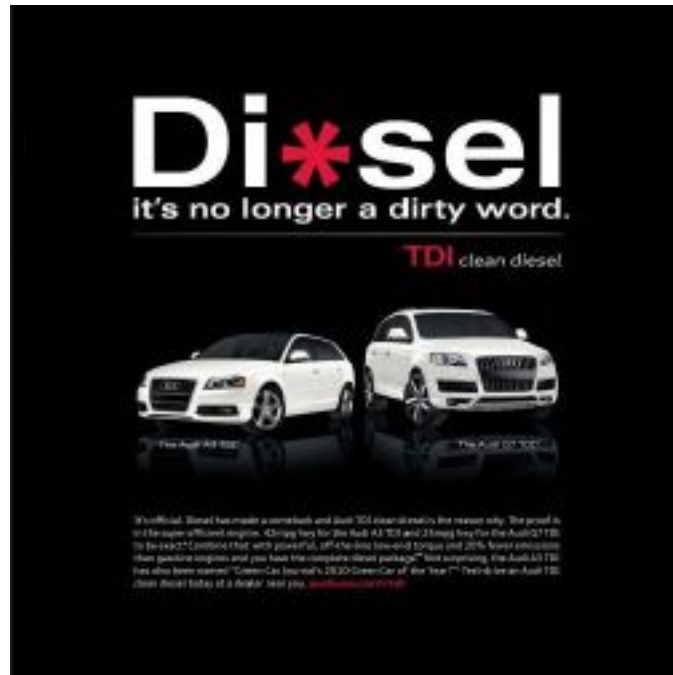
8 The way we’ve gone about it is through a number of communication pieces. One  
9 of them we’ve used is TDI Truth & Dare. It is a very good website that compares  
10 some older diesels versus the current TDI clean diesel. And one of the things we do  
11 is we put coffee filters over the exhaust pipes of both cars. We let them run for five  
12 minutes and after they are done, we take them off and the older diesel product (not  
13 a VW diesel) has a round sooty spot on that coffee filter. Ours is very clean. In fact  
14 they actually make coffee out of the filter that was attached to the Volkswagen clean  
15 diesel tail pipe and they drink it.

16 186. Volkswagen’s celebratory representations regarding its TDI cars’ purported low  
17 emissions and high performance dominated Volkswagen’s marketing materials for years.

18 187. For example, in a 2008 press release, VWGoA publicized that the “Internal  
19 Revenue Service has issued a certification letter affirming that the” Jetta TDI sedan and  
20 SportWagen “qualify for the Advanced Lean Burn Technology Motor Vehicle income tax credit.”  
21 The press release further stated:

22 Jetta TDI sedan and SportWagen showcase the best of both worlds, an alternative  
23 fuel vehicle with no compromises. Fuel efficiency, performance and convenience  
24 come standard with the 50-state compliant Jetta TDI sedan and SportWagen  
25 models, which meet the most stringent emissions standards in California.

26 188. AoA similarly ran ads representing that Audi TDI vehicles would “protect the  
27 environment” because diesel is “no longer a dirty word”:  
28



189. In one memorable television ad for Audi cars that ran during the 2010 Super Bowl, the “green police” arrested numerous individuals for such “offenses” as using plastic bottles and incandescent lightbulbs rather than more environmentally friendly options. At a roadblock, the green police stopped numerous vehicles, but singled out one, remarking that “we’ve got a TDI here—CleanDiesel.” That car was allowed to pass unobstructed, with an officer telling the driver “You’re good to go, sir.”

190. Such representations about the high performance and low environmental impact of Volkswagen’s TDI models continued throughout the Class Period. In a marketing brochure for the 2014 Jetta TDI, Volkswagen claimed that the vehicle surpassed numerous competing vehicles in fuel efficiency, and also “has lower CO<sub>2</sub> emissions compared to 90% of other vehicles’ engines. So every getaway you make will be a cleaner one.”





1 191. Defendants' advertising continued to emphasize that their TDI vehicles did not pose  
2 any tradeoff of performance for the sake of reduced emissions. In a sales brochure for the 2015  
3 Golf, the Company stated that "[w]ith the 2.0L TDI engine, you'll appreciate every fuel-efficient  
4 mile with the EPA-estimated 45 hwy mpg. But that's only half the story. Step on the pedal and  
5 feel the 236 lb-ft of torque and let the performance tell the other half."

6 192. In other words, VW AG and its subsidiaries made their TDI models' purported low  
7 emissions and high performance a focal point of their advertising strategy for years. In reality,  
8 however, their emissions levels were as high as 40 times the legal limit, and the Company  
9 employed defeat devices to manipulate emissions tests.

10 **H. Volkswagen's TDI Marketing Scheme**  
11 **Was Highly Successful and Profitable**

12 193. As discussed above, in 2005 and 2006, VW AG sought to develop and implement  
13 a plan to grow its business dramatically, especially in the United States, with a strong focus on  
14 environmentally friendly, low-emissions diesel vehicles. By illegally skirting emissions standards  
15 while touting manipulated testing results, Volkswagen met and, indeed, surpassed its goals.

16 194. In 2007, Volkswagen sold approximately 230,000 cars in the United States,  
17 exceedingly few of which were diesel vehicles. By 2013, Volkswagen brands sold over 400,000  
18 vehicles in the United States, including more than 111,000 diesel vehicles. Indeed, with a 70%  
19 share of the North American diesel automobile market in 2014, Volkswagen sold more diesel cars  
20 in the United States than every other brand combined. Overall, diesel sales represented 26% of  
21 VW AG's US sales, versus a US industry-wide diesel penetration of less than 3%.

22 195. VW AG has also admitted that it sold 8.5 million diesel vehicles in Europe that did  
23 not comply with European emissions standards and that approximately 11 million vehicles were  
24 affected worldwide. Diesel sales in Europe were highly important to Volkswagen because diesels  
25 accounted for more than half of all European car registrations in 2012–2014. In Europe in 2014,  
26 diesels accounted for 56% of Volkswagen brand sales, 72% of Audi brand sales, and 43% of  
27 Porsche brand sales.

196. Beyond the sheer numbers of cars sold, VW AG also profited handsomely from selling its TDI vehicles because Volkswagen charged consumers a significant premium for the TDI models of its cars, compared to the standard gasoline-powered models of those same vehicles. For example, in the United States for the Passat, between 2012 and 2015, the TDI model had a manufacturer suggested retail price (“MSRP”) ranging from \$5,380 to \$5,755 more than the MSRP for the standard model. For the Jetta SportWagen, between 2009 and 2015, the TDI model had an MSRP ranging from \$4,795 to \$5,570 more than the standard model. For the Beetle, between 2009 and 2015, the TDI model had a premium ranging from \$3,500 to \$4,600 more than the standard model. And for the Jetta, between 2009 and 2015, the TDI model had an MSRP ranging from \$4,755 to \$7,445 more than the standard model.

197. In all, Volkswagen sold approximately 585,000 TDI vehicles in the United States, including from the Audi and Porsche brands, that did not meet EPA and CARB emissions standards, as well as 11 million diesel vehicles that were equipped with defeat devices globally. The affected vehicle models are:

<u>MAKE</u>	<u>MODEL</u>	<u>YEAR(S)</u>
Audi	A3	2010–2015
Audi	A6 Quattro	2014–2016
Audi	A7 Quattro	2014–2016
Audi	A8/A8L	2014–2016
Audi	Q5	2014–2016
Audi	Q7	2009–2016
Porsche	Cayenne	2013–2016
Volkswagen	Beetle, Beetle Convertible	2013–2015
Volkswagen	Golf	2010–2015
Volkswagen	Golf SportWagen	2015
Volkswagen	Jetta, Jetta SportWagen	2009–2015

Volkswagen	Passat	2012–2015
Volkswagen	Touareg	2009–2016

198. Defendants’ representations about their TDI vehicles attracted consumers in other ways as well. Among other things, Defendants successfully lobbied the US government to provide tax credits for purchasers of many of their TDI cars, resulting in an earmark of at least \$78 million for TDI Jetta purchasers in 2009 and 2010 alone. Defendants also claimed that their TDI models “typically have a higher resale value versus comparable gasoline vehicles.”<sup>10</sup>

**I. Volkswagen Gets Caught Cheating and Fails to Correct Its Emissions Noncompliance, Despite Recalling 500,000 Cars**

199. VW AG has admitted that “[i]n or around March 2014, certain VW employees learned of the results of a study undertaken by [WVU] and commissioned by [ICCT]. The ICCT study identified substantial discrepancies in the NOx emissions from certain 2.0 Liter Subject Vehicles when tested on the road compared to when these vehicles were undergoing EPA and CARB standard drive cycle tests on a dynamometer. The results of the study showed that two of the three vehicles tested on the road, both 2.0 Liter Subject Vehicles, emitted NOx at values of up to approximately 40 times the permissible limit applicable during testing in the United States.” (SOF ¶52.)

200. VW AG also admitted that “[f]ollowing the ICCT study, CARB, in coordination with the EPA, attempted to work with VW to determine the cause for the higher NOx emissions in the 2.0 Liter Subject Vehicles when being driven on the road as opposed to on the dynamometer undergoing standard emissions test cycles. To do this, CARB, in coordination with the EPA,

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<sup>10</sup> The “Subject Vehicles” are defined in the admitted Statement of Facts as the model year (“MY”) 2009-2015 VW Jetta, MY 2009-2014 VW Jetta Sportwagen, MY 2010-2015 VW Golf, MY 2015 VW Golf Sportwagen, MY 2010-2013 and 2015 Audi A3, MY 2013-2015 VW Beetle and VW Beetle Convertible, MY 2012-2015 VW Passat, MY 2009-2016 VW Touareg, MY 2009-2015 Audi Q7, MY 2014-2016 Audi A6 Quattro, MY 2014-2016 Audi A7 Quattro, MY 2014-2016 Audi A8L, and MY 2014-2016 Audi Q5. (SOF ¶¶24-25.) The “Porsche Vehicles” are defined in the admitted Statement of Facts as the MY 2013-2016 Porsche Cayenne diesel vehicles. (SOF ¶26.)

1 repeatedly asked VW questions that became increasingly more specific and detailed, as well as  
2 conducted additional testing themselves.” (SOF ¶53.)

3           201. VW AG further admitted that “[i]n response to learning about the results of the  
4 ICCT study, engineers in the VW Brand Engine Development department formed an ad hoc task  
5 force to formulate responses to questions that arose from the U.S. regulators. VW AG supervisors,  
6 including Supervisor A [Neußer], Supervisor D [Eichler], and Supervisor E [Gottweis], and others,  
7 determined not to disclose to U.S. regulators that the tested vehicle models operated with a defeat  
8 device. Instead, Supervisors A, D, and E, and others decided to pursue a strategy of concealing the  
9 defeat device in responding to questions from U.S. regulators, while appearing to cooperate.” (SOF  
10 ¶54.)

11           202. VW AG admitted that “[t]hroughout 2014 and the first half of 2015, Supervisors A  
12 [Neußer], D [Eichler], and E [Gottweis], and others, continued to offer, and/or cause to be offered,  
13 software and hardware ‘fixes’ and explanations to U.S. regulators for the 2.0 Liter Subject  
14 Vehicles’ higher NOx measurements on the road without revealing the underlying reason—the  
15 existence of software designed to detect, evade and defeat U.S. emissions tests.” (SOF ¶55.)

16           203. According to the Second Superseding Indictment, on or about April 15, 2014,  
17 Schmidt forwarded Gottweis a copy of the ICCT presentation, and an email chain in which a VW  
18 employee stated, “[s]ome presenters indicated that they suspected cheating, where the vehicle  
19 recognizes it is an [sic] a dyno and runs different calibration that [sic] what it runs in actual driving.  
20 We will have to be careful with this going forward.” (SSI ¶72.)

21           204. VW AG has admitted that “[o]n or about April 28, 2014, members of the VW task  
22 force presented the findings of the ICCT study to Supervisor E [Gottweis], whose supervisory  
23 responsibility included addressing safety and quality problems in vehicles in production. Included  
24 in the presentation was an explanation of the potential financial consequences VW could face if  
25 the defeat device was discovered by U.S. regulators, including but not limited to applicable fines  
26 per vehicle, which were substantial.” (SOF ¶56.)

1           205. The Second Superseding Indictment alleges that “[o]n or about May 9, 2014,  
2 Schmidt sent an email to a VW employee, stating, ‘Are you crazy? Recall the email,’ in response  
3 to the VW employee’s original email that read: ‘As mentioned orally, VW currently in [North  
4 American Region] has the problem of high off cycle emissions, that the EPA has now found out  
5 about and we must respond. Oliver Schmidt as head of EEO plans to speak directly with [a VW  
6 supervisor] here in Herndon at the end of May. I cannot tell you anything before that because the  
7 investigations are still underway in [Wolfsburg]. Dr. Neusser is directly involved in it as head of  
8 development.’” (SSI ¶74 (second, third, and fourth alterations in original).)

9           206. VW AG has admitted that “[o]n or about May 21, 2014, a VW AG employee sent  
10 an email to his supervisor, Supervisor D [Eichler], and others, describing an ‘early round meeting’  
11 with Supervisor A [Neußer], at which emissions issues in North America for the Gen 2 2.0 Liter  
12 Subject Vehicles were discussed, and questions were raised about the risk of what could happen  
13 and the available options for VW. Supervisor D responded by email that he was in ‘direct touch’  
14 with the supervisor in charge of Quality Management at VW AG and instructed the VW AG  
15 employee to ‘please treat confidentially’ the issue.” (SOF ¶57.)

16           207. According to the Second Superseding Indictment, “[o]n or about May 22, 2014,  
17 GOTTWEIS sent a VW AG executive a memorandum describing a timeline of events with CARB  
18 after the ICCT study. GOTTWEIS stated that a full explanation could not be provided to authorities  
19 and it could be assumed that the authorities would test the vehicles for defeat devices. GOTTWEIS  
20 stated that even new software would not be able to make the cars fully compliant.” (SSI ¶75.)

21           208. VW AG has admitted that “[o]n or about October 1, 2014, VW AG employees  
22 presented to CARB regarding the ICCT study results and discrepancies identified in NOx  
23 emissions between dynamometer testing and road driving. In response to questions, the VW AG  
24 employees did not reveal that the existence of the defeat device was the explanation for the  
25 discrepancies in NOx emissions, and, in fact, gave CARB various false reasons for the  
26 discrepancies in NOx emissions including driving patterns and technical issues.” (SOF ¶58.)  
27

1           209. With the EPA’s and CARB’s permission, VWGoA agreed on December 2, 2014 to  
2 recall approximately 500,000 model-year 2009 to 2014 vehicles whose actual emissions deviated  
3 significantly from test results, so that VWGoA could implement a proposed “recalibration fix” to  
4 its engine software. VWGoA claimed that the voluntary recall would allow it to fix the problem  
5 of real-world elevated NOx emissions levels as compared to test levels, and “CARB cautioned  
6 VW that if our confirmatory testing showed that the fix did not address the on-road NOx issues,  
7 they would have to conduct another recall.”

8           210. When VWoA notified car owners of the recall, it did not disclose that the subject  
9 vehicles contained defeat-device software, or that they produced unacceptably high emissions  
10 levels. Rather, VWoA sent a letter telling owners that “[t]he vehicle’s engine management  
11 software has been improved,” and dealers would install a software upgrade “to assure your  
12 vehicle’s tailpipe emissions are optimized and operating efficiently.” That letter notified owners  
13 of a purported issue where the cars’ malfunction indicator light would turn on, and warned owners  
14 that if the light “illuminated for any reason, the vehicle will not pass an IM [inspection and  
15 maintenance] emissions inspection in some regions.”

16           211. Beginning in mid-April 2015, CARB conducted follow-up testing, which showed  
17 that the recalled cars continued to exceed emissions limits. Although “testing showed that the recall  
18 calibration did reduce the emissions to some degree[,] NOx emissions were still significantly  
19 higher than expected.” For vehicles that were equipped with SCR technology, the urea levels  
20 introduced were “not sufficient to keep NOx emission levels from rising throughout the cycle,”  
21 which “resulted in uncontrolled NOx emissions.”

22           212. As alleged in the Second Superseding Indictment, “[o]n or about May 12, 2015,  
23 [Jürgen] PETER sent an email to VW AG employees referencing on-road emissions measurements  
24 by CARB in mid-April through June. PETER proposed possible misleading and false arguments  
25 to present to CARB as to why the vehicles were not passing the emissions tests on the road.” (SSI  
26 ¶78.) “On or about June 23, 2015, PETER sent another email to VW AG employees reiterating  
27

1 that VW AG needed to come up with ‘good arguments’ to counter the questions from the U.S.  
2 regulators.” (SSI ¶79.)

3 213. In an email dated July 21, 2015, Defendant Horn conveyed the urgency of the  
4 CARB situation to multiple VW AG board members and executives in Germany, including Neußer  
5 and Christian Klingler, the Management Board member responsible for Sales and Marketing. *See*  
6 Complaint ¶161, *State of New York v. Volkswagen AG, et al.* (N.Y. Sup. Ct. filed July 19, 2016).  
7 Specifically, Horn made clear that certification of the MY 2016 Generation 3 vehicles was at risk  
8 if Volkswagen failed to provide CARB all the outstanding information it was awaiting. *See id.* As  
9 discussed below, Defendants Winterkorn and Diess were given a presentation about the defeat  
10 devices on July 27, 2015.

11 214. As VW AG has admitted, “[w]hen U.S. regulators threatened not to certify VW  
12 model year 2016 vehicles for sale in the United States, VW AG supervisors requested a briefing  
13 on the situation in the United States. On or about July 27, 2015, VW AG employees presented to  
14 VW AG supervisors. Supervisors A [Neußer] and D [Eichler] were present, among others.” (SOF  
15 ¶59).

16 215. According to the Criminal Complaint (attached as Exhibit 3) that the United States  
17 filed against Oliver Schmidt, “on or about July 27, 2015 SCHMIDT and other VW employees met  
18 in advance of the meeting with VW’s executive management. During this pre-meeting, the VW  
19 employees, including SCHMIDT, prepared a chart showing possible consequences of a meeting  
20 SCHMIDT was scheduled to have with CARB the following week. The slide showed that if the  
21 outcome was ‘positive for VW,’ VW would obtain approval for model year 2016 vehicles, but that  
22 if ‘negative for VW’ and there was ‘no explanation for GEN1 and GEN2,’ there could be an  
23 ‘Indictment?’” (Crim. Cmplt. ¶41.)<sup>11</sup>

24 216. Then, according to the Criminal Complaint against Schmidt, “on or about July 27,  
25 2015, SCHMIDT and other VW employees presented to VW’s executive management in

26 <sup>11</sup> “VW” is defined in the Criminal Complaint to refer collectively to VW AG and its subsidiaries,  
27 including VWGoA, and affiliates. (Crim. Cmplt. ¶3.)

1 Wolfsburg, Germany, regarding the existence, purpose, and characteristics of the defeat device. In  
2 the presentation, VW employees assured VW executive management that U.S. regulators were not  
3 aware of the defeat device—that is the engine’s ability to distinguish between the dynamometer  
4 and road mode. Rather than advocate for disclosure of the defeat device to U.S. regulators, VW  
5 executive management authorized its continued concealment.” (Crim. Cmplt. ¶42.) As detailed  
6 below, reports indicate that Defendants Diess and Winterkorn were among the VW AG executives  
7 who received the presentation Schmidt and others made in Wolfsburg on July 27, 2015.

8 217. As VW AG has admitted, “[o]n or about August 5, 2015, in a meeting in Traverse  
9 City, Michigan, two VW employees met with a CARB official to discuss again the discrepancies  
10 in emissions of the 2.0 Liter Subject Vehicles. The VW employees did not reveal the existence of  
11 the defeat device.” (SOF ¶60.)

12 218. As the Criminal Complaint against Schmidt alleges, “on or about August 17 and  
13 18, 2015, SCHMIDT and other co-conspirators developed a plan for what VW employees would  
14 say during a meeting scheduled with CARB on August 19, 2015 in El Monte, California. The plan,  
15 approved by senior VW managers, envisioned VW employees continuing to conceal the existence  
16 of the defeat device and cheating on U.S. emissions tests from U.S. regulators, in order to obtain  
17 certification for the model year 2016 vehicles.” (Crim. Cmplt. ¶47.)

18 219. The Second Superseding Indictment alleges that “[o]n or about August 17, 2015,  
19 SCHMIDT wrote to a manager at VW that another manager had just ‘explained to me why [another  
20 VW employee] should not come along [to a future CARB meeting]—so he would not have to  
21 consciously lie.’” (SSI ¶81 (second and third alterations in original).)

22 220. As VW AG has admitted, “[o]n or about August 18, 2015, Supervisor A [Neußer]  
23 and D [Eichler], and others, approved a script to be followed by VW AG employees during an  
24 upcoming meeting with CARB in California on or about August 19, 2015. The script provided for  
25 continued concealment of the defeat device from CARB in the 2.0 Liter Subject Vehicles, with the  
26 goal of obtaining approval to sell the Gen 3 model year 2016 2.0 Liter Subject Vehicles in the  
27 United States.” (SOF ¶61.)



1           221. VW AG also admitted that “[o]n or about August 19, 2015, in a meeting with  
2 CARB in El Monte, California, a VW employee explained, for the first time to U.S. regulators and  
3 in direct contravention of instructions from supervisors at VW AG, that certain of the 2.0 Liter  
4 Subject Vehicles used different emissions treatment depending on whether the vehicles were on  
5 the dynamometer or the road, thereby signaling that VW had evaded U.S. emissions tests.” (SOF  
6 ¶62.)

7           222. As VW AG has admitted, “[o]n or about September 3, 2015, in a meeting in El  
8 Monte, California with CARB and EPA, Supervisor D [Eichler], while creating the false  
9 impression that he had been unaware of the defeat device previously, admitted that VW had  
10 installed a defeat device in the 2.0 Liter Subject Vehicles.” (SOF ¶63.) As discussed below, the  
11 EPA responded on September 18, 2015, with a Notice of Violation (“NOV”) to VW AG, Audi  
12 AG, and VWGoA for the 2.0 liter diesel cars, and CARB sent those same entities an in-use  
13 compliance letter as well.

14           223. VW AG has admitted similar facts concerning its 3.0 liter diesel cars. Specifically,  
15 VW AG has admitted that “[o]n or about January 27, 2015, CARB informed VW AG that CARB  
16 would not approve certification of the Model Year 2016 3.0 Liter Subject Vehicles until Audi AG  
17 confirmed that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as had  
18 been identified by the ICCT study and as were being addressed by VW with the 2.0 Liter Subject  
19 Vehicles.” (SOF ¶65.)

20           224. VW AG has also admitted that “[o]n or about March 24, 2015, in response to  
21 CARB’s questions, Audi AG employees made a presentation to CARB, during which Audi AG  
22 employees did not disclose that the Audi 2.0 and 3.0 Liter Subject Vehicles and the Porsche  
23 Vehicles in fact contained a defeat device, which caused emissions discrepancies in those vehicles.  
24 The Audi AG employees informed CARB that the 3.0 Liter Subject Vehicles did not possess the  
25 same emissions issues as the 2.0 Liter Subject Vehicles when, in fact, the 3.0 Liter Subject Vehicles  
26 possessed at least one defeat device that interfered with the emissions systems to reduce NOx  
27 emissions on the dyno but not on the road. On or about March 25, CARB, based on the

1 misstatements and omissions made by the Audi AG representatives, issued an executive order  
2 approving the sale of Model Year 2016 3.0 Liter Subject Vehicles.” (SOF ¶66.)

3 225. Further, VW admitted that “[o]n or about November 2, 2015, EPA issued a Notice  
4 of Violation to VW AG, Audi AG and Porsche AG, citing violations of the Clean Air Act related  
5 to EPA’s discovery that the 3.0 Liter Subject Vehicles and the Porsche Vehicles contained a defeat  
6 device that resulted in excess NOx emissions when the vehicles were driven on the road.” (SOF  
7 ¶67.) VW AG also admitted that “[o]n or about November 2, 2015, VW AG issued a statement  
8 that ‘no software has been installed in the 3-liter V6 diesel power units to alter emissions  
9 characteristics in a forbidden manner.’” (SOF ¶68.)

10 226. However, VW AG admitted that “[o]n or about November 19, 2015, Audi AG  
11 representatives met with EPA and admitted that the 3.0 Liter Subject Vehicles contained at least  
12 three undisclosed AECDs. Upon questioning from EPA, Audi AG representatives conceded that  
13 one of these three undisclosed AECDs met the criteria of a defeat device under U.S. law.” (SOF  
14 ¶69.)

15 227. VW AG similarly admitted that “[o]n or about May 16, 2016, Audi AG  
16 representatives met with CARB and admitted that there were additional elements within two of its  
17 undisclosed AECDs, which impacted the dosing strategy in the 3.0 Liter Subject Vehicles and the  
18 Porsche Vehicles. (SOF ¶70.) Then, “[o]n or about July 19, 2016, in a presentation to CARB, Audi  
19 AG representatives conceded that elements of two of its undisclosed AECDs met the definition of  
20 a defeat device.” (SOF ¶71.)

21 228. In conclusion, VW AG admitted that “Supervisors A-F and others caused defeat  
22 device software to be installed on all of the approximately 585,000 Subject Vehicles and the  
23 Porsche Vehicles sold in the United States from 2009 through 2015.” (SOF ¶72.)

24 **J. Volkswagen’s Emissions-Cheating Scheme**  
25 **Was an Open Secret at the Company**

26 229. As several US and German news sources have reported, the emissions scandal-  
27 related misconduct at VW AG went far beyond any rogue group of engineers. Rather, as *Der*

1 *Spiegel* reported on October 14, 2015 based on information about VW AG’s internal investigation  
2 and Jones Day’s investigation, “the longstanding emissions fraud with illegal software was by no  
3 means the offense of a ‘small group’ of managers as the company has claimed so far. Dozens of  
4 Volkswagen managers were involved.” *Der Spiegel* also reported that the fact “[t]hat this engine  
5 met the requirements without the expensive exhaust gas treatment usually customary for diesel-  
6 powered engines had to ‘make every engine developer suspicious,’ a VW manager says.” After  
7 VW AG’s emissions cheating emerged and the Company offered amnesty to whistleblowers, as  
8 many as 50 employees elected to participate, further belying any notion that VW AG’s cheating  
9 was limited to a small number of low-level, rogue employees. VW AG’s admissions in its plea  
10 agreement and the United States’ allegations in the criminal cases against senior VW AG  
11 executives, as quoted above, further demonstrate that the emissions-cheating scheme was directed  
12 from and known by senior management of both VW AG and VWGoA.

13 230. Senior managers—including Defendant Winterkorn himself—were aware for years  
14 or were severely reckless in not knowing that the Company was using defeat-device software to  
15 hide the fact that the TDI cars did not and could not meet emissions standards. As discussed above,  
16 and as *Bild* reported on September 27, 2015, Bosch notified VW AG’s top management as early  
17 as 2007 that the EDC17 software supplied for use in VW AG’s TDI vehicles could not legally be  
18 used to reduce emissions during testing, and “[t]he circle of those in the know at VW must have  
19 been larger than assumed so far if even the supplier knew about the ploy.”

20 231. Additionally, as reported in the September 26, 2015 *Frankfurter Allgemeine*, VW  
21 AG’s present investigation into the emissions-cheating scandal (conducted by the Jones Day law  
22 firm) has revealed that a whistleblower at VW AG warned management in 2011 that the Company  
23 was illegally manipulating reported emissions data. Recipients of the warning included Neußer,  
24 then-Head of Powertrain Development for the Volkswagen brand and subsequently Volkswagen’s  
25 brand manager and a member of the VW AG Management Board.

26 232. After the whistleblower, an engineer at the Company, notified management of the  
27 misconduct, neither Neußer nor anyone else in management took any action to investigate whether

1 the allegations were true or otherwise to remedy the problem. Instead, VW AG intentionally  
2 installed emissions-cheating software on 11 million vehicles worldwide, told US regulators that  
3 the discrepancies between emissions-test results of Volkswagen cars in the lab and on the road  
4 were due to minor technical problems, allowed the noxious cars to be driven for years, and  
5 continuously touted the Company's purported "clean diesel" technology to investors.

6 233. Credible reports also indicate that Winterkorn's top lieutenants were centrally  
7 involved in the decision to use defeat-device software to manipulate emissions data. An October  
8 3, 2015 *Bild* article reported that, in internal interviews at the Company, several engineers have  
9 incriminated former VW AG head of development Hackenberg, who is reported not only to have  
10 known about VW AG's cheating, but was also one of the Company's executives to have given the  
11 order to cheat.

12 234. Despite the calamitous consequences that could flow from VW AG's use of defeat-  
13 device software, management and employees were far more concerned with maintaining secrecy  
14 and managing potential public-relations fallout than with investigating whether and how VW AG  
15 had been cheating emissions tests for years. In a February 14, 2016 article, *Bild* reported that  
16 internal communications among VW AG's engineers and management "coolly calculated" "the  
17 'risks' and 'benefits' of the emission fraud," discussing "scenarios on how to handle the allegations  
18 of US agencies." Among other options, the engineers discussed "[a]cknowledgement without  
19 comment or ignoring of the results"; "further tests/inspection"; and a "worst case scenario" of  
20 "[b]uy back of vehicles." The engineers even discussed the "offer of a software upgrade" "to  
21 placate the US agencies," even though all involved understood that the Company could not achieve  
22 "compliance with the required limits."

23 235. In addition, Winterkorn and others in VW AG's senior management were  
24 undoubtedly aware or severely reckless in not knowing that the TDI vehicles actually produced  
25 emissions far beyond legal levels, given the significant suspicions of competitors and industry  
26 insiders. As *Business Insider* reported on February 16, 2016, General Motors ("GM") had strong  
27 suspicions that Volkswagen was cheating on its diesel emissions. GM's former Vice Chairman

1 Lutz stated that GM had studied Volkswagen’s diesel technology and was utterly unable to  
2 understand how Volkswagen had complied with CARB’s strict standards. According to Lutz,  
3 “[o]ur people told me that they had studied the Volkswagen products and that they could not get  
4 the hardware to perform the same way to satisfy California’s emissions standards.” Eventually,  
5 Lutz was left to “ask[] if their people were just smarter than ours.” Of course, as has become clear,  
6 the only way Volkswagen’s TDI vehicles passed emissions testing was by using illegal defeat  
7 devices to manipulate testing results.

8 236. Similarly, as *Businessweek* reported on October 21, 2015 in an article titled “**How**  
9 **Could Volkswagen’s Top Engineers Not Have Known?**,” automotive expert Dudenhoeffer  
10 expressed his astonishment that Volkswagen management could credibly believe the Company  
11 had successfully produced a high-performance, low-emissions diesel vehicle. “That is the story of  
12 Santa Claus,” Dudenhoeffer stated, because without the urea system, “it’s not possible to meet the  
13 standard.”

14 237. Market observers have also made clear that the upper echelons of management at  
15 Volkswagen knew of the defeat devices. The October 21, 2015 *Businessweek* article detailed the  
16 ICCT and WVU investigation that revealed Volkswagen’s emissions cheating, and astutely asked:  
17 “[T]he diesel engine has been around for more than 100 years. It was invented in Germany. Is it  
18 really possible that a German company run by engineers believed the diesel engine had suddenly  
19 become clean?” The article went on:

20 It’s not credible that top managers were unaware corners had been cut, says  
21 Dudenhoeffer, who worked at Porsche and other carmakers before entering  
22 academia. In contrast to GM, where finance people have run the show for years,  
23 and Ford Motor, whose former CEO is a turnaround specialist from another  
24 industry, **VW is a company where the engineers are in charge.** It’s always  
25 claimed that an engineer-filled executive suite was a precondition of building top-  
26 quality cars. Winterkorn ran around at auto shows with a tape measure and a magnet  
27 to examine vehicles from rival carmakers, while back in his own ship he got  
28 involved in technical details. When VW managers called for clean diesel without  
the urea system, “they must have known that it’s impossible, or else it’s not possible  
they have degrees as engineers,” Dudenhoeffer says.

1           238. Further, contrary to his statements that he was not aware of the Company's  
2 emissions cheating until September 2015, as *Bild* reported on October 22, 2015, Winterkorn  
3 himself knew in the spring of 2014 that Volkswagen's TDI diesel engines employed illegal defeat  
4 devices in order to pass emissions testing. At that time, Winterkorn and others reportedly discussed  
5 communications from both the EPA and CARB regarding documented inconsistencies between  
6 VW AG's reported emissions results for its TDI vehicles and actual emissions levels.

7           239. The EPA's September 18, 2015 NOV evidences that Volkswagen top management  
8 knew in May 2014 that its TDI vehicles produced NOx emissions at levels far higher than  
9 permitted by applicable regulations. Rather than either reveal the truth to the public or work to fix  
10 the vehicles' underlying technical problems, Volkswagen responded by falsely denying that there  
11 was any problem at all. The EPA wrote that

12           [CARB] and the EPA were alerted to emissions problems with these vehicles in  
13 May 2014 when the West Virginia University's (WVU) Center for Alternative  
14 Fuels, Engines & Emissions published results of a study commissioned by the  
15 [ICCT] that found significantly higher in-use emissions from two light duty diesel  
16 vehicles (a 2012 Jetta and a 2013 Passat). Over the course of the year following the  
17 publication of the WVU study, VW continued to assert to CARB and the EPA that  
18 the increased emissions from these vehicles could be attributed to various technical  
19 issues and unexpected in-use conditions. . . . None of the potential technical issues  
20 suggested by VW explained the higher test results consistently confirmed during  
21 CARB's testing. It became clear that CARB and the EPA would not approve  
certificates of conformity for VW's 2016 model year diesel vehicles until VW  
could adequately explain the anomalous emissions and ensure the agencies that the  
2016 model year vehicles would not have similar issues. Only then did VW admit  
it had designed and installed a defeat device in these vehicles in the form of a  
sophisticated software algorithm that detected when a vehicle was undergoing  
emissions testing.

22           240. CARB's September 18, 2015 letter to Volkswagen likewise showed that  
23 Volkswagen was aware of the problems that ICCT and WVU had identified, as CARB wrote that  
24 ICCT's investigation

25           prompted CARB to start an investigation and discussions with the Volkswagen  
26 Group of America (VW) on the reasons behind these high NOx emissions observed  
27 on their 2.0 liter diesel vehicles over real world driving conditions. As you know,  
these discussions over several months culminated in VW's admission in early

1 September 2015 that it has, since model year 2009, employed a defeat device to  
2 circumvent CARB and the EPA emission test procedures.

3 241. As part of its response, according to the CARB letter, Volkswagen “initiated testing  
4 to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road  
5 emissions.” After learning on or about March 31, 2014 about the upcoming publication of the  
6 ICCT report, Defendant Horn, then-CEO of VWGoA, requested reports and analyses of the ICCT  
7 report from VWGoA’s Environmental and Engineering Office. (Complaint ¶¶121-23, *State of New*  
8 *York v. Volkswagen AG, et al.* (N.Y. Sup. Ct. filed July 19, 2016).)

9 242. In an email dated May 15, 2014, Defendant Horn was informed that Volkswagen  
10 vehicles did not meet governing emissions standards, and was warned of the significant risks  
11 arising out of the emissions scandal, including monetary penalties, recall of vehicles, removal of  
12 the cars from the United States, and the possibility of having to buy back the cars. Amidst repeated  
13 apologies, Horn admitted to the US Congress on October 8, 2015 that he was informed in May  
14 2014 of “a possible emissions non-compliance.” Horn admitted that “[w]e have broken the trust  
15 of our customers, dealerships, and employees, as well as the public and regulators.”

16 243. In a March 2, 2016 press release in connection with the Company’s defense to  
17 securities-fraud litigation in Germany, VW AG itself admitted that “[o]n 23 May 2014, a memo  
18 about the ICCT study was prepared for Martin Winterkorn, then-Chairman of the Management  
19 Board of VW AG. This memo was included in his extensive weekend mail.”

20 244. As *Bild* reported on February 14, 2016, Winterkorn received a memo on May 23,  
21 2014—16 months before the emissions-cheating scandal became public—from Gottweis, the  
22 veteran Volkswagen executive whom employees referred to as the “fireman” for his ability to  
23 “smell trouble” and “sound the alarm” and address emergent crises at the Company. Gottweis was  
24 Volkswagen’s top quality-assurance executive and led the Company’s “Product Safety Taskforce”  
25 and, according to a February 15, 2016 *Wall Street Journal* article, “ran a team of product sleuths  
26 that Volkswagen management dispatched around the world to put out quality flare-ups before they  
27 grew into a full-fledged blaze.” *Focus* similarly reported on February 16, 2016, that Gottweis “can

1 smell trouble,” and that “[u]sually Winterkorn heeded his advice.” According to a February 14,  
2 2016 report in *Süddeutsche Zeitung*, Gottweis always communicated openly with Winterkorn  
3 regarding quality issues, and Winterkorn usually followed up with Gottweis.

4 245. A *Süddeutsche Zeitung* article from January 13, 2017, explained that Gottweis had  
5 actually known of Volkswagen’s use of illegal defeat devices as far back as July 2012, when  
6 engineers informed he and Neußer of the devices. According to the article, “Gottweis in the spring  
7 of 2014 finally said ‘I have to talk to the boss,’” meaning Winterkorn.<sup>12</sup>

8 246. In Gottweis’s memo, which Winterkorn took home to read as part of his “weekend  
9 suitcase,” Gottweis discussed tests by US agencies in which the NOx output of TDI vehicles  
10 exceeded acceptable levels by up to 35 times. Gottweis told Winterkorn that there was no  
11 legitimate explanation for either those excessive emissions levels or the defeat device that  
12 regulators would no doubt find upon examination.

13 247. Specifically, and as *Süddeutsche Zeitung* reported, Gottweis wrote that  
14 Volkswagen’s US engineers could not provide an honest explanation for the heightened NOx  
15 emissions levels, and that “[n]o plausible explanation for the dramatically increased NOx  
16 emissions can be given to authorities.” Gottweis warned that “[i]t is to be assumed that the  
17 authorities will subsequently examine VW systems to determine if Volkswagen has installed test  
18 recognition into the engine control unit software (a so-called defeat device).”

19 248. *Bild* also reported on February 14, 2016 that Winterkorn admitted, during a  
20 deposition as part of Jones Day’s investigation into the Volkswagen emissions scandal, that by  
21

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22  
23 <sup>12</sup> See also *Süddeutsche Zeitung*, “Ermittler filzen Villa von Winterkorn,” Jan. 27, 2017 (“In the  
24 spring of 2014, [Gottweis] allegedly said: ‘I need to speak with the boss.’ The boss in Wolfsburg  
25 was Winterkorn.”); *Der Tagesspiegel*, “Martin Winterkorn in Erklärungsnot,” Jan. 15, 2017  
26 (Gottweis “allegedly informed Winterkorn about the manipulation of diesel emissions long before  
27 the scandal broke. . . . It is unclear at what point VW head Winterkorn learned about the tricks of  
his engineers for the first time. Gottweis, who in the course of his career at VW was also in charge  
of the emissions measuring laboratory in Los Angeles, could have confidentially informed  
Winterkorn earlier than is officially known, without leaving a trace.”).



1 May 2014, he was aware of the problems regarding impermissibly high emissions levels in the  
2 TDI vehicles.

3 249. After being placed on notice of Volkswagen’s emissions cheating, Winterkorn and  
4 other top managers did nothing for months, perhaps out of a cavalier and mistaken belief that  
5 Volkswagen could resolve any US legal issues by paying a “cost-of-doing-business” fine. The  
6 March 2, 2016 VW AG press release stated that “[o]n 14 November 2014, Mr. Winterkorn received  
7 another memo that reported, amongst other things, on several then current product defect cases  
8 and referred to a cost framework of approx. EUR 20 million for the diesel issue in North America.”  
9 That is, the Company ignored compelling evidence of illegal conduct because it was focused on  
10 its bottom line, without regard to compliance or environmental impact.

11 250. Similarly, as *Bild* reported on February 14, 2016, “[a]s late as July 2015 a VW  
12 technician noted in a matrix under ‘prospects’ the possibility that the emissions fraud could slip  
13 through the cracks at the agencies . . . or ‘monetary fines could be lower,’” and VW AG has  
14 admitted that on July 27, 2015, “Volkswagen employees discussed the diesel issue on the periphery  
15 of a regular meeting about damage and product issues, in the presence of Martin Winterkorn and  
16 Herbert Diess.”

17 251. In addition, according to a February 14, 2016 *Bild* report, a senior Volkswagen  
18 manager admitted true emissions levels to a CARB official on August 5, 2015 (over a month before  
19 Volkswagen’s emissions cheating became public), and Defendant Diess held meetings on August  
20 24 and 25, 2015 to discuss the Company’s response to the scandal that was about to break.

21 252. Similarly, leading German business newspaper *Handelsblatt* reported on February  
22 15, 2016 that Volkswagen sources admitted that “it appears that top management at VW knew  
23 about the existence of a U.S. probe for more than a year before it went public—but apparently did  
24 little to address the situation, which angered U.S. investigators.” Indeed, “it wasn’t just Mr.  
25 Winterkorn who knew, but it was common knowledge in top management circles. At the very  
26 latest, by the time of the first recall at the end of 2014, the entire Management Board at VW had  
27 been informed of the problem, which had been the subject of intense discussions.” Further, “senior

1 managers surrounding Mr. Winterkorn were informed of the scandal very early on in its  
2 development.”

3 253. Winterkorn was warned again regarding Volkswagen’s use of illegal defeat devices  
4 just two weeks before the scandal became public. On February 27, 2016, *Fortune* reported on  
5 internal Volkswagen documents demonstrating that a Volkswagen manager sent a letter directly  
6 to Winterkorn on September 4, 2015, stating that “[i]n the conversation on [September 3, 2015]  
7 with the regulator CARB (California Air Resources Board), the defeat device was admitted.”  
8 However, Winterkorn still stayed silent.

9 254. Volkswagen’s emissions cheating has also resulted in significant financial harm to  
10 the Company, in numerous ways. Ratings agencies such as S&P have downgraded Volkswagen  
11 debt, resulting in a sharply increased cost of capital—particularly damaging for Volkswagen’s  
12 financing unit. According to an October 13, 2015 Morgan Stanley analyst report, Volkswagen’s  
13 cost of capital has risen by more than 200 basis points. As Morgan Stanley noted, “[o]n a consumer  
14 finance business with over €140bn in assets, the annual cost of this rise in capital costs is very  
15 significant—if VW cannot pass this on to the consumer, as it does normally, this could almost  
16 entirely wipe out current VW Financial Services annual EBIT of almost €2bn p.a. On the other  
17 hand, if VW does pass on the higher costs to consumers, it will present a sharp competitive barrier  
18 for VW and Audi against their closest peers.”

19 255. Consumers will likely be further turned away from Volkswagen cars by the drop in  
20 resale values that Volkswagen cars have experienced in the scandal’s wake. Volkswagen vehicles’  
21 resale values were long a key selling point and value generator. In an August 20, 2012 analyst  
22 report, Morgan Stanley reported that resale values were “[b]y far the biggest single driver of  
23 ownership cost . . . . Here the quality and strong brand of VW vehicles [is] largely unmatched in  
24 the mass market segments. . . . When compared to the average peer, VW’s residual advantage  
25 looks to provide a €750-1250 per vehicle [total cost of ownership] advantage (equivalent to c. 5-  
26 7% of the 3-year [total cost of ownership]).”

1           256. In the wake of the scandal, however, resale values have plummeted. As Barclays  
2 wrote in a November 13, 2015 analyst report:

3           Kelley Blue Book, a research group that tracks car values, said resale values of VW  
4 models affected by the scandals have fallen 16% on average since their pre-crisis  
5 levels. According to Autolist, models affected by the scandal are taking 123 days  
6 to sell, about 44% longer than a control group of similar non-Volkswagen cars. List  
7 prices are about 5% below what the company's algorithms suggest they should be,  
8 and this drop has yet to cease.

9           It is not just the affected models that are likely to be impacted by this general tail  
10 off in sentiment. Consumers are either not clued-up enough to know which models  
11 have been implicated or, more likely, have little faith in VW's ability to draw a line  
12 under the situation.

13           257. Lessors of affected vehicles, as compared to owners, will not bear the same loss in  
14 value because lease-end residual values are written into the terms of the lease contracts. VW AG,  
15 on the other hand, faces significantly increased financial exposure because far fewer leasing  
16 customers (if any) will purchase their vehicles at lease-end at the agreed upon resale values, which  
17 were set before the emissions scandal was revealed and do not reflect the loss in value caused by  
18 the scandal. Volkswagen will then be left with increased inventory and, even if it can legally resell  
19 the affected vehicles (assuming a fix is available to render the cars compliant with emissions  
20 standards), will have to try to sell the cars into a depressed market.

21           258. In all, Volkswagen faces massive monetary liability. Credit Suisse presented a  
22 thorough analysis in an October 2, 2015 analyst report, discussing its base case of €43.6 billion  
23 cost impact to VW AG (including €6.5 billion in criminal and civil penalties) alongside a €77.8  
24 billion bear case and a €22.3 billion bull case. Those costs include vehicles' fall in residual value,  
25 the cost of required fixes to the vehicles, potential civil and criminal penalties, and a clawback of  
26 government subsidies that had been provided for energy-efficient vehicles. Société Générale's  
27 forecast is even starker, estimating in a January 7, 2016 analyst report that Volkswagen's legal  
28 liabilities alone will total €100 billion. None of these liabilities or contingencies were properly  
accounted for during the Class Period.

1           **K.     VW AG Fraudulently Understated Liabilities,**  
2           **Overstated Profits, and Failed to Disclose**  
3           **Material Contingencies**

4           259.   As a German corporation, VW AG is required to prepare its financial statements in  
5 accordance with International Financial Reporting Standards (“IFRS”). In VW AG’s Class Period  
6 periodic reports, VW AG, Winterkorn, and Diess represented that its financial statements complied  
7 with IFRS.

8           260.   Financial statements (including footnote disclosures) are a central feature of  
9 financial reporting. One of the fundamental objectives of financial reporting is that it provide  
10 accurate and reliable information concerning an entity’s financial performance during the period  
11 being presented.

12           261.   The Conceptual Framework underlying IFRS, the accounting standards that VW  
13 AG is subject to and that its publicly filed financial statements purported to comply with, states  
14 “[t]he objective of general purpose financial reporting is to provide financial information about the  
15 reporting entity that is useful to existing and potential investors, lenders and other creditors in  
16 making decisions about providing resources to the entity.” (IASB Conceptual Framework (“IASB  
17 CF”) OB2.)

18           262.   The IASB Conceptual Framework also states that investors, lenders, and other  
19 creditors are interested to know and understand, among other things, “how efficiently and  
20 effectively the entity’s management and governing board have discharged their responsibilities to  
21 use the entity’s resources,” while examples of these responsibilities include “protecting the entity’s  
22 resources from unfavourable effects of economic factors such as price and technological changes  
23 **and ensuring that the entity complies with applicable laws, regulations** and contractual  
24 provisions.” (IASB CF OB 4; footnote omitted.) Therefore, a reporting entity has a duty to present  
25 information in its general purpose financial reports that reflects its financial position, which is  
26 information about the entity’s economic resources and the claims against the reporting entity.  
27 (IASB CF OB 12.)

1           263. Further, the IASB Conceptual Framework states that the two fundamental  
2 qualitative characteristics that make accounting information useful for decision-making are  
3 relevance and faithful representation. (IASB CF QC 4 & 5.) To be a faithful representation,  
4 information must be complete, neutral, and free from error. (IASB CF QC 12.) “Complete” means  
5 providing “all information necessary for a user to understand the phenomenon being depicted,  
6 including all necessary descriptions and explanations.” (IASB CF QC 13.) “Neutral” means  
7 “without bias in the selection or presentation of financial information . . . not slanted, weighted,  
8 emphasized, de-emphasized or otherwise manipulated to increase the probability that financial  
9 information will be received favourably or unfavourably by users.” (IASB CF QC 14.) “Free from  
10 error” means “there are no errors or omissions in the description of the phenomenon, and the  
11 process used to produce the reported information has been selected and applied with no errors in  
12 the process.” (IASB CF QC 15.) “Free from error” would also mean the material conformity with  
13 the relevant accounting standards promulgated by IFRS, including IAS 37.

14           264. These accounting standards, and those described in further detail below, created an  
15 affirmative obligation requiring VW AG and those individuals signing its financial reports  
16 (including Winterkorn and Diess) to ensure that VW AG’s financial statements were accurate and  
17 complied with all relevant provisions of IFRS and IAS. These obligations were not upheld here.  
18 In the Company’s Class Period periodic reports, VW AG, Winterkorn, and Diess falsely  
19 represented that VW AG’s financial statements complied with IFRS. They did not. Specifically,  
20 VW AG’s accounting obligations included compliance with IAS 37, which governs when a  
21 company is required to recognize a “provision” for contingencies. Provisions are recognized as  
22 liabilities in financial statements because they are present obligations and it is probable that an  
23 outflow of resources will be required to settle the obligations.

24           265. Under IAS 37, a provision must be recognized when a company has a present  
25 obligation (legal or constructive) as a result of a past event; it is probable that an outflow of  
26 resources embodying economic benefits will be required to settle the obligation; and a reliable  
27 estimate can be made of the amount of the obligation, including when there is a range of possible

1 outcomes, in which case the amount accrued should be either the best estimate of the obligation  
2 or, if there is no best estimate, the midpoint of the range. A past event is deemed to give rise to  
3 present obligation if it is more likely than not that a present obligation exists at the end of each  
4 reporting period. (IAS 37 ¶15.) IAS 37 further provides that “[e]xcept in extremely rare cases, an  
5 entity will be able to determine a range of possible outcomes and can therefore make an estimate  
6 of the obligation that is sufficiently reliable to use in recognising a provision.” (IAS 37 ¶25.) In  
7 the rare cases in which a reliable estimate cannot be made, the liability still exists but cannot be  
8 recognized, and is instead disclosed as a contingent liability, as discussed further below in ¶266.  
9 (IAS 37 ¶26.)

10 266. IAS 37 designates a past event that leads to a present obligation as an obligating  
11 event. For an event to be deemed an obligating event, the entity cannot have a realistic alternative  
12 to settle the obligation created by the event. (IAS 37 ¶17.) This is the case if the settlement of the  
13 obligation can be enforced by law or, in the case of a constructive obligation, where the event  
14 creates valid expectations in other parties that the entity will discharge the obligation. (IAS 37  
15 ¶17.) IAS 37 specifically states that, in order to recognize a provision, it is not necessary to know  
16 the identity of the party or parties to whom the obligation is owed, and that the obligation may be  
17 to the public at large. (IAS 37 ¶20.)

18 267. In contrast to US Generally Accepted Accounting Principles, which require  
19 recognition of contingent liabilities only when they are “probable,” which is not defined with  
20 reference to any specific percentage likelihood and is sometimes interpreted as a high likelihood,  
21 a loss is considered “probable” and therefore must be recognized as a provision under IAS 37 when  
22 the loss is more likely than not, i.e., a probability of greater than 50%.

23 268. For a provision to qualify for recognition in accordance with IAS 37, in addition to  
24 the requirement of a present obligation existing at the end of a reporting period, there must be a  
25 probability that an outflow of resources embodying economic benefits to settle that obligation must  
26 be more likely than not to occur. (IAS 37 ¶23.) In each reporting period during the relevant  
27 timeframe, VW AG had a duty to settle the existing obligation caused by the use of unlawful defeat

1 devices in the vehicles it had sold and the resulting emissions violations and, therefore, it was more  
2 likely than not that an outflow of resources embodying economic benefits would be needed to  
3 settle the obligation.

4 269. Moreover, if the entity has a number of similar obligations (e.g., similar defeat  
5 devices installed in multiple cars), IAS 37 states that the probability that an outflow will be  
6 required in settlement is determined by considering the class of obligations as a whole, even if the  
7 likelihood of outflow for any one item may be small. (IAS 37 ¶24.) In cases where the probability  
8 that outflows of resources will be needed to settle the class of obligations as a whole, a provision  
9 must be recognized. (IAS 37 ¶24.)

10 270. As a liability, the provision would have reduced VW AG's operating profit during  
11 each period for which it should have been recognized and would have reduced VW AG's net assets  
12 and shareholders' equity as of the balance-sheet date at the end of the period. For example, in its  
13 interim report for the third quarter of 2013, VW AG reported that its "earnings [were] impacted  
14 by contingency reserves affecting the areas of Passenger Cars and Power Engineering."

15 271. In each of VW AG's interim and annual reports issued during the Class Period, VW  
16 AG, Winterkorn, and Diess (for VW AG's second quarter 2015 interim report) stated that the  
17 Company's financial statements were prepared in accordance with IFRS. More specifically, VW  
18 AG and Winterkorn stated in the Company's annual reports that "[i]n accordance with IAS 37,  
19 provisions are recognized where a present obligation exists to third parties as a result of a past  
20 event, where a future outflow of resources is probable and where a reliable estimate of that outflow  
21 can be made." Contrary to these statements and in violation of IFRS and IAS 37, VW AG  
22 recognized no provision for its present obligations relating to its emissions-cheating scheme during  
23 the Class Period.

24 272. As set forth in greater detail below, each of the requirements for recognition of a  
25 provision under IAS 37 was met at all relevant times by VW AG. VW AG's installation of defeat  
26 devices in 11 million cars, including 585,000 cars sold in the United States, violated applicable  
27 legal and regulatory requirements that could subject it to fines and criminal and civil liability, and

1 thus constituted a “past event” that created a then-present legal obligation under the first prong of  
2 IAS 37. Under the second prong of IAS 37, it was probable that VW would have to pay (use an  
3 “outflow of resources”) to resolve regulatory fines and criminal and civil litigation, as reflected in  
4 the billions of dollars of liabilities to purchasers of its “clean diesel” cars for damages and repairs,  
5 and to US and foreign governmental agencies for fines and penalties resulting from its emissions-  
6 cheating scheme. The existence of regulatory regimes in the United States and elsewhere meant  
7 that Defendants had to actively defraud and manipulate regulators and the public in selling 11  
8 million cars over an eight-year period, which cars were likely to remain in use for many years after  
9 the date of sale, and it was not more probable than not that the installation of so many illegal defeat  
10 devices could remain completely undetected forever. Under the third and final prong of IAS 37, a  
11 provision was required because the amount of the provision could be reliably estimated. For  
12 example, even assuming liability would be limited to US regulatory fines, Defendants could simply  
13 calculate the total numbers of cars with illegal defeat devices sold as of the reporting date in the  
14 United States and in California, and extrapolate the possible fines associated with the sale of those  
15 vehicles (up to \$42,500 each, or over \$20 billion in the aggregate). Such a simple calculation would  
16 create a highly reliable baseline from which to determine a provision. In fact, IAS 37 specifically  
17 cites “penalties or clean-up costs for unlawful environmental damage” as an example of a present  
18 obligation arising from past events that should be recorded as a provision because it would lead to  
19 an outflow of resources embodying economic benefits in settlement regardless of the future actions  
20 of the entity. (IAS 37 ¶19.)

21 273. Another specific example provided in IAS 37 of an entity that must recognize a  
22 provision is when “an entity recognizes a provision for the decommissioning costs of an oil  
23 installation or a nuclear power station to the extent that the entity is obliged to rectify damage  
24 already caused.” (IAS 37 ¶19.) This example relates to the circumstances experienced by VW AG  
25 in this matter because, similar to the entity in the specific example described in IAS 37 that caused  
26 damage from a prior event and had a present obligation to settle the damage, VW AG had caused  
27 damage by knowingly using unlawful defeat devices in the automobiles it had sold, resulting in



1 violations of emissions regulations in the United States and elsewhere, and had an obligation  
2 during the relevant timeframe to settle the damage through payments of CARB, EPA, and other  
3 penalties and damages, or other resources embodying economic benefits to settle that obligation.

4 274. In addition to IAS 37's requirements concerning provisions, IAS 37 requires a  
5 company to disclose contingent liabilities in two circumstances: (1) a possible obligation arises  
6 from past events, and its existence will be confirmed only by the occurrence or non-occurrence of  
7 one or more uncertain future events not wholly within the company's control; or (2) a present  
8 obligation arises from past events but is not recognized as a provision because (a) it is not probable  
9 that an outflow of resources embodying economic benefits will be required to settle the obligation,  
10 or (b) the amount of the obligation cannot be measured with sufficient reliability. In either case,  
11 IAS 37 requires companies to disclose contingent liabilities, unless the possibility of an outflow  
12 of resources embodying economic benefits is remote. The company must (unless the possibility of  
13 any outflow in settlement is remote) disclose a brief description of the nature of each class of  
14 contingent liability at the end of each reporting period and, where practicable, an estimate of its  
15 financial effect, an indication of the uncertainties relating to the amount or timing of any outflow,  
16 and the possibility of any reimbursement. (IAS 37 ¶86.)

17 275. While it is clear that IAS 37 required VW AG to record a provision, even if a  
18 provision was not recorded, IAS 37 required VW AG, Winterkorn, and Diess to disclose a  
19 contingent liability relating to the Company's emissions-cheating scheme. Assuming that VW AG,  
20 Winterkorn, and Diess wrongly believed that it was not *probable* that an outflow of resources  
21 embodying economic benefits would be needed to settle obligations caused by the use of defeat  
22 devices, the possibility of an outflow of resources embodying economic benefits to settle those  
23 obligations could not be deemed *remote*, and disclosure of a contingent liability was therefore  
24 required.

25 276. To the extent the emissions cheating scheme could be characterized not as a  
26 "present obligation" but as a "possible obligation," it would be confirmed by the occurrence of the  
27

1 US government discovering Volkswagen’s misconduct and thus was required to be disclosed as a  
2 contingent liability in each of VW AG’s financial reports issued during the Class Period.

3 277. Alternatively, to the extent that VW AG’s liabilities related to the emissions-  
4 cheating scheme constituted “present obligations,” VW AG, Winterkorn, and Diess were required  
5 to disclose a contingent liability relating to Volkswagen’s use of defeat devices to the extent that  
6 either it was not probable that an outflow of resources embodying economic benefits would be  
7 required to settle the obligation, or the amount of the obligation could not be measured with  
8 sufficient reliability to recognize a provision.

9 **1. VW AG Had Actual Knowledge from November 19,**  
10 **2010 to April 28, 2014 that Its Financial Statements**  
11 **Were Materially False and Misleading**

12 278. VW AG was required to record a provision for the liabilities arising from its  
13 emissions-cheating scheme in each reporting period during the Class Period. From at least  
14 November 19, 2010 to April 28, 2014, the liabilities were probable under IAS 37 and VW AG  
15 could reliably estimate the amount of liabilities, or at the very least, provide a range of liabilities.

16 279. The losses arising from VW AG’s misconduct were probable under IAS 37 because  
17 senior VW AG management, including Winterkorn, knew from before the start of the Class Period  
18 that VW AG was engaging in deliberate emissions cheating that exposed it to massive liability in  
19 the United States and elsewhere. Notwithstanding these liabilities and obligations, Defendants  
20 recorded *no* provision for any of the billions in liabilities they had incurred. VW AG has admitted  
21 that “[f]rom approximately May 2006”—years before the start of the Class Period—“to  
22 approximately November 2015, VW AG, through Supervisors A-F and other VW employees,  
23 agreed to deceive U.S. regulators and U.S. customers about whether the Subject Vehicles and the  
24 Porsche Vehicles complied with U.S. emissions standards. . . . Supervisors A-F and other VW  
25 employees: (a) knew that the Subject Vehicles and the Porsche Vehicles did not meet U.S.  
26 emissions standards; (b) knew that VW was using software to cheat the U.S. testing process by  
27 making it appear as if the Subject Vehicles and the Porsche Vehicles met U.S. emissions standards

1 when, in fact, they did not; and (c) attempted to and did conceal these facts from U.S. regulators  
2 and U.S. customers.” (SOF ¶31.)

3 280. Also prior to the start of the Class Period, in 2006, employees told VW AG’s  
4 Management Board, led by Winterkorn, that Volkswagen’s diesel engines would not be able to  
5 comply with emissions requirements. Further, in 2007, Bosch, the supplier of the defeat device  
6 code, specifically warned Volkswagen’s senior executives that the software was illegal. Also, in  
7 2008, Bosch demanded that Volkswagen indemnify Bosch for liability arising from the defeat  
8 device.

9 281. Further, US regulators were already focused on Volkswagen’s emissions  
10 compliance at least as early as 2008. Indeed, CARB issued an “Executive Order” in June 2008  
11 demanding a statement from VW AG that no defeat device was installed in the engines of  
12 Volkswagen’s cars. Otherwise, the letter states, CARB would withdraw its certification of the  
13 vehicles and assess a penalty of \$5,000 per car.

14 282. Further, in 2011, an internal whistleblower alerted Winterkorn confidant and senior  
15 VW AG executive Neußer to the illegal manipulation of emissions data through the use of defeat  
16 devices.

17 283. The probability of the liabilities arising from the Company’s misconduct is also  
18 demonstrated by VW AG’s Code of Conduct. Specifically, in May 2010, the Company enacted a  
19 Code of Conduct titled “Know, Follow, Rules.” The Code of Conduct was signed by Winterkorn,  
20 who represented in the Code of Conduct that it was a “Group-wide guideline that applies to all of  
21 our employees and members of executive bodies and for the compliance with which each  
22 individual is equally responsible.” For his part, Winterkorn represented in the Code of Conduct  
23 that he “commit[ed] [himself] to following the Code of Conduct.”

24 284. According to the Code of Conduct, VW AG “consider[s] compliance with  
25 international conventions, laws, and internal rules to be the basis for sustainable and successful  
26 economic activities.” Two of the conventions specifically mentioned in the Code of Conduct  
27 pertain to environmental laws and sustainability regulations. Therefore, in adopting the Code of

1 Conduct in 2010, VW AG recognized that by violating “international conventions [and] laws”  
2 pertaining to the environment, the Company would face liabilities that would undermine its  
3 “sustainable and successful economic activities.” As noted above, VW AG has admitted that  
4 beginning in May 2006 (four years before the Code of Conduct was adopted), the Company began  
5 its emissions cheating scheme.

6 285. VW AG, Winterkorn, and Diess also knew that VW AG’s liabilities were probable  
7 under the Group Auditing program established by the Code of Conduct. Specifically, the Code of  
8 Conduct states that “Group Auditing will review compliance on a case-by-case and/or random  
9 basis as part of the auditing program approved by the Chairman of the Board of Management of  
10 Volkswagen AG.” The Code of Conduct further states that “[e]ach of our employees obeys the  
11 laws, regulations, and internal rules applicable to their working environment and acts in  
12 accordance with the Code of Conduct,” and that “superiors guard against unacceptable conduct.”  
13 VW AG’s Group Auditing and compliance program—along with the repeated warnings from  
14 government regulators, whistleblowers and Bosch, as well as Winterkorn’s detail-oriented nature  
15 and his installation of top lieutenants in executive posts—put the Company on notice at least as  
16 early as the start of the Class Period that its liabilities arising from its emissions-cheating scheme  
17 were probable.

18 286. The losses were also reliably estimable. Throughout the Class Period, VW AG,  
19 Winterkorn, and Diess knew or recklessly disregarded that Volkswagen faced EPA fines of  
20 \$37,500 per violation and CARB fines of \$5,000 per violation for each affected car in the United  
21 States.<sup>13</sup> Indeed, CARB specifically warned VW AG in June 2008 that the Company would be  
22 assessed a \$5,000 per car penalty for vehicles that contained a defeat device. VW AG, Winterkorn,  
23 and Diess also knew that the Company faced significant penalties for implanting defeat devices in  
24 Volkswagen diesel cars throughout the world.

25 \_\_\_\_\_  
26 <sup>13</sup> EPA’s \$37,500 penalty applies to violations occurring after January 13, 2009. At all relevant  
27 times before January 13, 2009, EPA’s penalty was \$32,500 per car. CARB’s relevant fine for  
violations was \$5,000 per car at all relevant times.

287. Throughout the Class Period, VW AG, Winterkorn, and Diess knew the number of “clean diesel” cars Volkswagen was illegally selling in the United States and around the world. Specifically, Volkswagen sold at least 43,869 of these vehicles in the United States in 2009, 58,784 in 2010, 76,564 in 2011, 99,121 in 2012, 111,285 in 2013, and 98,500 in 2014. In total, from 2010 to 2014, Volkswagen sold at least 488,123 “clean diesel” cars in the United States. When multiplying the number of “clean diesel” cars that Volkswagen illegally sold in this country (488,213) by EPA’s fine of \$37,500 per violation (for violations occurring after January 13, 2009) combined with CARB’s fine of \$5,000 per violation, VW AG faced a liability of approximately \$20,989,289,000.<sup>14</sup>

288. VW AG actively concealed this roughly \$21 billion liability from investors each year throughout the Class Period—despite the fact that the liability was continuously increasing as time went on given Volkswagen’s continued push to increase sales of “clean diesel” vehicles in the United States. As demonstrated by the chart below, Volkswagen concealed liabilities of roughly \$1.9 billion for 2009, \$4.4 billion for 2010, \$7.7 billion for 2011, \$12.0 billion for 2012, \$16.8 billion for 2013, and \$21.0 billion for 2014.

Year	Number of cars sold	EPA Fine	CARB Fine	Concealed Liability (per year)	Concealed Liability (total)
2009	43,869	\$37,500	\$5,000	\$1,886,367,000	\$1,886,367,000
2010	58,784	\$37,500	\$5,000	\$2,527,712,000	\$4,414,079,000
2011	76,564	\$37,500	\$5,000	\$3,292,252,000	\$7,706,331,000
2012	99,121	\$37,500	\$5,000	\$4,262,203,000	\$11,968,534,000
2013	111,285	\$37,500	\$5,000	\$4,785,255,000	\$16,753,789,000
2014	98,500	\$37,500	\$5,000	\$4,235,500,000	\$20,989,289,000

<sup>14</sup> The annual vehicle sales totals in this and the next paragraph do not include the roughly 100,000 clean diesel cars that Volkswagen sold in the United States in 2015. Thus, the totals discussed in this and the next paragraph are less than “the approximately 585,000 Subject Vehicles and the Porsche Vehicles” that VW AG has admitted selling in this country “from 2009 through 2015.” (SOF ¶72.) Accordingly, the estimated liability amounts in these paragraphs may understate the actual liabilities that were probable and reliably estimable during the Class Period. Plaintiffs’ calculation also assumes that all of VW AG’s clean diesel cars would be subject to the same state penalties as CARB.

1           289. Accordingly, from at least November 19, 2010 to April 28, 2014, VW AG's  
2 liabilities arising from its emissions-cheating scheme were probable under IAS 37, and VW AG  
3 could reliably estimate the amount of liabilities, or at the very least, provide a range of liabilities  
4 as required by IAS 37. Instead of recording a provision for these liabilities, VW AG actively  
5 concealed them.

6                           **2. VW AG Specifically Quantified the**  
7                           **Understatement of Its Liabilities No Later Than**  
8                           **April 28, 2014**

9           290. VW AG has admitted that “[o]n or about April 28, 2014, members of the VW task  
10 force [tasked with formulating responses to questions from U.S. regulators] presented the findings  
11 of the ICCT study to Supervisor E [Gottweis] . . . . Included in the presentation was an explanation  
12 of the potential financial consequences VW could face if the defeat device was discovered by U.S.  
13 regulators, including but not limited to the applicable fines per vehicle, which were substantial.”  
(SOF ¶56.)

14           291. As explained above, based on the number of “clean diesel” cars that Volkswagen  
15 sold in the United States each year from 2009 to 2014, VW AG, Winterkorn, and Diess concealed  
16 liabilities of roughly \$1.9 billion for 2009, \$4.4 billion for 2010, \$7.7 billion for 2011, \$12.0 billion  
17 for 2012, \$16.8 billion for 2013, and \$21.0 billion for 2014. In light of the admitted “substantial”  
18 liabilities that VW AG, Winterkorn, and Diess concealed from investors during the Class Period,  
19 Defendants specifically quantified the understatement of VW AG’s liabilities no later than April  
20 28, 2014.

21           292. Additionally, on March 10, 2016, the *Financial Times* reported that Defendant  
22 Horn received a letter attached to an email on May 15, 2014 stating that 500,000–600,000 cars in  
23 the United States from model years 2009–2014 could be affected by the diesel scandal.  
24 Significantly, the letter specifically enumerated the potential fines of “EPA: \$37,500, and CARB:  
25 \$5,500” per violation and specifically warned Horn that given the potential level of penalties,  
26 “[t]he contents of this [ICCT] study cannot be ignored!”  
27

1           293. Further, as the United States alleged in its criminal complaint against Schmidt, on  
2 or about May 20, 2014, Schmidt emailed “the then-Chief Executive Officer of VW GOA”—  
3 Horn—and another employee a document analyzing “Possible Consequences/Risks” of the ICCT  
4 study. The analysis noted possible monetary penalties per vehicle of up to \$37,500 from the EPA,  
5 with 500,000 to 600,000 affected vehicles. The document also noted, “Difference between street  
6 and test stand must be explained. (Intent = penalty!)” and “applications modifications in GEN1  
7 and GEN2 can achieve reductions of NOx emissions under RDE [real drive emissions], but not  
8 compliance within the limits.” (Crim. Cmplt. ¶37.)

9           294. Indeed, if 500,000–600,000 cars sold in the United States were installed with defeat  
10 devices, under Volkswagen’s own analysis, Horn knew at least as early as May 20, 2014 that  
11 Volkswagen’s illicit practices could cost Volkswagen between **\$21.5 and \$25.8 billion just in**  
12 **finances from EPA and CARB.** Despite Defendants’ explicit awareness of VW AG’s financial  
13 exposure, however, they failed to take meaningful corrective action not only with regard to the  
14 affected vehicles, but also with regard to VW AG’s accounting for that exposure.

15           295. Further, VW AG admitted in a press release on March 2, 2016 that “[o]n 23 May  
16 2014, a memo about the ICCT study was prepared for Martin Winterkorn, then-Chairman of the  
17 Management Board of VW AG. This memo was included in his extensive weekend mail.” This  
18 admission is consistent with *Bild*’s report on February 14, 2016 that Winterkorn received a memo  
19 on May 23, 2014—16 months before the emissions-cheating scandal became public—from  
20 Gottweis, a veteran Volkswagen executive whom employees referred to as the “fireman” for his  
21 ability to “smell trouble” and “sound the alarm” and address emergent crises at Volkswagen.  
22 Gottweis reportedly always communicated openly with Winterkorn regarding quality issues, and  
23 Winterkorn usually followed up with Gottweis.

24           296. In Gottweis’s memo, which Winterkorn took home to read as part of his “weekend  
25 suitcase,” Gottweis discussed tests by US agencies in which the NOx output of TDI vehicles  
26 exceeded acceptable levels by up to 35 times. Gottweis told Winterkorn that there was no  
27

1 legitimate explanation for either those excessive emissions levels or the defeat device that  
2 regulators would no doubt find upon examination.

3 297. Specifically, and as *Süddeutsche Zeitung* reported, Gottweis wrote that  
4 Volkswagen's US engineers could not provide an honest explanation for the heightened NOx  
5 emissions levels, and that "[n]o plausible explanation for the dramatically increased NOx  
6 emissions can be given to authorities." Gottweis warned that "[i]t is to be assumed that the  
7 authorities will subsequently examine VW systems to determine if Volkswagen has installed test  
8 recognition into the engine control unit software (a so-called defeat device)."

9 298. *Bild* also reported on February 14, 2016 that Winterkorn admitted, during a  
10 deposition as part of Jones Day's investigation into the Volkswagen emissions scandal, that by  
11 May 2014, he was aware of the problems regarding impermissibly high emissions levels in the  
12 TDI vehicles.

13 299. VW AG's, Winterkorn's, and Diess's failure to recognize provisions relating to  
14 Volkswagen's use of illegal defeat devices to circumvent emissions standards in the United States  
15 and elsewhere caused VW AG's operating profit, net assets, and shareholders' equity to be  
16 materially overstated and its liabilities to be materially understated in all of its financial statements  
17 issued during the Class Period.

18 300. Under IAS 37, VW AG, Winterkorn, and Diess were obligated to recognize  
19 provisions to account for those estimable liabilities that arose out of past events. VW AG,  
20 Winterkorn, and Diess should have recognized provisions in an amount representing the  
21 Company's best estimate of the expenditures required to settle its obligations. Because VW AG  
22 does not break out its provisions from its financial reporting in any particularized manner, it is  
23 impossible for Plaintiffs without more information to determine with certainty the precise amounts  
24 that should have been taken as provisions but were not. That information is uniquely in  
25 Defendants' possession and will be obtained during discovery. On information and belief, none of  
26 VW AG's financial statements issued during the Class Period included any provision relating to  
27 its use of illegal defeat devices to circumvent emissions standards, except for its Third Quarter



1 2015 Interim Report issued on October 28, 2015, which included an inadequate provision for the  
2 Company's liabilities arising from the diesel scandal.

3 301. VW AG, Winterkorn, and Diess should have recognized provisions relating to  
4 Volkswagen's use of the illegal defeat devices in each of its quarterly and annual financial  
5 statements issued during the Class Period. The losses relating to the use of defeat devices were  
6 "probable" under IAS 37 because it was more likely than not that the defeat devices would be  
7 discovered and that VW AG would incur enormous liabilities to address this self-inflicted problem.  
8 The losses were "reliably estimable" because VW AG knew the number of cars it sold in the United  
9 States and elsewhere and knew the penalties that governmental authorities would impose on VW  
10 AG when regulators discovered the defeat devices, as well as the likely amounts of its liabilities  
11 to purchasers of the cars. For example, as discussed above, Volkswagen, Winterkorn, and Diess  
12 knew that the EPA and CARB would impose per-vehicle penalties of \$37,500 and \$5,000,  
13 respectively, for the use of the illegal defeat devices. VW AG also could reliably estimate the cost  
14 of fixing or buying back the unlawful vehicles it sold to consumers. VW AG should have  
15 recognized a provision for these penalties and costs for every car sold with illegal defeat devices  
16 during every quarter during the Class Period.

17 302. The illegal defeat devices also affected the valuation of residual value risk in VW  
18 AG's financial services business, which agrees to buy back selected vehicles at a residual value  
19 that is fixed at the inception of the contract. VW AG stated in each of its annual reports during the  
20 Class Period that "[w]e evaluate the underlying lease contracts at regular intervals and recognize  
21 any necessary provisions if we identify any potential risks." VW AG should have recognized  
22 provisions during each quarter of the Class Period for the probable and reliably estimable loss it  
23 would incur when leased cars became substantially worthless as a result of the illegal defeat  
24 devices. On information and belief, VW AG did not recognize any provision for the residual value  
25 risk relating to the defeat devices during the Class Period.

26 303. Whatever the amount that VW AG ultimately provisioned to address its obligations  
27 arising from the diesel-emissions scandal, and whenever those provisions were recognized, the

1 amount was inadequate. In the late summer and early fall of 2015, VW AG recognized a €6.7  
2 billion provision to cover only the actual costs of repairing affected vehicles (~€5.3 billion) and  
3 the decline in the residual values of those cars (~€1.3 billion). Those provisions, which did not  
4 include amounts such as the costs of auto buybacks and resolving any government investigations  
5 or civil lawsuits, represented approximately half of VW AG's 2014 net income. On January 11,  
6 2016, Volkswagen CEO Müller stated the Company's belief that the €6.7 billion provision "should  
7 be enough." It was not until February 29, 2016, that VW AG admitted that its emissions scandal-  
8 related provisions "need to be increased." Then, on April 22, 2016, VW AG announced that it  
9 needed to set aside **€16.2 billion** (over \$18 billion) to fund the recall of millions of cars, legal  
10 claims, and related costs arising out of the diesel scandal, resulting in an operating loss of  
11 approximately **€4.1 billion** and a net loss of **€5.5 billion** for 2015.

## 12 **VII. DEFENDANTS' SCANDAL** 13 **UNRAVELS AND THE TRUTH IS REVEALED**

14 304. On Friday, September 18, 2015, the EPA and CARB announced that Volkswagen  
15 *admitted* to systematically defrauding investors and the public for years by deliberately cheating  
16 on US emissions tests and making its diesel vehicles appear cleaner and more powerful than they  
17 actually are. Specifically, on September 18, the EPA issued a Notice of Violation of the Clean Air  
18 Act to VW AG, Audi AG, and VWGoA, stating that Volkswagen and Audi cars equipped with  
19 four-cylinder 2.0 liter diesel engines from model years 2009–2015 included illegal software known  
20 as a "defeat device" that was specifically designed to circumvent EPA emissions standards. That  
21 same day, CARB sent a letter to VW AG, Audi AG and VWGoA advising that it had initiated an  
22 enforcement investigation of Volkswagen pertaining to the vehicles at issue.

23 305. As described in the NOV, Volkswagen's fraud was not only brazen but also broad.  
24 Volkswagen's misconduct affected approximately 585,000 diesel cars sold in the United States  
25 since 2008 and spanned several different Volkswagen car brands and numerous different  
26 Volkswagen models. The affected diesel vehicles include the: (1) Jetta (MY 2009–2015); (2) Jetta  
27 SportWagen (MY 2009–2014); (3) Beetle (MY 2012–2015); (4) Beetle Convertible (MY 2012–

1 2015); (5) Audi A3 (MY 2010–2015); (6) Golf (MY 2010–2015); (7) Golf SportWagen (MY  
2 2015); and (8) Passat (MY 2012–2015).

3 306. According to the NOV, Volkswagen utilized in each of these cars an illegal  
4 software algorithm that detects when the car is undergoing official emissions testing, and turns full  
5 emissions controls on **only during the test**. When the cars are being driven on the road—i.e., in  
6 all normal driving circumstances—the software shuts down, which greatly reduces the  
7 effectiveness of the vehicles’ pollution emissions controls and increases the cars’ performance. As  
8 a result of this algorithm, Volkswagen’s diesel vehicles met emissions standards in the laboratory  
9 or testing station, but during normal operation, **emitted NOx at up to 40 times the legal limit**.

10 307. In light of the effect of the algorithm, the EPA determined that it was an illicit  
11 “defeat device” as defined by the Clean Air Act, and found that Volkswagen violated Section  
12 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(3), 7522(a)(1), 7522(a)(3)(B), as well as  
13 40 C.F.R. §§ 86.1854-12(a)(3)(ii) and 86.1854-12(a). The EPA also found that Volkswagen’s 2.0  
14 liter diesel cars violated the US Tier 2, Bin 5 standard and were not able to comply with the Tier  
15 3 standard as Volkswagen represented because, but for the installation and use of the defeat  
16 devices, the vehicles’ emissions of NOx were 10 to 40 times above compliant levels. According  
17 to Cynthia Giles, the EPA’s Assistant Administrator for the Office of Enforcement and  
18 Compliance Assurance, “[u]sing a defeat device in cars to evade clean air standards is illegal and  
19 a threat to public health.”

20 308. Given the magnitude of the scandal as disclosed on September 18, 2015, VW AG  
21 reportedly faced up to **\$18 billion** in penalties for violations of the US Clean Air Act alone. Indeed,  
22 Tyson Slocum, Director of the Energy Program at Public Citizen, a consumer advocacy group,  
23 told the *New York Times* on September 18 that VW AG’s misconduct is “several steps beyond the  
24 violations that we’ve seen from other auto companies. **They appear to have designed a system**  
25 **with the intention to mislead consumers and the government.**” The disclosure of VW AG’s  
26 admitted cheating on US emissions standards caused the price of Volkswagen’s ordinary ADRs to  
27 decline from \$38.03 per ADR on September 17, 2015 to \$36.31 per ADR on September 18, 2015,

1 or approximately 5%. This disclosure also caused the price of Volkswagen’s preference ADRs to  
2 decline from \$38.05 per ADR on September 17, 2015, to \$36.47 per ADR on September 18, 2015,  
3 or approximately 4%. Investors continued to assess and digest the significance of the  
4 announcement over the next several days, as additional information and details continued to be  
5 disseminated into the market.

6 309. On Sunday, September 20, 2015, then-CEO Winterkorn **admitted** that Volkswagen  
7 broke the public’s trust by defrauding federal and state regulators, adding that he was  
8 “personally . . . deeply sorry for the breach of trust.” According to Winterkorn, the Company’s  
9 “manipulations . . . violate American environmental standards . . . [and] [w]e do not and will not  
10 tolerate violations of any kind of our internal rules or of the law.” In addition to issuing a sweeping  
11 apology for lying to the public, also on September 20, Volkswagen halted US sales of its diesel-  
12 powered cars and launched an internal investigation into its misconduct. Volkswagen continued to  
13 sell its 3.0-liter diesel models, even though they contained similar, but not-yet-disclosed defeat  
14 devices.

15 310. The next day, on Monday, September 21, the US Department of Justice’s (“DoJ”)   
16 Environmental and Natural Resources Division opened a criminal probe into Volkswagen’s  
17 admission that it rigged its diesel cars to beat emissions tests. Also on September 21, the German  
18 government stated that it would investigate whether VW AG manipulated emissions testing in  
19 Europe, and the US House of Representatives Energy Committee’s Oversight Subcommittee  
20 announced plans to hold a hearing on the Volkswagen case.

21 311. Numerous authorities, regulators, professors, and analysts quickly denounced  
22 Volkswagen’s actions. Stephan Weil, the prime minister of Lower Saxony, which owns 20% of  
23 the Company, issued a statement on September 21 that “[m]anipulation of an emissions test is  
24 completely unacceptable and without any justification.” Deutsche Bank issued an analyst report  
25 on September 20, 2015 stating that “**this appears to be intentional cheating**” by Volkswagen.  
26 Further, Karl Brauer, an analyst at Kelley Blue Book, explained to the *New York Times* on  
27 September 21, 2015 that the Company “must have had a mix of performance, durability and

1 economy that they liked, but realized they couldn't achieve it and still get the emissions" without  
2 using the defeat devices. Indeed, Brauer added that "[n]ow, we have to wonder if the [diesel]  
3 technology really advanced as far as we thought at VW." According to a Commerzbank analyst  
4 report issued on September 21, 2015, "[i]n a nutshell, VW is violating the Clean Air Act [and]  
5 acknowledged that there might be wrongdoing by VW USA."

6 312. The additional disclosures regarding the significance of VW AG's admitted  
7 cheating on US emissions standards, including Defendant Winterkorn's public admission and  
8 apology, caused the price of Volkswagen's ordinary ADRs to decline from \$36.31 per ADR on  
9 September 18, 2015 to \$30.10 per ADR on September 21, 2015, or approximately 17%. This  
10 disclosure also caused the price of Volkswagen's preference ADRs to decline from \$36.47 per  
11 ADR on September 18, 2015, to \$29.77 per ADR on September 21, 2015, or approximately 18%.

12 313. On September 22, 2015, Volkswagen's emissions crisis deepened as it revealed that  
13 as many as **11 million vehicles worldwide** contained the defeat devices used to evade emissions  
14 tests and that the Company would take a **\$7.3 billion** charge to earnings and cut its full-year  
15 outlook. Volkswagen recognized the \$7.3 billion provision in the "cost of sales" category of the  
16 Company's income statement for the third fiscal quarter of 2015, resulting in a dollar-for-dollar  
17 reduction in operating profit. Significantly, this \$7.3 billion charge includes only the cost of the  
18 software and hardware to update the defective vehicles, residual value risks for the Company's  
19 leasing portfolio, and a support fund for Volkswagen dealers. Not included in the \$7.3 billion  
20 provision, among other things, are the costs of any legal measures, penalties, or fines flowing from  
21 the scandal.

22 314. Winterkorn again acknowledged "misconduct" on September 22, and VWGoA's  
23 then-CEO, Defendant Horn, stated that "[o]ur company was **dishonest with the EPA, and the**  
24 **[CARB] and with all of you . . . . [W]e've totally screwed up.**" Winterkorn also apologized  
25 again, stating that "[m]illions of people in the world trust our brand, our cars, and our technology.  
26 **I am endlessly sorry that we have betrayed that trust.**"

1           315. The outrage regarding the Company’s misconduct continued on September 22.  
2 Kevin Tynan, a Bloomberg Intelligence auto industry analyst, reported that “[w]hat is so damning  
3 is that this was something actively pursued. This isn’t an oversight. Someone at VW had to  
4 decide that cheating the system was going to be a better use of time, money and resources  
5 than meeting regulatory requirements.” Further, as *Deutsche Welle* reported on September 22,  
6 2015, according to automotive expert Dudenhoeffer, Volkswagen knew the law in the United  
7 States and knew what defeat devices are. Dudenhoeffer opined that Volkswagen **consciously**  
8 **violated US statutes and its misconduct could not have occurred by accident.**

9           316. The disclosure of the increased breadth of Volkswagen’s scandal caused the price  
10 of Volkswagen’s ordinary ADRs to decline from \$30.10 per ADR on September 21, 2015 to  
11 \$25.44 per ADR on September 22, 2015, or approximately 16%. This disclosure also caused the  
12 price of Volkswagen’s preference ADRs to drop from \$29.77 per ADR on September 21, 2015 to  
13 \$23.98 per ADR on September 22, 2015—a decline of nearly 20%.

14           317. Amidst Volkswagen’s escalating scandal, the Company ousted CEO Winterkorn  
15 on September 23, 2015, and pledged to prosecute those involved in the scheme to cheat emissions  
16 tests. In a statement following his resignation, Winterkorn stated that he would “**accept**  
17 **responsibility**” for the “**irregularities that have been found in diesel engines.**”

18           318. Indeed, Klaus Breitenbach, an analyst at Baader Helvea Equity research, wrote in  
19 a September 23, 2015 report that “**it is difficult to understand why Mr. Winterkorn, who is well**  
20 **known for his attention to detail, had no knowledge of the irregularities which have been**  
21 **found in diesel cars.**” Further, Thomas Donaldson, a professor of legal studies and business at the  
22 Wharton School at the University of Pennsylvania, said that “[f]rom a man renowned for  
23 **attention to detail, and a company itself known for highly centralized decision making, it’s**  
24 **hard to think he didn’t know.**” In a September 23, 2015 interview with *Berliner Morgenpost*,  
25 Dudenhoeffer opined that Winterkorn was responsible for the scandal and it was simply not  
26 conceivable that Winterkorn was not aware of the issues.

1           319. On September 24, 2015, Attorneys General from 27 US states announced that they  
2 opened an investigation into Volkswagen after it admitted that it rigged diesel emissions  
3 technology to pass US smog tests. Eventually, Attorneys General from each of the 50 states and  
4 the District of Columbia joined the investigation.

5           320. On September 25, 2015, the acting Chairperson of the VW AG Supervisory Board,  
6 Berthold Huber, announced that VW AG suspended a group of eight senior engineers pending  
7 proof of their innocence. The executives include Audi development chief Hackenberg,  
8 Volkswagen research and development head Neußer, and Porsche development leader Hatz.

9           321. Also on September 25, VW AG's Supervisory Board named Matthias Müller, the  
10 head of Volkswagen's Porsche sports-car division, as CEO to replace Winterkorn. The Company's  
11 major shareholders also announced the most sweeping corporate restructuring that Volkswagen  
12 has undertaken in decades. When accepting the CEO position, Müller acknowledged  
13 Volkswagen's failings and stated in a VW AG press release that "[m]y most urgent task is to win  
14 back trust for the Volkswagen group," and announced that the Company hired US law firm Jones  
15 Day to conduct an investigation.

16           322. The German Minister of Transportation, Alexander Dobrindt, also disclosed on  
17 September 25 that of the 11 million rigged cars, nearly 3 million of them were sold in Germany.  
18 According to a September 25, 2015 *Wall Street Journal* report, when making the announcement,  
19 Dobrindt stated that "[t]he manipulations are inadmissible and illegal."

20           323. Further, on September 25, 2015, following the September 18 NOV issued for 2.0  
21 liter diesel engines, the EPA initiated testing of all Volkswagen model-year 2015 and 2016 light-  
22 duty diesel models available in the United States using updated testing procedures specifically  
23 designed to detect potential defeat devices.

24           324. The announcement of Volkswagen's suspension of senior employees and the  
25 increased breadth of the EPA investigation caused the price of Volkswagen's ordinary ADRs to  
26 drop from \$27.16 per ADR on September 24, 2015 to \$25.68 per ADR on September 25, 2015, or  
27

1 over 5%, and the price of its preference ADRs to drop from \$25.53 per ADR on September 24,  
2 2015 to \$23.98 per ADR on September 25, 2015, or approximately 6%.

3 325. The fact that the Company's senior management knew of the emissions scandal  
4 long before it was disclosed to the public was further confirmed on September 26, 2015. On that  
5 day, the German newspaper *Frankfurter Allgemeine Zeitung*, based on information it learned  
6 stemming from VW AG's internal investigation, reported that VW AG's own technicians warned  
7 the Company **at least as early as 2011** about the illegality of its emissions practices, as discussed  
8 more fully above.

9 326. Corroborating *Frankfurter Allgemeine Zeitung's* report, on Sunday, September 27,  
10 2015, *Bild* reported that Bosch warned Volkswagen's "top circles" **as early as 2007** not to use the  
11 devices for illegal purposes. In particular, while Bosch provided EDC17 to VW AG, Bosch was  
12 under the impression that EDC17 would be used **only** in internal vehicle testing. But VW AG  
13 **affirmatively modified** the module to detect when a vehicle was undergoing laboratory emissions  
14 testing and then **shut down** when the vehicle was on the road. *Bild* also reported that Bosch told  
15 Volkswagen that the Company's plans for the use of the software were, in fact, "**illegal.**" Further,  
16 according to *Bild*, Volkswagen knew even before 2007 that its diesel engines developed for the  
17 US market would not meet emissions standards unless they used a different engine technology,  
18 which would have added a cost of €300 per vehicle – a sum that Volkswagen finance officials said  
19 was too much at a time when a Company-wide cost-cutting exercise was underway.

20 327. The next day, on Monday, September 28, 2015, prosecutors in Germany announced  
21 that they opened a specific criminal investigation into former CEO Winterkorn and other unnamed  
22 Volkswagen executives to determine whether they committed fraud through the sale of vehicles  
23 with manipulated emissions data. The disclosures on September 26 through 28 caused the price of  
24 Volkswagen's ordinary ADRs to decline from \$25.68 per ADR on September 25, 2015 to \$23.97  
25 per ADR on September 28, 2015, or almost 7%. The disclosures also caused the price of  
26 Volkswagen's preference ADRs to drop from \$23.98 per ADR on September 25, 2015 to \$22.39  
27 per ADR on September 28, 2015, a similar 7% decline.



1           328. On September 29, 2015, Olaf Lies, a VW AG Board member and Economy  
2 Minister of Lower Saxony admitted to the BBC that VW AG staff “**acted criminally**” based on  
3 their role in cheating emissions tests, and that they “must take personal responsibility.” Also on  
4 September 29, *Süddeutsche Zeitung* reported that a VW AG technician warned Neußer, the former  
5 head of the VW AG engine development department, about the illegality of the emission practices  
6 as early as 2011, but was disregarded.

7           329. On October 2, 2015, VW AG’s scandal widened as France and Italy launched  
8 probes into the Company to investigate suspicions of “aggravated deception,” among other things.  
9 Further, the *New York Times* reported on October 2 that Attorneys General from at least 30 states  
10 and the District of Columbia were quickly progressing with their bipartisan investigation into  
11 allegations of consumer fraud and violation of environmental regulations by Defendants, and that  
12 they had served subpoenas on the Company and its divisions. This news caused the price of  
13 Volkswagen ordinary ADRs to decline from \$23.72 per ADR on October 1, 2015 to \$23.07 per  
14 ADR on October 2, 2015, or approximately 3%. This disclosure also caused the price of  
15 Volkswagen preference ADRs to decline from \$21.75 per ADR on October 1, 2015 to \$20.99 per  
16 ADR on October 2, 2015, or approximately 3%.

17           330. On October 8, 2015, Defendant Horn testified under oath before the House  
18 Committee on Energy and Commerce Subcommittee on Oversight and Investigations and admitted  
19 that Volkswagen used “a software program that served to defeat the regular emissions testing  
20 regime,” and took “full responsibility for our actions.” According to Horn, the emissions cheating  
21 software was installed “**for the express purpose of beating tests**” in light of tightened emissions  
22 standards.

23           331. Critically, Defendant Horn admitted on October 8 that he knew of the emissions  
24 non-compliance “**in the spring of 2014 when the West Virginia University study was**  
25 **published.**” The Volkswagen Group’s actions, according to Horn, “are deeply troubling. . . . We  
26 have broken the trust of our customers, dealerships, and employees, as well as the public and  
27 regulators.” Horn continued that “[w]e are determined to make things right. This includes

1 accepting the consequences for our acts, providing a remedy, and beginning to restore the trust of  
2 our customers, our employees, the regulators, and the American public.”

3 332. Also on October 8, prosecutors in Germany raided Volkswagen’s headquarters in  
4 Wolfsburg and offices elsewhere, seeking records regarding the emissions scandal. According to  
5 the prosecutor’s office in Braunschweig, Germany, which is overseeing the probe, three state  
6 attorneys and 50 state police officers raided Volkswagen offices and private homes in order to  
7 secure documents and data-storage devices that could provide information about those responsible  
8 for the emissions scandal.

9 333. On October 14, 2015, Winfried Vahland, who spent 25 years at Volkswagen  
10 including leading Volkswagen’s Skoda unit until he was appointed to head Volkswagen’s North  
11 America division on September 25, 2015, suddenly resigned.

12 334. On October 15, 2015, the Company suspended Falko Rudolph, the head of its main  
13 transmissions plant in Kassel, Germany. Rudolph, who previously ran Volkswagen’s main engines  
14 plant in Salzgitter, oversaw the development of diesel engines at Volkswagen between 2006 and  
15 2010.

16 335. Also on October 15, 2015, Germany’s ministry for transport ordered Volkswagen  
17 to conduct a mandatory recall of the 2.4 million cars in Germany, and consequently, all 8.5 million  
18 cars in Europe implanted with its emissions-cheating technology. Under EU rules, cars that are  
19 cleared (or not cleared) to operate in one country are automatically approved (or not approved)  
20 across the European Union, so the recall in Germany also affects the approval of vehicles  
21 elsewhere in the Union. The disclosures on October 15 caused the price of Volkswagen ordinary  
22 ADRs to decline from \$29.24 per ADR on October 14, 2015 to \$28.19 per ADR on October 15,  
23 2015, or approximately 4%. These disclosures also caused the price of Volkswagen preference  
24 ADRs to decline from \$24.55 per ADR on October 14, 2015 to \$23.54 per ADR on October 15,  
25 2015, or approximately 4%.

26 336. On October 16, 2015, the US Attorney’s Office in Detroit and the DoJ’s Fraud  
27 Section joined the sweeping federal probes of VW AG over emissions-test cheating.

1           337. On October 20, 2015, VW AG suspended its quality-control chief Tuch, the fifth  
2 senior executive to be put on leave in connection with the emissions-cheating scandal. Winterkorn  
3 hand-picked Tuch in 2010 to head the Company’s quality-control department. At the time of  
4 Tuch’s appointment, Winterkorn said the quality-control expert “will bring us forward in the  
5 U.S.A.” Tuch and Winterkorn worked together closely, and met together every Monday to discuss  
6 quality issues, often taking test drives in vehicles manufactured by the Company.

7           338. On October 21, 2015, the *Financial Times* reported that VW AG suspended Richard  
8 Dorenkamp, former head of technical development for low-emission engines, and that Peter  
9 Doerfler, head of group auditing and Volkswagen’s anti-corruption officer, was also being  
10 replaced.

11           339. On October 22, 2015, *Bild* reported that top management at Volkswagen knew  
12 about problems with emissions levels of diesel vehicles at least as early as the spring of 2014.  
13 Specifically, at that time, then-CEO Winterkorn discussed the issues with the Company’s diesel  
14 cars as raised by a letter sent by the EPA. Further, according to *Bild*, Neußer also received  
15 information from the United States in the spring of 2014 regarding possible violations of US  
16 emissions standards.

17           340. Further, on October 25, 2015, the Company suspended Hanno Jelden,  
18 Volkswagen’s head of powertrain electronics, in connection with the emissions scandal. In  
19 addition to these senior executives, Volkswagen also suspended numerous other unspecified  
20 employees—ranging from board-level executives at Volkswagen divisions to technicians who may  
21 be implicated in the scandal—at the recommendation of Jones Day.

22           341. Significantly, even after the EPA issued the NOV on September 18, 2015 and  
23 governments and regulators across the globe initiated investigations into the Company,  
24 Volkswagen still concealed the true extent of its misconduct. On November 2, 2015, the EPA  
25 issued a second NOV of the Clean Air Act to VW AG, Audi AG, VWGoA, Porsche AG, and  
26 Porsche Cars North America. This NOV stated that Volkswagen developed and installed a defeat  
27 device in larger vehicles equipped with 3.0-liter diesel engines for model year 2014 through 2016

1 that masked the fact that the cars emitted NO<sub>x</sub> at up to nine times EPA's standard, in violation of  
2 US Tier 2, Bin 5. The affected diesel models include the (1) 2014 VW Touareg; (2) 2015 Porsche  
3 Cayenne; and (3) 2016 Audi A6 Quattro, A7 Quattro, A8, A8L and Q5. In total, the second NOV  
4 covers approximately 10,000 diesel passenger cars already sold in the United States, as well as an  
5 unknown number of 2016 vehicles. EPA and CARB also began an investigation into these  
6 violations.

7 342. While under the first NOV, Volkswagen was thought to have cheated only on tests  
8 for small and mid-sized diesel-powered vehicles, the second NOV covers large Volkswagen  
9 SUVs, such as the Touareg, Porsche Cayenne, and Audi Q5 and Q7.

10 343. Similar to the September 18 NOV, the November 2 NOV states that Volkswagen  
11 manufactured and installed software in the electronic control module of these vehicles that senses  
12 when the vehicle is being tested for compliance with EPA emissions standards. When the vehicle  
13 senses that it is undergoing a federal emissions test, it operates in a low NO<sub>x</sub> "temperature  
14 conditioning" mode. Under that mode, the vehicle meets emission standards. In all other driving  
15 conditions, the cars operate in "normal mode" and emit NO<sub>x</sub> at up to nine times the EPA standard.  
16 Given the effect this software had on the emissions for Volkswagen's 3.0 liter diesel engines, the  
17 EPA determined that it was an unjustified and illegal defeat device. According to Cynthia Giles,  
18 Assistant Administrator for the EPA's Office of Enforcement and Compliance Assurance, "VW  
19 has once again failed its obligation to comply with the law that protects clean air for all  
20 Americans."

21 344. The disclosure of the second NOV caused the price of Volkswagen ordinary ADRs  
22 to decline from \$27.00 per ADR on November 2, 2015 to \$25.49 per ADR on November 3, 2015,  
23 or approximately 6%. This disclosure also caused the price of Volkswagen preference ADRs to  
24 decline from \$24.12 per ADR on November 2, 2015 to \$23.20 per ADR on November 3, 2015, or  
25 approximately 4%.

26 345. On November 3, Volkswagen, Porsche and Audi ordered dealers to stop selling all  
27 models at issue in the second NOV.

1           346. On November 8, 2015, Volkswagen announced a “goodwill package” for owners  
2 of its diesel vehicles. The package consisted of a \$500 prepaid Visa card, a \$500 dealership card,  
3 and three years of free roadside assistance services. According to US Senators Richard Blumenthal  
4 and Edward Markey, Volkswagen’s consumer program was “insultingly inadequate” and “a **fig**  
5 **leaf attempting to hide the true depths of Volkswagen’s deception.**”

6           347. On November 19, 2015, Volkswagen officials informed the EPA that the illegal  
7 defeat devices existed in all of the Company’s US 3.0-liter diesel models since 2009. This  
8 increased the number of 3.0-liter diesel engine cars implicated by the EPA’s second NOV issued  
9 to Volkswagen on November 2 by approximately 850%, from 10,000 vehicles to 85,000 vehicles,  
10 while the violations that the EPA had previously alleged—most from the last couple of model  
11 years—now go much further. Now the violations include all Volkswagen and Audi US vehicles  
12 with 3.0-liter diesel engines from the 2009–2016 model years.

13           348. Further, on December 1, 2015, the *New York Times* reported that the German  
14 Federal Motor Transport Authority, Kraftfahrt-Bundesamt (the “KBA”), determined that the  
15 software that Volkswagen installed in its diesel cars in Europe constituted an illegal defeat device  
16 and, consequently, violated Euro-5 rules.

17           349. On December 3, 2015, Hackenberg resigned as top manager of the Audi luxury-car  
18 division and as one of the most prominent executives of the Volkswagen Group as a whole.  
19 Hackenberg was the first Volkswagen executive to officially step down since Winterkorn resigned.

20           350. On December 10, 2015, Poetsch, the Chairman of Volkswagen’s Supervisory  
21 Board, provided an update with regard to the Company’s internal investigation. Thus far, the  
22 investigation has confirmed that the Company’s decision to cheat emissions tests was made more  
23 than a decade ago, in 2005, after Volkswagen realized that it was unable “to meet by legal means  
24 the stricter nitrogen oxide requirements in the United States within the required timeframe and  
25 budget.” Poetsch stated that the cheating took place in a climate of lax ethical standards and that  
26 “[t]here was a tolerance for breaking the rules.” “It proves not to have been a one-time error, but  
27 rather a chain of errors that were allowed to happen.”

1           351. Then, on January 4, 2016, the DoJ filed a complaint on behalf of the EPA against  
2 VW AG, Audi AG, VWGoA, Volkswagen Group of America Chattanooga Operations, LLC, Dr.  
3 Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. for violations of Sections 204 and  
4 205 of the Clean Air Act, 42 U.S.C. §§ 7523 and 7524, arising out of Volkswagen’s emissions  
5 scandal. The DoJ complaint alleges that the defendants violated the Clean Air Act by illegally  
6 selling approximately 580,000 vehicles equipped with 2.0 and 3.0 liter diesel engines that were  
7 not properly certified by the EPA and violated environmental laws; tampering with the emissions-  
8 control system; failing to report violations to regulators; and providing misleading information and  
9 affirmative misrepresentations to regulators.

10           352. Significantly, the DoJ complaint also states that even though Volkswagen promised  
11 to take responsibility for its actions, it continued to “knowingly conceal[] [from the US  
12 government] facts that would have revealed the existence of the dual-calibration strategy utilized  
13 in the 3.0L Subject Vehicles . . . and also engaged in affirmative misrepresentations and took  
14 affirmative actions designed to conceal those facts.” Indeed, even after the EPA issued its  
15 September 18 NOV to Volkswagen and Defendant Horn testified before Congress, Volkswagen  
16 failed to come forward and reveal to regulators that the 3.0L vehicles contained defeat devices.  
17 The existence of the defeat devices was uncovered only as a result of EPA and CARB diligence.  
18 A senior DoJ official told *Reuters* on January 5, 2016 that “[w]e’re alleging that they **knew what**  
19 **they were doing, they intentionally violated the law** and that the consequences were significant  
20 to health.”

21           353. The DoJ’s suit seeks up to \$48 billion in damages—more than twice the maximum  
22 amount some legal experts had estimated. According to an analyst report issued by Goldman  
23 Sachs, the suit “serves as a reminder/reality check of VW’s still unresolved emissions issues.”

24           354. The disclosure of the DoJ’s lawsuit caused the price of Volkswagen ordinary ADRs  
25 to decline from \$30.10 per ADR on January 4, 2016 to \$28.34 per ADR on January 5, 2016, or  
26 approximately 6%. Similarly, this disclosure caused the price of Volkswagen’s preference ADRs  
27

1 to decline from \$27.30 per ADR on January 4, 2016 to \$26.16 per ADR on January 5, 2016, or  
2 approximately 4%.

### 3 **VIII. POST-CLASS PERIOD DEVELOPMENTS**

4 355. On January 12, 2016, CARB rejected Volkswagen’s proposal to recall and remedy  
5 the Company’s diesel cars equipped with 2.0-liter engines, finding that the plans were “incomplete,  
6 substantially deficient, and fall far short of meeting the legal requirements to return these vehicles  
7 to the claimed certification configuration.” CARB also issued an NOV to VW AG and VWGoA  
8 on January 12, explaining that the Company’s 2.0-liter diesel vehicles certified under LEV, LEV  
9 II, LEV III, ULEV, and ULEV II did not meet emissions standards. Following the rejection, CARB  
10 Chair Mary D. Nichols stated that “**Volkswagen made a decision to cheat on emissions tests**  
11 **and then tried to cover it up. They continued and compounded the lie and when they were**  
12 **caught they tried to deny it.** The result is thousands of tons of nitrogen oxide that have harmed  
13 the health of Californians. They need to make it right. Today’s action is a step in the direction of  
14 assuring that will happen.”

15 356. On January 22, 2016, the German newspaper *Süddeutsche Zeitung* reported that  
16 “almost all executives involved in the emissions problems in the engine development **knew about**  
17 **the manipulations or even were involved in it.** In the relevant department, it had been **no secret**  
18 **that this was the only way VW could officially meet the emission limits for nitrogen oxide in**  
19 the emissions test of the authorities in the United States and Europe. **Many employees and**  
20 **managers in this division were privy to this.”** According to the report, one whistleblower  
21 involved in the deception had alerted Neußer as early as 2011, but Neußer apparently did nothing.  
22 *Süddeutsche Zeitung* based this report on information from Volkswagen’s internal investigation,  
23 which had not yet been made public—and which VW AG has since said, contrary to its prior  
24 assurances, will never be made public.

25 357. On February 4, 2016, Volkswagen announced that it replaced the head of  
26 VWGoA’s legal department, David Geanacopoulos, who was also the head of VWGoA’s public  
27 affairs department. CARB also told Volkswagen on February 4 that the Company’s 3.0 liter cars

1 produced excess emissions and were otherwise noncompliant under applicable California  
2 standards.

3 358. On February 8, 2016, VW AG’s Head of Quality Assurance, Tuch—who was  
4 appointed by Winterkorn in 2010—announced that he would leave the Company.

5 359. On March 2, 2016, VW AG issued a press release stating that it concealed its fraud  
6 because it believed that fines in only a “two-digit or lower three-digit million amount would be  
7 imposed” and that the issue “could be contained” by “technical solutions.” In other words,  
8 Volkswagen continued to defraud investors because it thought it could get off cheap—or for  
9 nothing if Volkswagen’s misconduct slipped through the cracks.

10 360. VW AG also confirmed that the diesel scandal began as early as 2005, when the  
11 Company decided to begin a major push to increase market share in the United States through the  
12 use of purportedly “clean diesel” technology. Because Volkswagen was unable to meet the United  
13 States’ strict emissions standards, the Company decided to cheat and install defeat devices in its  
14 diesel cars. Volkswagen also confirmed that Winterkorn received a memo on May 23, 2014  
15 regarding the defeat devices, as well as a second memo on November 14, 2014 that warned the  
16 then-CEO that Volkswagen could face a fine of approximately €20 million arising out of the diesel  
17 scandal in the United States. Then, according to Volkswagen, on July 27, 2015, Defendants  
18 Winterkorn and Diess attended a meeting at which they specifically discussed the diesel issues.  
19 Still, no disclosure was made to investors.

20 361. On March 7, 2016, prosecutors in France announced that they had opened a serious-  
21 fraud investigation into Volkswagen over the devices the automaker fitted into cars to cheat on  
22 emissions tests. According to Serious Fraud Office Chief Nathalie Homobono, investigators had  
23 already established that Volkswagen had cheated “**with intent**” and that the Company’s actions  
24 were “**intentional**.”

25 362. That same day, a former VWGoA employee who worked in Michigan, Daniel  
26 Donovan, filed a complaint against VWGoA claiming that he was wrongfully terminated in  
27 retaliation for reporting and objecting to the intentional spoliation of evidence by VWGoA. *See*



1 *Donovan v. Volkswagen Grp. of Am., Inc.*, 2016-151877-CD (Mich. State Oakland Cnty. filed  
2 Mar. 7, 2016). According to Donovan’s complaint, he was fired for refusing to participate in what  
3 he believed was a criminal obstruction of justice in connection with VWGoA’s gathering and  
4 preservation of evidence relating to the EPA’s September 18, 2015 NOV. Specifically, VWGoA’s  
5 information technology department knew that it was required to immediately cease deleting all  
6 information on September 18, but did not stop the deletions until September 21, 2015—three days  
7 after the issuance of the NOV. When Donovan relayed the presence of the legal hold to VWGoA’s  
8 Executive Vice President and Chief Information Officer on September 18, rather than execute the  
9 hold, the Chief Information Officer simply responded with irritation and asked Donovan, “Why  
10 the f\*\*\* are you calling me?”

11 363. On March 8, 2016, the *Wall Street Journal* reported that the DoJ was expanding its  
12 probe of VW AG using the Financial Institutions Reform, Recovery and Enforcement Act  
13 (“FIRREA”), which is designed to combat bank fraud. The DoJ issued a subpoena to Volkswagen  
14 under FIRREA to investigate possible violations of tax laws, among other matters, including  
15 whether lenders were harmed by financing customers’ purchases of Volkswagen cars at inflated  
16 values. Federal prosecutors are also examining whether Volkswagen may be legally and  
17 financially liable for customers who obtained tax credits when they bought cars they thought  
18 emitted fewer pollutants than the cars actually did.

19 364. Also on March 8, 2016, German prosecutors announced that they widened their  
20 criminal investigation of VW AG’s diesel emissions-cheating scandal to cover 17 people, up from  
21 6.

22 365. On March 9, 2016, Defendant Horn resigned as President and CEO of VWGoA,  
23 after spending 25 years at Volkswagen.

24 366. Shortly after his resignation, on March 10, 2016, the *Financial Times* reported that  
25 the May 15, 2014 email sent to Defendant Horn (summarized by *Bild* on February 14, 2016)  
26 attached a letter stating that 500,000–600,000 cars in the United States from model years 2009–  
27 2014 could be affected by the diesel scandal. Significantly, the letter also enumerated the potential

1 fines of “EPA: \$37,500, and CARB: \$5,500” per violation and specifically warned Horn that given  
2 the potential level of penalties, “[t]he contents of this [ICCT] study cannot be ignored!” Indeed, if  
3 500,000–600,000 cars were installed with defeat devices, under Volkswagen’s own analysis, Horn  
4 knew at least as early as May 15, 2014 that Volkswagen’s illicit practices could cost Volkswagen  
5 between **\$21.5 and \$25.8 billion just in fines from EPA and CARB.**

6 367. On March 29, 2016, the Federal Trade Commission filed a complaint against  
7 VWGoA, VWGoA d/b/a/ VWoA, and VWGoA d/b/a AoA seeking a permanent injunction and  
8 other equitable relief arising out of the defendants’ “deceptive representations” and “deceptive  
9 failure to disclose” in marketing materials for Volkswagen’s diesel cars. *See FTC v. Volkswagen*  
10 *Grp. of Am., Inc.*, 16-cv-1534 (C.D. Cal. filed Mar. 29, 2016). According to the complaint, for  
11 years Volkswagen ran nationally televised advertisements and national print and online media  
12 campaigns and issued press releases and other public statements that touted the Company’s “clean  
13 diesel” technology. Volkswagen’s marketing campaign further emphasized that its “clean diesel”  
14 vehicles reduced NOx emissions by 90%, that they met the strictest EPA standards, and that they  
15 were environmentally friendly. In truth, Volkswagen knew that its “clean diesel” cars did not  
16 reduce NOx emissions by 90%, violated EPA standards, and were anything but environmentally  
17 friendly. Volkswagen was able to justify its fraudulent claims only by fitting its vehicles with  
18 illegal defeat devices designed to understate the true levels of emissions during regulatory tests.

19 368. On April 13, 2016, VW AG’s Management Board accepted bonus cuts of at least  
20 30% in a tacit acknowledgement that they are responsible for the scandal.

21 369. On April 20, 2016, *Reuters* reported that VW AG and US officials reached a deal  
22 under which VW AG would offer to buy back almost 500,000 2.0-liter diesel cars that used the  
23 emissions-cheating devices. This includes versions of the Jetta sedan, the Golf compact, and the  
24 Audi A3 sold since 2009. According to *Reuters*, the buyback offer does not apply to the 80,000  
25 larger, 3.0-liter diesel vehicles that also exceeded US pollution limits, including Audi and Porsche  
26 SUV models. In addition to buying back the cars, VW AG also agreed to establish a compensation  
27 fund for owners, which is expected to cost more than \$1 billion on top of the costs of buying back

1 the cars. Volkswagen was also expected to offer to repair polluting diesel vehicles if US regulators  
2 approved a fix. Further, *Reuters* reported that any final settlement was also expected to include an  
3 environmental-remediation fund to address excess pollution emitted by Volkswagen cars since  
4 2009.

5 370. Separately, *Die Welt* also reported on April 20 that the deal to settle the case would  
6 involve paying each affected customer up to \$5,000. After considering the costs of resolving this  
7 aspect of the scandal, according to another *Reuters* report issued on April 20, VW AG was  
8 expected to hike its provisions arising out of the diesel-emissions scandal from \$7.6 billion to a  
9 “double-digit billion amount.”

10 371. Then, on April 21, 2016, Volkswagen formally announced before the Court that it  
11 reached an agreement in principle with US regulators to buy back 500,000 2.0-liter diesel vehicles,  
12 along the lines of the deal announced by *Reuters* on April 20. The settlement did not address the  
13 3.0 liter diesel vehicles in the United States, as noted above, and also left open the question as to  
14 the Company’s liabilities for fixing the over 10 million diesel vehicles in Europe that are affected  
15 by the cheating. Volkswagen and the United States are also still negotiating the fines that  
16 Volkswagen must pay, as well as the compensation that owners will receive under the deal. Nearly  
17 every US state Attorney General is also still pursuing claims against Volkswagen, as are private  
18 plaintiffs and the DoJ.

19 372. In addition to the partial settlement with US authorities, Volkswagen also  
20 announced on April 21 that it reached an agreement in principle on the basic features of a  
21 settlement with the civil class-action plaintiffs representing purchasers, lessees, and dealers of  
22 Volkswagen cars.

23 373. The next day, on April 22, VW AG published its consolidated financial statements  
24 for 2015. Specifically, VW AG disclosed that it needed to set aside **€16.2 billion** (over \$18 billion)  
25 in special items to fund the recall of millions of cars, legal claims, and related costs arising out of  
26 the diesel scandal, resulting in an operating loss of approximately **€4.1 billion** and a net loss of  
27 **€5.5 billion** for 2015.

1           374. Also on April 22, VW AG announced that the Jones Day investigation would not  
2 conclude until the fourth quarter of 2016, and did not provide a timeline for the release of any  
3 results of the report (if results were ever released at all, which VW AG has since said they will not  
4 be). Even though VW AG had in its possession interim results of the investigation (and had  
5 promised to release the results by late April 2016), it claimed it was unable to release them because  
6 doing so “**would present unacceptable risks for Volkswagen and, therefore, cannot take place**  
7 **now.**”

8           375. On April 30, 2016, *Bild* reported that the DoJ is investigating a senior lawyer in  
9 Volkswagen’s legal department who asked colleagues in August 2015 to delete “incriminating  
10 material” regarding the emissions fraud. *Bild*’s report is based on testimony given to Jones Day  
11 during the course of its investigation into the Company. Specifically, following a meeting of  
12 Volkswagen’s Product Safety Committee on August 24, 2015, the unnamed lawyer (given the  
13 pseudonym “Christoph R.”)—who has since been suspended for months—told colleagues to delete  
14 sensitive data from computers. According to *Bild*, several confidential documents can no longer  
15 be found on the Company’s systems. This lawyer also advised colleagues in the summer of 2015  
16 to avoid the words “defeat device” in written statements. Only on September 1, 2015, a week after  
17 the senior Volkswagen lawyer told colleagues to scrub information from their computers, did  
18 Volkswagen issue its litigation hold. Significantly, the lawyer who told colleagues to delete the  
19 “incriminating material” is the same lawyer who issued the litigation hold to Volkswagen  
20 employees.

21           376. VW AG has since admitted, in connection with its guilty plea to obstruction of  
22 justice, that in August and September 2015, VW AG and Audi AG employees destroyed  
23 documents and files related to US emissions issues that they believed would be covered by the  
24 litigation hold. VW AG employees also requested that their counterparts at “Company A” (Bosch)  
25 destroy sensitive documents related to US emissions issues. VW AG has also admitted that the  
26 employees who participated in this document destruction did so to protect both VW and  
27 themselves from the legal consequences of their actions. Within VW AG and Audi AG, thousands

1 of documents were deleted by approximately 40 VW AG and Audi AG employees, including by  
2 high-level VW AG executives. (SOF ¶¶73-81.)

3 377. In particular, VW AG has admitted that “[o]n or about September 3, 2015”—two  
4 days after the litigation hold at VW AG was issued—“Supervisor A [Neußer] approached  
5 Supervisor D [Eichler]’s assistant, and requested that Supervisor D’s assistant search in Supervisor  
6 D’s office for a hard drive on which documents were stored containing emails of VW AG  
7 supervisors, including Supervisor A. Supervisor D’s assistant recovered the hard drive and gave it  
8 to Supervisor A. Supervisor A later asked his assistant to throw away the hard drive.” (SOF ¶79.)

9 378. *Bild* further reported on May 7, 2016 that Volkswagen had for many years misled  
10 authorities and misrepresented emissions data with the knowledge of former CEO Winterkorn.  
11 Specifically, in November 2013, the Company’s Quality Assurance Department warned  
12 Winterkorn of a “borderline consumption situation” with regard to carbon dioxide (“CO<sub>2</sub>”)  
13 emissions of Volkswagen cars. According to Volkswagen’s analysis, many of its car models met  
14 CO<sub>2</sub> requirements only under the “best possible test conditions.” During a “real-life test,” the CO<sub>2</sub>  
15 emissions and fuel consumption rose by 10% to 18%, and did not meet CO<sub>2</sub> requirements or the  
16 CO<sub>2</sub> values set in Volkswagen’s catalogues. The “action recommendation” that Volkswagen’s  
17 Quality Assurance Department gave to Winterkorn was to set “realistic CO<sub>2</sub> catalogue values” in  
18 the future.

19 379. Winterkorn, however, blatantly disregarded this recommendation. Rather than  
20 correct the embellished consumption data, on July 17, 2014, Winterkorn ordered subordinates to  
21 close the “target gap between labelling and measured consumption” with unnamed and unknown  
22 technical innovations to be developed in the future. This was despite the fact that an internal  
23 Volkswagen analysis conducted in July 2014 showed that “since the market year 2012, the critical  
24 consumption concepts (CO<sub>2</sub>) are rising significantly.” In fact, Volkswagen engineers prepared a  
25 crisis report in November 2014 which explained that “disproportionate increase of the red concepts  
26 (CO<sub>2</sub> > 108%). All Polo diesel concepts are red. Situation is no longer manageable. No reporting  
27 to KBA possible. Possible withdrawal of affected type permits.”

1           380. On September 9, 2016, VW AG engineer James Liang pleaded guilty to conspiring  
2 to defraud the United States, to commit wire fraud, and to violate the Clean Air Act with regard to  
3 Volkswagen’s “clean diesel” vehicles. In his plea agreement, Liang admitted that in or around  
4 2008, he planned and employed the defeat device software in Volkswagen vehicles because the  
5 EA 189 engine “could not meet both customer expectations as well as new, stricter U.S. emissions  
6 standards.” (Liang Plea Agreement p. 5; attached as Exhibit 4.) Liang knew “that EPA would not  
7 certify vehicles for sale in the United States if EPA knew that the vehicles contained a defeat  
8 device.” (*Id.*) Nevertheless, “[a]s part of the certification process for each new model year,  
9 including model years 2009 through 2016, Liang knew his co-conspirators continued to falsely  
10 and fraudulently certify to EPA and CARB that VW diesel vehicles met U.S. emissions standards  
11 and complied with the Clean Air Act.” (*Id.* p. 6.) And in the spring of 2014, when U.S. regulators  
12 learned of “substantial discrepancies in the NOx emissions from certain VW vehicles when tested  
13 on the road compared to when these vehicles were undergoing EPA standard drive cycle tests on  
14 a dynamometer” and sought an explanation for the issue, “Liang and his co-conspirators discussed  
15 how they could answer the regulatory agencies’ questions without revealing the defeat device,”  
16 and Liang knew that “his co-conspirators intentionally made fraudulent explanations to the EPA  
17 and CARB when providing testing results, data, presentations, and statements to the EPA and  
18 CARB by failing to disclose the fact that the primary reason for the discrepancy was the defeat  
19 device.” (*Id.* pp. 6-7.)

20           381. Liang’s plea agreement also states that in addition to his role at VW AG, Liang was  
21 the Leader of Diesel Competence for VWGoA from about May 2008 until the date of his plea. (*Id.*  
22 at 5.) In his role at VWGoA, Liang assisted in certification, testing, and warranty issues for  
23 Volkswagen diesel vehicles in the United States. (*Id.*) In addition, Liang personally attended a  
24 meeting with EPA in Ann Arbor, Michigan in March 2007 and participated as his co-conspirators  
25 misrepresented that Volkswagen’s diesel cars complied with US NOx emissions standards. (*Id.* at  
26 6.) During the meeting, Liang “knew that VW was cheating by implementing the defeat device  
27 and that he and his co-conspirators were deceiving EPA in this meeting.” (*Id.*)

1           382. On December 30, 2016, the United States filed criminal charges against Oliver  
2 Schmidt for his role in perpetrating Volkswagen’s emissions scheme. According to the criminal  
3 complaint, Schmidt “knowingly participat[ed] in a conspiracy which lasted from in or about May  
4 2006 to at least September 2015 . . . to: (1) defraud the United States by impairing and impeding  
5 the lawful functions of the EPA . . . ; (2) defraud VW customers . . . ; and (3) violate the Clean Air  
6 Act by making a material statement, representation, or certification . . . required pursuant to the  
7 Clean Air Act . . . .” (Crim. Cmplt. ¶4.) Specifically, the United States alleged that Schmidt  
8 “intended to, and did, deceive and mislead U.S. regulators by offering reasons for the discrepancy  
9 [in Volkswagen “clean diesel” cars’ emissions when being driven on the road as opposed to during  
10 standard U.S. emissions tests] other than the fact that VW was intentionally cheating on U.S.  
11 emissions tests, in order to allow VW to continue to sell diesel vehicles in the United States.” (*Id.*  
12 ¶5.)

13           383. On January 11, 2017, VW AG pleaded guilty to criminal and civil charges of  
14 conspiracy to commit wire fraud and to violate the Clean Air Act, importing cars by means of false  
15 statements, and obstruction of justice for its role in orchestrating the emissions-cheating scandal.  
16 To resolve the charges, VW AG agreed to pay \$4.3 billion in penalties—one of the largest such  
17 penalties in history. In addition, federal prosecutors announced similar criminal charges against  
18 six VW AG executives for their roles in the scheme: (1) Richard Dorenkamp; (2) Heinz-Jakob  
19 Neußer; (3) Jens Hadler; (4) Bernd Gottweis; (5) Oliver Schmidt; and (6) Jürgen Peter. One of  
20 those executives, Schmidt—a top emissions-compliance manager for Volkswagen in the United  
21 States—was arrested in Florida on a charge of conspiracy to defraud the United States. The other  
22 executives reportedly reside in Germany and have been advised not to travel to the United States.

23           384. Then, on January 27, 2017, the *Wall Street Journal* reported that German  
24 prosecutors widened their probe into Volkswagen’s diesel emissions-cheating scandal and that  
25 investigators have found evidence that former CEO Winterkorn may have known about the use of  
26 the illegal software and its impact on emissions tests earlier than Winterkorn previously  
27 acknowledged. Reuters reported on the same day that “Braunschweig prosecutors said [that day]

1 they had searched 28 homes and offices in connection with their investigation this week. The  
2 number of people accused in connection with the emissions scandal had risen to 37 from 21,  
3 including Winterkorn.” Reuters quoted the prosecutors as stating that “[s]ufficient indications  
4 have resulted from the investigation, particularly the questioning of witnesses and suspects as well  
5 as the analysis of seized data, that the accused (Winterkorn) may have known about the  
6 manipulating software and its effects sooner than he has said publicly.””

7 385. On February 1, 2017, VW AG and VWGoA announced that they had reached  
8 proposed settlements with private plaintiffs and the FTC to resolve civil claims regarding  
9 approximately 78,000 3.0 liter TDI vehicles in the United States—all 3.0 liter TDI V6 diesel engine  
10 vehicles that Volkswagen, Audi, or Porsche marketed or sold in the United States for MY 2009  
11 through 2016. Under the proposed settlements, Volkswagen is to make cash payments to all  
12 eligible members of the class; recall and repair, free of charge to the customer, approximately  
13 58,000 affected 3.0 liter vehicles; and buy back or offer trade-in credit of equal value for, or  
14 terminate the leases of, approximately 20,000 affected 3.0 liter vehicles. Volkswagen stated that it  
15 expects to pay approximately \$1.2 billion under these settlements.

#### 16 **IX. ADDITIONAL ALLEGATIONS OF DEFENDANTS’ SCIENTER**

17 386. As alleged in this Complaint, Volkswagen and the Officer Defendants engaged in  
18 a decade-long scheme to defraud investors through numerous materially false and misleading  
19 representations and omissions, as well as to violate governing emissions standards and defraud  
20 consumers. Defendants, when they committed that misconduct, acted with scienter in that they  
21 knew, or recklessly disregarded, that the public documents and statements issued or disseminated  
22 in the name of VW AG, VWoA/VWGoA, and AoA detailed in Section X below were materially  
23 false or misleading, and knowingly and substantially participated or acquiesced in the issuance or  
24 dissemination of those statements or documents as primary violators of the federal securities laws.  
25 The allegations detailing Defendants’ fraudulent scheme, detailed in Section VI above, are  
26 incorporated in this Section by reference and provide powerful evidence of Defendants’ scienter.  
27 Other facts evidencing Defendants’ scienter are alleged below.



1           387. At all relevant times, Defendants were aware or, alternatively, recklessly  
2 disregarded that (i) approximately 11 million of Volkswagen’s vehicles worldwide contained  
3 illegal defeat-device software that had no proper or lawful purpose, but enabled the vehicles to  
4 pass emissions tests while far exceeding emissions limits under real-world, on-road driving  
5 conditions; (ii) Volkswagen pursued and met its aggressive US growth goals through a concerted  
6 effort to market and sell approximately 585,000 purportedly “clean diesel” cars that failed to  
7 comply with governing federal and state emissions standards; and (iii) Volkswagen significantly  
8 overstated its profits by failing to properly record provisions for the Company’s inevitable massive  
9 liability arising out of its fraudulent misconduct.

10           388. **First**, VW AG has admitted that it defrauded consumers and misled regulators.  
11 Among other things, Defendants have stated that “these vehicles were designed and manufactured  
12 with a defeat device to bypass, defeat, or render inoperative elements of the vehicles’ emissions  
13 control system” and “[w]e have admitted it to the regulator. It is true.” Defendant Winterkorn  
14 apologized that VW AG had “broken the trust of our consumers and the public.” And Defendant  
15 Horn admitted that “our company was dishonest. With the EPA, and [CARB], with all of you. . . .  
16 [W]e have totally screwed up.” VW AG has admitted that “Supervisors A [Neußer] and C [Hadler]  
17 and others marketed, and caused to be marketed, the Subject Vehicles to the U.S. public as ‘clean  
18 diesel’ and environmentally-friendly, when they knew the Subject Vehicles were intentionally  
19 designed to detect, evade and defeat U.S. emissions standards” (SOF ¶44), and that VW AG is  
20 responsible for these employees’ actions under US law (SOF p. 2-1).

21           389. **Second**, as VW AG has admitted, its top executives, including Defendant  
22 Winterkorn, knew of and received reports concerning the Company’s use of defeat-device software  
23 and VW AG’s attendant financial and legal exposure. As early as 2007, Bosch warned VW AG’s  
24 top executives, including Winterkorn, that the Company’s intended use for its emissions-regulating  
25 software was illegal. In 2011, an internal whistleblower warned the Company, including  
26 Winterkorn’s confidant and Volkswagen’s then-head of development Neußer, that the Company  
27 was illegally manipulating reported emissions data.

1           390. Reports indicate that “top management at VW knew about the existence of a US  
2 probe for more than year before it went public—but apparently did little to address the situation.”  
3 Indeed, the Company has admitted, and Winterkorn reportedly confirmed in deposition testimony,  
4 that Winterkorn received a memorandum in May 2014 from Volkswagen’s “fireman” Gottweis,  
5 whose job was to “sound the alarm” when crises emerged. The May 2014 memo detailed the  
6 Company’s use of defeat devices and the lack of any defensible, honest explanation for the defeat  
7 devices when regulators would inevitably discover the devices and scrutinize their use, with  
8 Gottweis writing that “[n]o plausible explanation for the dramatically increased NOx emissions  
9 can be given to authorities.” Winterkorn took that memo home to read as part of his “weekend  
10 suitcase.” Winterkorn received another memo discussing Volkswagen’s emissions cheating in  
11 November 2014 and, in July 2015, Winterkorn and Defendant Diess were present at a meeting  
12 where employees discussed Volkswagen’s emissions cheating.

13           391. Moreover, as detailed above, Winterkorn’s closest confidants at VW AG—Hatz  
14 and Hackenberg—were instrumental in the development and introduction of the defeat devices at  
15 the center of this case. Given Winterkorn’s detail-oriented nature, his knowledge of everything his  
16 two closest lieutenants were doing reasonably implies knowledge from the outset of the Class  
17 Period.

18           392. Rather than investigating, reporting, or taking action to halt the emissions cheating,  
19 however, Volkswagen’s management was far more interested in continuing to sell the illegally  
20 equipped cars, maintaining secrecy, and managing public-relations fallout. Internal  
21 communications at the Company reportedly show engineers and management weighing the risks  
22 and benefits of Volkswagen’s fraud, including how to placate US regulators, and deciding not to  
23 prioritize addressing the Company’s emissions cheating out of a mistaken and unreasonable belief  
24 that Volkswagen’s financial exposure would be at most €20 million—and could possibly even slip  
25 through the cracks entirely.

26           393. **Third**, even as Volkswagen’s cheating came to light, including once the ICCT and  
27 WVU study had been published in May 2014 and regulators including the EPA and CARB

1 informed Volkswagen that they had discovered abnormalities in Volkswagen’s emissions-testing  
2 results, Defendants continued to falsely blame faulty testing procedures in an attempt to hide their  
3 misconduct. In December 2014, Volkswagen agreed to recall approximately 500,000 vehicles  
4 whose actual emissions deviated significantly from test results, stating that it did so to implement  
5 a proposed “recalibration fix” to its engine software. But Volkswagen did not disclose that its  
6 vehicles contained defeat-device software or that they produced emissions in excess of legal limits,  
7 instead telling consumers that “engine management software has been improved,” “to assure your  
8 vehicle’s tailpipe emissions are optimized and operating efficiently.” The recall was authorized by  
9 or known to the most senior executives at VW AG, VWGoA, VWoA, and AoA, including  
10 Defendants Winterkorn and Horn.

11 394. The EPA’s September 18, 2015 NOV to Volkswagen concerning observed  
12 discrepancies between emissions levels in tests and on the road also shows that Volkswagen falsely  
13 denied to EPA that there was any problem at all. The EPA explained how Volkswagen falsely  
14 “continued to assert to CARB and the EPA that the increased emissions from these vehicles could  
15 be attributed to various technical issues and unexpected in-use conditions.”

16 395. **Fourth**, reports indicate that even once the fact of Volkswagen’s use of illegal  
17 defeat devices emerged, top executives directed Volkswagen’s employees to destroy evidence in  
18 order to hide and minimize Volkswagen’s culpability and exposure. A high-level official in  
19 Volkswagen’s legal department, “Christoph R.,” is reported to have directed colleagues in August  
20 2015 to delete “incriminating material” concerning the diesel scandal, days before sending  
21 employees a “litigation hold” to preserve relevant documents. In other words, the Volkswagen  
22 executive responsible for ensuring the preservation of evidence was, at the same time, personally  
23 directing the destruction of that evidence. VW AG has admitted these facts and pleaded guilty to  
24 obstruction of justice based on the deliberate destruction of evidence. (SOF ¶¶73-81.)

25 396. **Fifth**, the US-based Volkswagen entities—VWGoA, VWoA, and AoA, as well as  
26 VWGoA and VWoA executive Horn—acted with scienter because they were centrally involved  
27 in the process for acquiring all necessary approvals and certifications so that their vehicles could

1 legally be sold and driven in the United States. As part of the regulatory process, those entities  
2 regularly and frequently interacted with regulators, and were responsible for understanding and  
3 complying with emissions limits and regulations. The entities were responsible for submitting  
4 numerous applications and made detailed representations to regulators and the public confirming  
5 the vehicles' compliance with governing regulations, evidencing a high degree of knowledge of  
6 the vehicles' emissions and compliance. VWGoA, VWoA, AoA, and Horn either knew or were  
7 reckless in not knowing that the purportedly "clean diesel" vehicles that were subject to these  
8 regulatory processes were equipped with defeat devices and in reality emitted NOx emissions far  
9 in excess of allowable limits. As alleged above, the Liang Plea Agreement and the Second  
10 Superseding Indictment demonstrate that VWGoA executives knowingly deceived the EPA and  
11 CARB about the defeat devices.

12       397. **Sixth**, Volkswagen's culture, including Defendant Winterkorn's hands-on  
13 micromanagement, supports a strong inference that Winterkorn and other top executives were  
14 aware that Volkswagen implemented a sophisticated emissions-cheating scheme for over a decade,  
15 as the Company has admitted that the current diesel scandal has its roots in the Company's  
16 "strategic decision to launch a large-scale promotion of diesel vehicles in the United States in  
17 2005." In the ensuing years, it was widely known at Volkswagen that engineers were unable to  
18 successfully design a high-performance and low-emissions "clean diesel" engine.

19       398. Among other things, when Winterkorn took over as VW AG's CEO and brought  
20 along his top lieutenants Hatz and Hackenberg, beginning in late 2006, the Company committed  
21 to aggressively expand its diesel sales in the United States but also abandoned Volkswagen's use  
22 of the effective SCR system in favor of cheaper, less effective NOx traps. Winterkorn, Hatz, and  
23 Hackenberg—all demanding, detail-oriented engineers—were hostile to environmental  
24 regulations and had long opposed any measures that reduced emissions but had any negative  
25 impact on driving performance. By all accounts, Winterkorn was imperious and focused on  
26 engineering details, going so far as to attend auto shows with a tape measure and a magnet to  
27 precisely examine vehicles.

1           399. In addition, it has been widely reported how both Winterkorn and Piech ran  
2 Volkswagen through a “reign of terror” and “culture of fear” that served as a “breeding ground for  
3 scandal” and “an accident waiting to happen” that made “shortcuts and cheating more likely” while  
4 making “arrogant bosses feel invincible in the face of competition and regulation.” Further, the  
5 Chairman of VW AG’s Supervisory Board has admitted that the diesel scandal arose from “a  
6 tolerance for breaking the rules” at the Company. Automotive-industry expert Dudenhoeffer has  
7 explained how Winterkorn “had his hands in everything,” leading to a lack of any effective internal  
8 controls at the Company that allowed for the intentional violation of laws and regulations.  
9 Winterkorn and his team demanded the impossible—that engineers design a diesel engine that met  
10 emissions standards, did not sacrifice performance, and did not use SCR—and were well aware  
11 that goal could not be met legitimately and honestly. The fact that the emissions cheating was an  
12 open secret at Volkswagen is further shown by the use of code words such as “acoustic mode” and  
13 “acoustic function” to discuss the defeat-device software.

14           400. Indeed, Volkswagen’s top managers directed the Company’s fraudulent  
15 misconduct. Reports indicate that the idea for the defeat devices was originally developed under  
16 Winterkorn’s leadership at Audi in 1999 and that, by the time years later when Volkswagen  
17 implemented the defeat devices, Hackenberg himself was one of the executives known to order  
18 the emissions cheating. And Hatz stressed how important it was for Volkswagen to “keep the  
19 pleasure” so that its cars were “fun to drive,” while also admitting that it was “nearly impossible”  
20 for Volkswagen’s diesel engines to meet CARB’s emissions standards. As *Bild* has reported, when  
21 Volkswagen first installed defeat-device software in 2008, “there was no way . . . to reconcile  
22 meeting emission standards within the targeted cost of the engine. . . . Otherwise, the company  
23 would have to abandon the introduction of the engine, development of which was begun in 2005.”

24           401. Further, a top Volkswagen technician gave a PowerPoint presentation in 2006  
25 laying out, in detail, ways that Volkswagen could cheat on US emissions testing. The PowerPoint  
26 made clear that Volkswagen insiders knew that its diesel engines exceeded emissions standards,  
27 but executives repeatedly rejected proposals to lower emissions levels, and the entire Volkswagen

1 Management Board—led by Defendant Winterkorn—repeatedly refused technical proposals to  
2 upgrade emissions controls.

3 402. **Seventh**, Defendants’ scienter is evidenced by the numerous iterations of defeat-  
4 device software that Volkswagen employed in its purportedly “clean diesel” vehicles over the  
5 years. The Company altered the illegal software to use with four different engine types, including  
6 intentionally and actively updating the software numerous times so that vehicles could pass  
7 emissions testing while keeping true, on-road emissions levels hidden. It is simply not plausible  
8 that a rogue group of low-level employees could or would have developed and kept secret a  
9 sophisticated, years-long plan to continually update the defeat-device software.

10 403. **Eighth**, the delay in rolling out the purportedly “clean diesel” Jetta in the United  
11 States in 2008 evidences Defendants’ scienter. After announcing a spring-2008 rollout of the Jetta  
12 TDI, Volkswagen was forced to push back the rollout until summer 2008 due to the Company’s  
13 inability to develop a high-performance diesel engine that met emissions standards. That decision  
14 garnered significant industry scrutiny, and was a significant blow to Volkswagen’s acknowledged  
15 aspirations to use “clean diesel” vehicles as the primary driver of US market growth.

16 404. **Ninth**, there is a compelling inference of scienter because growth through “clean  
17 diesel” sales was a central focus for Volkswagen throughout the Class Period. As discussed above,  
18 VW AG saw expanding diesel sales—particularly in the United States—as a critical driver of  
19 market and earnings growth that would enable Volkswagen to become the world’s largest  
20 automaker. In turn, the US-based entities—VWGoA, VWoA, and AoA—were pushed to expand  
21 diesel sales and implemented aggressive, large-scale campaigns to sell purportedly “clean diesel”  
22 vehicles and take over an increasing portion of the US environmentally friendly car market. That  
23 focus manifested itself in television and print advertising, as well as in numerous statements to  
24 investors throughout the Class Period.

25 405. **Tenth**, Defendants’ scienter is supported by the fact that Volkswagen’s vehicles  
26 produced CO<sub>2</sub> emissions in excess of legal limits for years, with Winterkorn’s awareness and  
27 approval, yet the Company took no corrective measures. In November 2013, the Company’s

1 Quality Assurance Department warned Winterkorn that many Volkswagen models met CO2  
2 requirements only under the “best possible test conditions,” rather than in real-life, on-road  
3 conditions. Winterkorn ignored that warning despite internal reports in July and November 2014  
4 stating that CO2 output in Volkswagen’s vehicles was “no longer manageable.” Volkswagen not  
5 only ignored its cars’ CO2-emissions noncompliance, but failed to take any steps in light of the  
6 CO2 noncompliance to investigate or ensure the Company’s compliance with governing NOx  
7 emissions regulations

8 406. **Eleventh**, the sudden resignations, firings, and suspensions of top executives,  
9 including Winterkorn, Horn, Hatz, Hackenberg, Neußer, Vahland, Dorenkamp, Rudolph, Doerfler,  
10 Tuch, and Jelden, who are either known to have been directly involved in the use and consequences  
11 of defeat devices, or who were likely to have been involved based on their positions, roles, and  
12 tenure, provide strong evidence of Defendants’ scienter. Each of those individuals resigned, was  
13 fired, or was suspended, as news of Volkswagen’s emissions cheating came to light and shortly  
14 after Volkswagen commenced its internal investigation.

15 407. **Twelfth**, the numerous investigations and legal actions concerning Volkswagen’s  
16 diesel cheating scandal evidence scienter. The Company’s internal investigation is ongoing, as are  
17 investigations and prosecutions by the EPA and CARB, as well as the DoJ, the Federal Trade  
18 Commission, the US House Energy Committee, the Attorneys General of all 50 states and the  
19 District of Columbia, the British Parliament, and the German, French, and Italian governments—  
20 along with Volkswagen consumers and dealers. Volkswagen is attempting to finalize the details  
21 of the resolution of certain claims of the US government and consumers, including committing  
22 billions of dollars to buy back affected vehicles, repair vehicles if possible, and pay into funds for  
23 environmental remediation.

24 408. **Thirteenth**, VW AG, VWGoA, VWoA, and AoA each acted with scienter because  
25 the scienter of top executives Winterkorn, Diess, and Horn is imputed to the companies that those  
26 individuals spoke on behalf of and controlled. Winterkorn was VW AG’s CEO during the Class  
27 Period and Chairman of the VW AG Management Board, and Diess was and is a member of the

1 VW AG Management Board. Horn was the President and CEO of VWGoA, as well as president  
2 for the VWoA brand. Winterkorn and Diess spoke on behalf of VW AG and controlled VWGoA,  
3 VWoA, and AoA, and Horn spoke on behalf of and controlled VWGoA and VWoA. Each of  
4 Winterkorn, Diess, and Horn made, caused to be made, or certified materially false statements and  
5 omissions that misled investors with regard to the companies' financial results, compliance with  
6 governing emissions standards, and use of illegal defeat devices, as detailed in this Complaint.

7 **X. MATERIALLY FALSE AND MISLEADING**  
8 **STATEMENTS AND OMISSIONS**

9 409. Winterkorn, Diess, VW AG, VWGoA, VWoA, and AoA all made numerous false  
10 and misleading statements and omitted material facts concerning VW AG's financial results and  
11 VW and Audi cars' NOx emissions levels, emissions-control technology, and compliance with US  
12 and European regulatory standards. These false and misleading statements and omissions were  
13 made in documents and broadcasts including Defendants' periodic financial reports, press releases,  
14 press kits, marketing brochures, vehicle labels, websites, and television advertisements.

15 **A. VW AG, Winterkorn, and Diess Made False**  
16 **Statements and Omissions About VW AG's**  
17 **Accounting and Its Financial Results and Condition**

18 410. As discussed above at ¶409, VW AG, Winterkorn, and Diess falsely stated in VW  
19 AG's periodic reports during the Class Period that its financial statements complied with IFRS and  
20 IAS, when in fact they did not because they failed to properly recognize provisions related to the  
21 emissions-cheating scheme or, in the alternative, to disclose contingent liabilities related to that  
22 scheme.

23 411. As also discussed above at ¶301, VW AG's liabilities to purchasers and lessees of  
24 its "clean diesel" cars for damages and repairs, its liabilities to US and foreign governmental  
25 agencies for fines and penalties resulting from its emissions-cheating scheme, and its obligation to  
26 repurchase leased cars at contractual resale values vastly exceeding their actual, impaired values  
27 constituted present obligations that were reliably estimable and were likely to result in an outflow  
28 of resources to settle the obligations, and should therefore have been recognized as a provision



1 under IAS 37 in each of its financial statements issued during the Class Period with respect to the  
 2 defective diesel vehicles sold or leased during the relevant financial reporting period. As a liability,  
 3 the provision would have reduced VW AG's operating profit during the period for which it should  
 4 have been recognized and would have increased the Company's total liabilities and reduced the  
 5 Company's net assets and shareholders' equity as of the balance-sheet date at the end of the period.

6 412. VW AG's liabilities accrued to date as a result of the defeat device fraud amount to  
 7 at least \$18 billion, before giving effect to liabilities arising from all fines, damage awards, criminal  
 8 penalties, and other costs that the Company has not yet accrued.

9 413. As a result of VW AG's failure to properly recognize provisions relating to its use  
 10 of unlawful defeat devices in its "clean diesel" vehicles, its total liabilities were materially  
 11 understated and its operating profit, total assets, and shareholders' equity were materially  
 12 overstated in each of VW AG's following periodic reports during the Class Period. Winterkorn  
 13 signed each of the Annual Reports. Each of the Interim Reports was signed by the Board of  
 14 Management of VW AG. Winterkorn was a member of the Board of Management at the time of  
 15 each of those reports except for the Third Quarter 2015 Report, and Diess was a member of the  
 16 Board of Management when the Second and Third Quarter 2015 Interim Reports were issued. All  
 17 amounts in the table below are in euros in millions:

<b>VW AG Report</b>	<b>Reported Total Liabilities<sup>15</sup></b>	<b>Reported Total Assets</b>	<b>Reported Shareholders' Equity</b>	<b>Reported Operating Profit</b>
2010 Annual Report, issued on February 25, 2011	150,681	199,393	45,978	7,141
21 First Quarter 2011 Interim Report, issued on April 27, 2011	161,056	213,255	49,364	2,912
23 Second Quarter 2011 Interim Report, issued on July 28, 2011	162,496	218,175	53,018	3,174

26  
 27 <sup>15</sup> The sum of reported current and noncurrent liabilities.

<b>VW AG Report</b>	<b>Reported Total Liabilities<sup>15</sup></b>	<b>Reported Total Assets</b>	<b>Reported Shareholders' Equity</b>	<b>Reported Operating Profit</b>
Third Quarter 2011 Interim Report, issued on October 27, 2011	168,584	228,818	57,507	2,891
2011 Annual Report, issued on February 15, 2012	190,272	252,626	57,539	11,271
First Quarter 2012 Interim Report, issued on April 26, 2012	199,352	264,919	60,738	3,209
Second Quarter 2012 Interim Report, issued on July 26, 2012	208,428	274,958	62,292	3,283
Third Quarter 2012 Interim Report, issued on October 24, 2012	230,582	308,937	74,086	2,343
2012 Annual Report, issued on February 22, 2013	227,523	309,644	77,515	11,510
First Quarter 2013 Interim Report, issued on April 29, 2013	237,459	321,771	80,011	2,344
Second Quarter 2013 Interim Report, issued on July 31, 2013	235,499	319,092	81,386	3,437
Third Quarter 2013 Interim Report, issued on October 30, 2013	235,503	323,398	83,628	2,777
2013 Annual Report, issued on February 21, 2014	234,296	324,333	87,733	11,671
First Quarter 2014 Interim Report, issued on April 29, 2014	246,568	333,909	80,031	2,855
Second Quarter 2014 Interim Report, issued on July 31, 2014	246,410	336,124	89,524	3,330
Third Quarter 2014 Interim Report, issued on October 30, 2014	256,305	347,308	85,806	3,230
2014 Annual Report, issued on February 17, 2015	261,020	351,209	89,991	12,697
First Quarter 2015 Interim Report, issued on April 29, 2015	286,560	375.827	81,610	3,328

VW AG Report	Reported Total Liabilities <sup>15</sup>	Reported Total Assets	Reported Shareholders' Equity	Reported Operating Profit
Second Quarter 2015 Interim Report, issued on July 29, 2015	277,857	374,910	88,442	3,492
Third Quarter 2015 Interim Report, issued on October 28, 2015	277,799	371,411	85,901	(3,479)

414. In the alternative, VW AG, Winterkorn, and Diess should have disclosed the existence of a contingent liability related to the emissions-cheating scheme, as well as an estimate of its financial effect, an indication of the uncertainties relating to the amount or timing of any outflow, and the lack of any possibility of reimbursement, in each of VW AG's periodic reports issued during the Class Period.

**B. Defendants Made False Statements and Omissions About VW Vehicles' Emissions-Reduction Technology and Compliance with US and European Emissions Regulations**

415. In addition to the false and misleading financial information discussed above, Defendants made numerous false statements about their vehicles' emissions-control technology and compliance with applicable US and European emissions standards.

**1. Defendants Made Pre-Class Period False Statements and Omissions That Artificially Inflated the Prices of VW AG Securities and Remained Uncorrected Throughout the Class Period**

416. Before the start of the Class Period, Defendants made a number of materially false and misleading statements in press releases and marketing brochures about their vehicles' emissions-control technology and compliance with applicable US and European emissions standards. These false statements artificially inflated the prices of VW AG securities and remained uncorrected at the outset of the Class Period and throughout the Class Period. In addition to the false and misleading statements in websites, brochures, interviews, and television and print

1 advertisements quoted in ¶¶178-92 above, Defendants made the following pre-Class Period false  
2 and misleading statements.

3 **a) Defendants Made False Statements and**  
4 **Omissions in Pre-Class Period Press Releases**

5 417. A January 4, 2009 press release by VWoA/VWGoA entitled “Volkswagen’s 2.0L  
6 Turbo Clean Diesel Engine Recognized as 2009 Ward’s 10 Best Engine” stated:

7 “We’re pleased that Ward’s has recognized our advanced 2.0-liter clean diesel  
8 engine as one of their 2009 10 Best Engines,” said Stefan Jacoby, CEO,  
9 Volkswagen Group of America. **“The all-new 2.0L turbodiesel engine is not only  
10 the first of its kind to be emissions-compliant in all 50 states, but perhaps the  
11 most technically refined powerplant of its kind in the world.”**

12 **As the pioneering entry in the new era of clean diesel in North America, the  
13 new TDI engine technology in the Jetta sedan and SportWagen meets the  
14 United States most stringent emissions control standard -- California's Tier  
15 II/Bin 5 -- without the use of urea injection.**

16 \* \* \*

17 **In response to the U.S. federal mandate for Ultra Low Sulfur Diesel (ULSD),  
18 Volkswagen has been able to greatly reduce nitrous oxide (NOx) and  
19 particulate emissions on its clean diesel TDI engines through use of three key  
20 technologies: a common rail direct injection system; piezo fuel injectors; and  
21 an advanced exhaust system after-treatment system. The result is a reduction  
22 of NOx and particulate emissions by up to 90-percent; exceptional noise and  
23 vibration harshness performance; and fuel efficiency on par with more complex and  
24 expensive gas/electric hybrid systems.**

25 418. A June 11, 2009 AoA press release entitled “Audi Covers the 24 Hours of Le Mans  
26 Race Stateside on Social Media Websites” stated:

27 Audi TDI technology marks its 20th anniversary year by offering U.S. consumers  
28 the world’s cleanest diesel system in the 2009 Audi Q7 TDI. This ground breaking  
vehicle, on sale now, combines efficiency and performance with styling and  
luxurious appointments to open up the discussion over America’s alternative fuels  
options. **Audi TDI is a technology certified to meet emissions regulations in all  
50 U.S. states. That includes the California ULEV II (Ultra-Low Emissions  
Vehicle) standards that also apply to conventional gasoline vehicles and  
represent one of the world’s most rigorous motor vehicle emission  
requirements. Audi will further showcase the fuel-economy and emissions  
benefits of clean diesel later this year with the introduction of the Audi A3  
TDI.**

1 419. A February 1, 2010 VWoA/VWGoA press release entitled “Volkswagen’s 2.0L  
2 TDI Clean Diesel Engine Named a ‘Ward’s 10 Best Engine’ for 2010” stated:

3 **The 2.0L TDI is compliant with the stringent Tier 2, Bin 5/ULEV II emissions**  
4 **standards that apply in California and all 50 U.S. states,** and is available now  
5 in the all-new sixth generation Golf, the award-winning Jetta, and the versatile Jetta  
SportWagen models.

6 \* \* \*

7 **Greenhouse gas emissions are cut 25 percent over a comparable gasoline**  
8 **engine, along with a 95 percent reduction of nitrogen oxide emissions since**  
9 **1990, making for a cleaner ride with every mile.**

10 420. The statements quoted in ¶¶417-19 were materially false and misleading because  
11 the vehicles in question actually did not comply with the cited regulatory standards for emissions;  
12 the vehicles (as demonstrated by the ICCT/WVU testing and as acknowledged by US, State, and  
13 European regulators) actually emitted NOx at levels far higher than permitted by the regulatory  
14 standards; the emissions-control technologies described in the statements did not reduce NOx and  
15 greenhouse gas emissions as much as Defendants said they did; and the vehicles only purported to  
16 achieve the low emissions represented by Defendants and to comply with the regulatory standards  
because the vehicles were secretly equipped with illegal defeat devices.

17 **b) Defendants Made False**  
18 **Statements and Omissions in**  
19 **Pre-Class Period Marketing Brochures**

20 421. VWoA/VWGoA’s model-year 2010 Beetle, Touareg, and Passat marketing  
21 brochures, which are believed to have been published by VWoA/VWGoA in 2009 and to have  
22 continued to be publicly distributed by VWoA/VWGoA during and throughout the Class Period,  
23 all asked: “**Did you know . . . that we were the first to make clean diesel available in all 50**  
24 **states?**” The 2010 Touareg marketing brochure added that “[t]he TDI engine is cleaner than  
25 **conventional diesels, emitting as much as 95% less soot as well as a reduction in oxides of**  
26 **nitrogen and sulfur.**”

27 422. VWoA/VWGoA’s model-year 2010 Golf marketing brochure, which is believed to  
28 have been published by VWoA/VWGoA in 2009 and to have continued to be publicly distributed

1 by VWoA/VWGoA during and throughout the Class Period, asked: “**Did you know . . . that we**  
 2 **were the first to make clean diesel available in all 50 states?** . . . The all-new 2010 Golf Clean  
 3 Diesel . . . [is] efficient, using a turbocharger and smart exhaust design to use fuel more effectively.  
 4 So much so, in fact, that **Volkswagen was the first automaker to make clean diesel cars that**  
 5 **are certified in all 50 states.**”

6 423. VWoA/VWGoA’s model-year 2010 Jetta marketing brochure, which is believed to  
 7 have been published by VWoA/VWGoA in 2009 and to have continued to be publicly distributed  
 8 by VWoA/VWGoA during and throughout the Class Period, stated:

9 Did you know that a Volkswagen was named the 2009 World Car of the Year?\* Or  
 10 that Volkswagen has ESP® standard on all 2010 vehicles? Or that we provide a  
 11 Carefree Maintenance™ Program\*\* on all our 2010 cars? **Or that we were the**  
 12 **first to make clean diesel available in all 50 states?**

13 \* \* \*

14 **The Volkswagen TDI engine is cleaner than conventional diesels, emitting as**  
 15 **much as 95% less soot than previous diesel engines, as well as a reduction in**  
 16 **oxides of nitrogen and sulfur. It’s powerful, with the kind of low-end torque that**  
 17 **racers and tuners demand. It’s efficient, using a turbocharger and smart exhaust**  
 18 **design to burn fuel more effectively. So much so, in fact, that Volkswagen was**  
 19 **the first automaker to make clean diesel cars certified in all 50 states.**

20 424. AoA’s model-year 2010 Audi A3 marketing brochure, which is believed to have  
 21 been published by AoA in 2009 and to have continued to be publicly distributed by AoA during  
 22 and throughout the Class Period, stated that the Audi A3 had “**the cleanest diesel technology in**  
 23 **the world**” and that “**TDI® emissions are reduced to ultra-low levels thanks to a revolutionary**  
 24 **emissions system. The result is a car that is clean, quiet, powerful and proven.**”

25 425. AoA’s model-year 2010 Audi Q7 marketing brochure, which is believed to have  
 26 been published by AoA in 2009 and to have continued to be publicly distributed by AoA during  
 27 and throughout the Class Period, stated:

28 In the Q7 TDI®, all of the power and performance come with a respect for the  
 environment Audi considers essential. **On top of the ultra-low emissions a TDI®**  
**vehicle produces, the revolutionary clean diesel emissions system scrubs the**  
**exhaust, producing lower levels of NOX than gasoline-powered vehicles. It’s**

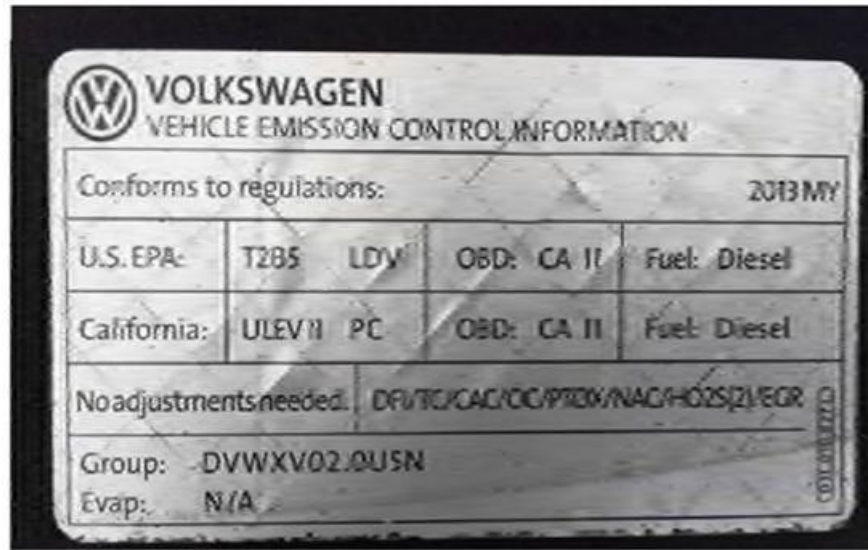
1           **so clean, it already complies with the stringent emissions standards coming to**  
2           **Europe in 2014.** Clean, powerful and efficient – only in the Audi Q7 TDI®.

3           426. The statements quoted in ¶¶421-25 were materially false and misleading because  
4 the vehicles in question actually did not comply with the cited regulatory standards for emissions;  
5 the vehicles (as demonstrated by the ICCT/WVU testing and as acknowledged by US, State, and  
6 European regulators) actually emitted NOx at levels far higher than permitted by the regulatory  
7 standards; the emissions-control technologies described in the statements did not reduce NOx  
8 emissions as much as Defendants said they did; and the vehicles only purported to achieve the low  
9 emissions represented by Defendants and to comply with the regulatory standards because the  
10 vehicles were secretly equipped with illegal defeat devices.

11                           **2. Defendants Made False Statements and**  
12                           **Omissions About Emissions-Control Technology**  
13                           **and Compliance During the Class Period**

14           427. During the Class Period, Defendants continued to make materially false and  
15 misleading statements about their vehicles' emissions-control technology and compliance with  
16 applicable US and European emissions standards.

17           428. Every "Clean Diesel" vehicle sold by Defendants in the United States during the  
18 Class Period bore a sticker falsely representing that the vehicle complied with US EPA and CARB  
19 emissions standards, substantially in the form below:  
20  
21  
22  
23  
24  
25  
26  
27



11 429. The stickers quoted in ¶428 were materially false and misleading because the  
12 vehicles bearing the stickers actually did not comply with the cited regulatory standards for  
13 emissions. Actually (as demonstrated by the ICCT/WVU testing and as acknowledged by US,  
14 State, and European regulators) the vehicles emitted NO<sub>x</sub> at levels far higher than permitted by  
15 the regulatory standards, and only purported to comply with standards because the vehicles were  
16 secretly equipped with illegal defeat devices.

17 430. Defendants also made false statements about VW vehicles' emissions-control  
18 technology and compliance with applicable US and European emissions standards in VW AG's  
19 periodic reports and in press releases, press kits, and marketing brochures.

20 **a) Defendants Made False Statements in VW AG's**  
21 **Periodic Reports**

22 431. VW AG's periodic reports during the Class Period, all of which were signed by  
23 Winterkorn (and, in the case of the Second Quarter 2015 Interim Report, also by Diess) except for  
24 the Third Quarter 2015 Annual Report, which was signed by the Management Board of VW AG,  
25 including Diess, included the following false and misleading statements.  
26  
27



1 432. VW AG’s 2010 Annual Report, issued on February 25, 2011, quoted Winterkorn  
2 as saying that **“Our pursuit of innovation and perfection and our responsible approach will**  
3 **help to make us the world’s leading automaker by 2018—both economically and**  
4 **ecologically”** and that **“Our aim is to make the Volkswagen Group the leading automaker by**  
5 **2018—economically and ecologically.”**

6 433. The 2010 Annual Report also stated:

7 **The key element of our “Strategy 2018” is to position the Volkswagen Group**  
8 **as a global economic and environmental leader among automobile**  
9 **manufacturers.**

10 \*\*\*\*\*

11 **We are paying particular attention to our environmentally friendly**  
12 **orientation** and the profitability of our vehicle projects. This also ensures that the  
13 Company can be successful with the right products, even in an economically  
14 difficult environment, and that capital expenditure remains at manageable levels.  
15 **With our attractive and environmentally friendly range of vehicles,** which we  
16 are steadily and rationally expanding, and the excellent position of the separate  
17 brands in the markets worldwide, **we are able to leverage the Group’s strengths**  
18 **and to systematically increase our competitive advantage. Our activities are**  
19 **oriented on setting new ecological standards in the areas of vehicles,**  
20 **powertrains and lightweight construction.**

21 434. The 2010 Annual Report also stated:

22 In order to master the challenges of the automotive future and reach the “Strategy  
23 2018” targets, **the decisive advantages for the Volkswagen Group lie in its**  
24 unique brand portfolio, the young, innovative and **environmentally friendly**  
25 **model range,** the broad international presence with local value added in many key  
26 regions, the significant synergy potential in the Group-wide development of  
27 technologies and models, and finally in its financial strength.

28 \*\*\*\*\*

29 **Thanks to our expertise in technology and design, we have a diverse, attractive**  
30 **and environmentally friendly range of products that meets all customer**  
31 **desires and needs.**

32 435. The 2010 Annual Report also stated: **“Thanks to our attractive and**  
33 **environmentally friendly model range, we significantly increased the Group’s market share**  
34 **in important key markets; our global market share also recorded encouraging growth.”**

1 436. VW AG’s First Quarter 2011 Interim Report, dated April 27, 2011, stated that  
2 **“Thanks to our expertise in technology and design, we have a diverse, attractive and**  
3 **environmentally friendly range of products that meets all customer desires and needs.”**

4 437. VW AG’s Second Quarter 2011 Interim Report, dated July 28, 2011, and Third  
5 Quarter 2011 Interim Report, dated October 27, 2011, repeated the statement quoted in the  
6 immediately preceding paragraph.

7 438. VW AG’s Third Quarter 2011 Interim Report also stated:

8 In September 2011, the Supervisory Board of Volkswagen AG gave the green light  
9 for the largest investment package in the Group’s history. With this approval, the  
10 Company will invest approximately €62.4 billion in the Automotive Division over  
11 the next five years, **thus putting in place key preconditions for becoming the**  
12 **economic and environmental leader in the automotive sector. The bulk of the**  
13 **investments will be made in environmentally friendly, sustainable models and**  
14 **technologies . . . .**

15 439. VW AG’s 2011 Annual Report, dated February 15, 2011, quoted Winterkorn as  
16 saying that **“Our pursuit of innovation and perfection and our responsible approach will help**  
17 **to make us the world’s leading automaker by 2018—both economically and ecologically”** and  
18 that **“Our number one priority is our customers, no question. And our job is to build the best,**  
19 **safest and most environmentally friendly cars for them.”**

20 440. The 2011 Annual Report also included a letter from Winterkorn in which he  
21 emphasized the importance of making “environmentally friendly” vehicles:

22 At Volkswagen, what really matters to us mostly that we can satisfy our customers  
23 and employees all over the world; **that we can drive forward all the technologies**  
24 **needed to make our vehicles even safer and more environmentally friendly;**  
25 that we can conserve resources and use renewable energy in our plants; and, not  
26 least, that we can continue our broad commitment to education, culture and a  
27 responsible society.

28 Responsibility for the environment for our employees and for society is a core  
component of our Strategy 2018. Because we are convinced that this is the only  
way that Volkswagen can grow sustainability and profitably. And because this is  
an integral part of becoming the leading automobile manufacturer—in every  
respect.

441. The 2011 Annual Report also stated:

1           **We are focusing in particular on the environmentally friendly orientation and**  
2           **profitability of our vehicle projects so that the Volkswagen Group has the right**  
3           **products for success even in more challenging economic conditions.** At the same  
4           time, this will mean that capital expenditure remains at manageable levels. **Our**  
5           **attractive and environmentally friendly range of vehicles, which we are**  
6           **steadily and judiciously expanding,** and the excellent position enjoyed by our  
individual brands in the markets worldwide, are key factors allowing us to leverage  
the Group’s strengths and to systematically increase our competitive advantages.  
**Our activities are primarily oriented on setting new ecological standards in the**  
**areas of vehicles, powertrains and lightweight construction.**

7           442. The 2011 Annual Report also stated that **“Thanks to our expertise in technology**  
8           **and design, we have a diverse, attractive and environmentally friendly portfolio of products**  
9           **that meets all customer desires and needs.”**

10           443. VW AG’s First Quarter 2012 Interim Report, dated April 26, 2012, stated that  
11           **“Thanks to our expertise in technology and design, we have a diverse, attractive and**  
12           **environmentally friendly portfolio of products that meets all customer desires and needs.”**

13           444. VW AG’s Second Quarter 2012 Interim Report, dated July 26, 2012, and Third  
14           Quarter 2012 Interim Report, dated October 24, 2012, repeated the statement quoted in the  
15           immediately preceding paragraph.

16           445. VW AG’s 2012 Annual Report, dated February 22, 2013, quoted Winterkorn as  
17           saying that **“Our pursuit of innovation and perfection and our responsible approach will help**  
18           **to make us the world’s leading automaker by 2018—both economically and ecologically”;**  
19           that **“We are systematically focusing our vehicles and our plants on being environmentally**  
20           **friendly and efficient”;** and that **“our goal is to ensure the Volkswagen Group reaches the top**  
21           **of the automotive industry by 2018—in both economic and ecological terms. We are focusing**  
22           **all our efforts and energy on achieving this goal.”**

23           446. The 2012 Annual Report also stated that **“The [VW] Group continued to extend**  
24           **its strong competitive position in the reporting period thanks to its wide range of attractive**  
25           **and environmentally friendly models.”**

1           447. The 2012 Annual Report also stated that “By 2018, we also intend to be the number  
2 one in the automotive industry in ecological terms. To reach this goal, . . . **we intend to make our**  
3 **products more environmentally friendly.**”

4           448. The 2012 Annual Report also stated:

5           **We are focusing in particular on the environmentally friendly orientation and**  
6 **profitability of our vehicle projects so that the Volkswagen Group has the right**  
7 **products for success even in more challenging economic conditions. . . . Our**  
8 **attractive and environmentally friendly range of vehicles, which we are steadily**  
9 **and judiciously expanding, and the excellent position enjoyed by our individual**  
10 **brands in the markets worldwide, are key factors allowing us to leverage the**  
11 **Group’s strengths and to systematically increase our competitive advantages.**

12           449. The 2012 Annual Report also stated:

13           **The decisive advantages that the Volkswagen Group can exploit to master the**  
14 **challenges of the automotive future and to achieve its Strategy 2018 targets are**  
15 **its unique brand portfolio, its young, innovative and environmentally friendly**  
16 **model range, its broad international presence with local value added in many key**  
17 **regions, the significant synergy potential offered by the Group-wide development**  
18 **of technologies and models, and finally its financial strength.**

19           450. The 2012 Annual Report also stated that “**We offer an extensive range of**  
20 **environmentally friendly, cutting-edge, high-quality vehicles for all markets and customer**  
21 **groups that is unparalleled in the industry.**”

22           451. The 2012 Annual Report also stated that the Company’s “**positive performance is**  
23 **due above all to our attractive and environmentally friendly model portfolio, which**  
24 **impresses customers around the globe.**”

25           452. VW AG’s First Quarter 2013 Interim Report, dated April 29, 2013, stated that “Our  
26 expertise is unparalleled in the industry and **we offer an extensive range of environmentally**  
27 **friendly, cutting-edge, high-quality vehicles for all regions and customer groups.**”

28           453. VW AG’s Second Quarter 2013 Interim Report, dated July 31, 2013, and Third  
Quarter 2013 Interim Report, dated October 30, 2013, repeated the statement quoted in the  
immediately preceding paragraph.

1           454. The Third Quarter 2013 Interim Report also stated that **“Chairman of the Board**  
2 **of Management Prof. Dr. Martin Winterkorn stressed that the Group enjoys a strong**  
3 **position thanks to its range of highly efficient and environmentally friendly diesel, petrol and**  
4 **natural gas engines . . . .”**

5           455. VW AG’s 2013 Annual Report, dated February 21, 2014, quoted Winterkorn as  
6 saying that **“Our pursuit of innovation and perfection and our responsible approach will help**  
7 **to make us the world’s leading automaker by 2018—both economically and ecologically”**;  
8 that **“our goal is to become better and better, more efficient, more environmentally friendly**  
9 **and even more customer-centric — from development through production down to sales”**; and that  
10 **“our goal is to ensure the Volkswagen Group reaches the top of the automotive industry by**  
11 **2018—in both economic and ecological terms. We are focusing all our efforts and energy on**  
12 **achieving this goal.”**

13           456. The 2013 Annual Report also stated:

14           **We are focusing in particular on the environmentally friendly orientation and**  
15 **profitability of our vehicle projects so that the Volkswagen Group has the right**  
16 **products for success even in more challenging economic conditions. . . . Our**  
17 **attractive and environmentally friendly range of vehicles, which we are**  
18 **selectively expanding, and the strong position enjoyed by our individual brands in**  
19 **the markets worldwide, are key factors allowing us to leverage the Group’s**  
20 **strengths and to systematically increase our competitive advantages.**

21           457. The 2013 Annual Report also stated that **“Volkswagen is . . . continuing to focus**  
22 **in depth on developing efficient drive technologies, thus extending its position as an**  
23 **innovation leader in the area of environmentally friendly mobility,”** and that **“We offer an**  
24 **extensive range of environmentally friendly, cutting-edge, high-quality vehicles for all**  
25 **markets and customer groups that is unparalleled in the industry.”**

26           458. VW AG’s First Quarter 2014 Interim Report, dated April 29, 2014, stated that **“We**  
27 **offer an extensive range of environmentally friendly, cutting-edge, high-quality vehicles for**  
28 **all markets and customer groups that is unparalleled in the industry.”**

1 459. VW AG’s Second Quarter 2014 Interim Report, dated July 31, 2014, and Third  
2 Quarter 2014 Interim Report, dated October 30, 2014, repeated the statement quoted in the  
3 immediately preceding paragraph.

4 460. VW AG’s 2014 Annual Report, dated February 17, 2015, quoted Winterkorn as  
5 saying that **“Our pursuit of innovation and perfection and our responsible approach will help  
6 to make us the world’s leading automaker by 2018—both economically and ecologically.”**

7 461. The 2014 Annual Report also stated:

8 The Volkswagen Group aims to increase its unit sales and profitability for the long  
9 term. This is why its Strategy 2018 —with which Volkswagen intends to become  
10 the global economic **and environmental leader among automobile  
11 manufacturers by 2018** — has been anchored in the Company.

11 \*\*\*\*\*

12 **We are focusing in particular on the environmentally friendly orientation and  
13 profitability of our vehicle projects so that the Volkswagen Group has the right  
14 products for success even in more challenging economic conditions. . . . Our  
15 attractive and environmentally friendly range of vehicles, which we are  
16 selectively expanding, and the strong position enjoyed by our individual brands in  
17 the markets worldwide, are key factors allowing us to leverage the Group’s  
18 strengths and to systematically increase our competitive advantages.**

19 **Our activities are primarily oriented on setting new ecological standards in the  
20 areas of vehicles, drivetrains and lightweight construction.**

21 462. The 2014 Annual Report also stated:

22 **Our attractive and environmentally friendly model portfolio impresses  
23 customers around the globe. The trust placed in us by customers, as well as  
24 our high quality and efficiency standards, allow us to meet and even exceed  
25 our financial targets.**

26 463. The 2014 Annual Report also stated that **“We offer an extensive array of  
27 attractive, environmentally friendly, cutting-edge, high-quality vehicles for all markets and  
28 customer groups.”**

1 464. VW AG's First Quarter 2015 Interim Report, dated April 29, 2015, stated that "**We**  
2 **offer an extensive array of attractive, environmentally friendly, cutting-edge, high-quality**  
3 **vehicles for all markets and customer groups.**"

4 465. VW AG's Second Quarter 2015 Interim Report, dated July 29, 2015, repeated the  
5 statement quoted in the immediately preceding paragraph.

6 466. The statements quoted in ¶¶432-64 were materially false and misleading because  
7 far from being "environmentally friendly," VW AG's diesel vehicles were equipped with secret  
8 defeat devices that allowed them to be sold under the pretense that their NOx emissions were  
9 within the legal limits when they actually (as demonstrated by the ICCT/WVU testing and as  
10 acknowledged by US, State, and European regulators) exceeded such limits by as much as 40  
11 times, and far from being an "environmental leader," VW AG was deliberately violating  
12 environmental regulations designed to protect human health and reduce the threat of global  
13 warming.

14 467. VW AG's second-quarter 2011 Interim Report, dated July 28, 2011, stated:

15 The new 2.0l 103 kW TDI engine has been modified specially for the Passat  
16 manufactured in Chattanooga, North America. **Lower raw emissions and its SCR**  
17 **(selective catalytic reduction) emissions control system enable the powertrain**  
18 **to meet the strict requirements of the US BIN5/ULEV emissions laws.** The new  
engine underlines Volkswagen's firm belief that diesel-powered vehicles also have  
strong potential in the USA.

19 468. The statement quoted in ¶467 was materially false and misleading because the  
20 vehicles in question actually did not comply with the cited regulatory standards for emissions; the  
21 vehicles (as demonstrated by the ICCT/WVU testing and as acknowledged by US, State, and  
22 European regulators) actually emitted NOx at levels far higher than permitted by the regulatory  
23 standards; the emissions-control technologies described in the statement did not reduce NOx  
24 emissions as much as Defendants said they did; and the vehicles only purported to achieve the low  
25 emissions misrepresented by Defendants and to comply with the regulatory standards because the  
26 vehicles were secretly equipped with illegal defeat devices.  
27

1                                   **b) Defendants Made Material Omissions in VW**  
2                                   **AG's Periodic Reports**

3           469. Not only do the facts alleged herein make Defendants' statements identified above  
4 materially false and misleading, but such statements in VW AG's periodic reports concerning,  
5 among other things, the Company's vehicles' compliance with emissions standards, Defendants'  
6 commitment to being environmentally friendly, and their use of technology and engineering  
7 expertise to produce "clean diesel" vehicles triggered an obligation for Defendants to disclose in  
8 each of VW AG's annual and interim reports issued during the Class Period the omitted facts  
9 concerning, among other things, that the subject "clean diesel" vehicles could not have been legally  
10 sold in the United States or Europe as they did not meet the applicable emissions standards and  
11 utilized illegal defeat devices. As noted above, Volkswagen's periodic reports issued during the  
12 Class Period were each signed by either Winterkorn or Diess, or both.

13                                   **c) Defendants Made False Statements and**  
14                                   **Omissions in Press Releases and Press Kits**

15           470. A January 7, 2011 AoA press release entitled "Inside the U.S. Audi Momentum  
16 Story" stated:

17           When Audi introduced its first TDI® model in the U.S. in 2009, it was difficult to  
18 assess the American appetite for clean diesel vehicles. Unlike Europe, where diesel  
19 is often the dominant engine choice, America harbored mixed memories of  
20 clattering diesels from the past.

21           Funny what a difference a year makes. **With fuel economy gains of up to 40%**  
22 **and one-third reductions in green-house gas emissions, U.S. consumers found**  
23 **that TDI provides a compelling environmental choice without any**  
24 **performance sacrifices.** In 2010, the innovative Audi TDI clean diesel technology  
25 made up 53% of all U.S. Audi A3 sales, and 43.5% of all Audi Q7 sales. TDI  
26 models made up a solid 47.8% of the sales for the two model lines combined—a  
27 key reason why Audi plans to at least double its TDI offerings in the U.S. market  
28 in the near future. The strong U.S. demand for TDI has also proven to be  
significantly higher than the 18-20% sales mix anticipated just a year earlier.

29           471. A January 9, 2011 VWoA/VWGoA press release entitled "Volkswagen Reveals the  
30 All-New Passat—A First-In-Class Vehicle That Delivers Superior German Engineering and Is  
31 Built in America" stated:



1 The new Passat, the largest ever, is the only midsize sedan that offers superior  
2 German engineering at an accessible price. The Passat TDI—the only clean diesel  
3 option in the segment—is expected to deliver 43 miles per gallon on the highway,  
4 with a range of approximately 800 miles.

5 The quiet, four cylinder 2.0L TDI Clean Diesel (140 hp/236 lb.-ft.) has the power  
6 of a six cylinder gasoline engine and the fuel economy of a hybrid. The Passat TDI  
7 is expected to deliver 43 miles per gallon on the highway, with a range of  
8 approximately 800 miles. **Volkswagen’s TDI clean diesel engines, which come  
9 with a NOx storage catalytic converter, are among the cleanest engines in the  
10 world, fulfilling emissions requirements in all 50 states.**

11 472. An April 18, 2011 VW AG press release entitled “Initial Facts: The Beetle” stated:

12 **US diesel with 140 PS.** When it comes to engines, all signs point toward  
13 sustainability. In the USA, the Beetle will be offered as a turbodiesel for the first  
14 time. **The Beetle 2.0 TDI (103 kW / 140 PS) meets all USA emission limits** and  
15 attains 40\* mpg fuel economy in the Highway cycle, 29\* mpg in City driving, and  
16 33\* mpg combined.

17 \* \* \*

18 Engine specifications: . . . all diesels are new common rail TDI engines; **all engines  
19 meet Euro-5 emissions standard; all US engines fulfil BIN5 / ULEV PZEV.**

20 473. An April 18, 2011 VWoA/VWGoA press release entitled “Volkswagen Debuts the  
21 Sportiest, Most Fuel-Efficient Beetle Ever; Automotive Icon Gets a Major 21st Century Update”  
22 stated:

23 **The quiet, four cylinder 2.0L TDI Clean Diesel engine . . . meets all U.S.  
24 emission limits** and offers manufacturer estimates of 40 mpg highway, 29 mpg  
25 city, and 33 mpg combined.

26 474. A May 6, 2011 VW AG press release entitled “32nd International Vienna Motor  
27 Symposium: Volkswagen steps up its use of plug-in hybrid technology” stated:

28 At the Vienna Motor Symposium Volkswagen also showcased two new engines  
which will be available shortly: the 1.4 l TSI Motor E 85 **and the new 2.0l TDI,  
which already fulfils stringent BIN5/ULEV emission laws in the USA.**

\* \* \*

Unlike the European automotive market, the share of passenger cars with diesel  
engines is still quite small in the USA. In recent years, just a few carmakers—  
notably Volkswagen and Audi—have been able to sell appreciable volumes of

1 vehicles with diesel engines. By introducing the new 2.0 l TDI, the Volkswagen  
2 Group is reaffirming its conviction that diesel engines still have great potential in  
passenger cars in the USA.

3 The 2nd generation 2.0 l TDI, familiar from Europe, was modified and further  
4 engineered for the new Passat to be produced in Chattanooga exclusively for the  
5 North American market. **To satisfy BIN5/ULEV emission regulations in the  
USA, it was necessary to reduce the engine’s raw emissions and install an SCR  
(selective catalytic reduction) emissions control system.**

6  
7 475. A July 11, 2011 VWoA/VWGoA press release entitled “To the point: The Beetle”  
8 stated:

9 In the USA, the most fuel-efficient engine is the 2.0 TDI, which attains a Highway  
10 fuel economy of 40 mpg and offers fun that is in harmony with the environment.

11 \* \* \*

12 Engine specifications: . . . Diesel: TDI (common rail engines). **All EU engines fulfil  
Euro-5 emissions standard; all US engines fulfil BIN5 / ULEV PZE**

13  
14 476. In a September 13, 2011 VW AG press release entitled “Modern-day sustainability  
15 made by Volkswagen,” Defendant Winterkorn was quoted as saying that “small emissions” were  
16 important for VW AG’s sales:

17 Talking to some 2,000 guests from 43 countries, Martin Winterkorn said: “This  
18 evening showcases the diversity of our brands, our models and the optimum  
19 solutions for our customers. **People want to live and act responsibly and that  
holds equally true with respect to the key issue of mobility. That means:  
20 Beautiful design with no gimmicky window dressing, total driving pleasure but low  
consumption, big emotions but small emissions.** The Volkswagen Group offers  
21 all that with a diversity no other automaker can match.

22 477. VWoA/VWGoA’s model-year 2012 Beetle press kit, which is believed to have  
23 been published by VWoA/VWGoA in 2011 and to have continued to be publicly distributed by  
24 VWoA/VWGoA throughout the Class Period, stated:

25 **Clean Diesel Leadership:** Volkswagen pioneered the use of turbocharging and  
26 direct injection in diesel engines and continues to lead the industry in this  
27 technology. This isn’t the first Beetle to be sold in the U.S. market with a diesel  
28 engine. From 1998 until 2006, the New Beetle was fitted with a 1.9-liter  
turbocharged four-cylinder diesel engine.

1 **Since then this engine has been heavily revised to accommodate increasing**  
 2 **demand for improvements in exhaust emissions and acoustics.** One of the most  
 3 fundamental improvements was converting the fuel-injection system to a common-  
 4 rail design, as well as increasing the capacity by 72 cc thanks to a 1.5-mm wider  
 5 bore.

6 \* \* \*

7 The engine's turbocharger features adjustable guide vanes that maintain the best  
 8 aspect ratio for low- and high-speed performance. **In order to meet current**  
 9 **tailpipe emissions standards in all 50 states, the engine makes use of both high-**  
 10 **and low-pressure exhaust gas recirculation over all engine speeds, as well as**  
 11 **an exhaust system that has a particulate filter.**

12 478. VWoA/VWGoA's model-year 2012 Golf press kit, which is believed to have been  
 13 published by VWoA/VWGoA in 2011 and to have continued to be publicly distributed by  
 14 VWoA/VWGoA throughout the Class Period, stated that "[t]he 2012 Golf is offered with the  
 15 choice of two technically-advanced engines. Buyers can choose either the 2.5-liter in-line five-  
 16 cylinder gasoline engine, **or the 50-state compliant 2.0L TDI Clean Diesel.**"

17 479. VWoA/VWGoA's model-year 2012 Passat press kit, dated August 23, 2011, stated  
 18 that "[t]he TDI engine is equipped with a Selective Catalytic Reduction System (SCR), a clean  
 19 **engine that fulfills emissions requirements in all 50 states.**"

20 480. VWoA/VWGoA's model-year 2012 Touareg press kit, dated September 6, 2011,  
 21 stated: "**To achieve its 50-state-legal emissions qualification, a deNOx catalytic converter,**  
 22 **augmented by a special injection system that sprays AdBlue into the exhaust, helps reduce**  
 23 **NOx emissions by up to 90 per cent. This lets the engine meet the Tier 2, Bin 5/ULEV II**  
 24 **standards imposed across all 50 U.S. states.**"

25 481. A May 7, 2012 VWoA/VWGoA press release entitled "Volkswagen Passat Sets  
 26 World Record for Longest Distance on One Tank of Clean Diesel Fuel" and a September 19, 2012  
 27 VWoA/VWGoA press release entitled "It's Official: 2012, the Best Year Ever for the Volkswagen  
 28 Passat" both stated:

The Passat's 2.0-liter TDI Clean Diesel inline four-cylinder engine produces 140  
 horsepower and 236 pound-feet of torque and with a manual transmission delivers  
 an EPA estimated fuel economy rating of 43 mpg on the highway. **The TDI engine**

1 **is equipped with a Selective Catalytic Reduction System (SCR) that fulfills**  
2 **emissions requirements in all 50 states.**

3 482. VWoA/VWGoA's model-year 2013 Passat press kit, dated January 2, 2013, stated  
4 that "[t]he TDI engine is equipped with a Selective Catalytic Reduction System (SCR) that  
5 **fulfills emissions requirements in all 50 states.**"

6 483. VWoA/VWGoA's model-year 2013 Touareg press kit, which is believed to have  
7 been published by VWoA/VWGoA in 2012, stated that "[t]o **achieve its 50-state-legal emissions**  
8 **qualification, a deNOx catalytic converter, augmented by a special injection system that**  
9 **sprays AdBlue into the exhaust, helps reduce NOx emissions by up to 90 per cent. This lets**  
10 **the engine meet the Tier 2, Bin 5/ULEV II standards imposed across all 50 U.S. states.**"

11 484. A March 27, 2013 VWoA/VWGoA press release entitled "Seventh-Generation  
12 Volkswagen Golf Makes Its North American Debut At The New York International Auto Show"  
13 stated:

14 The Golf TDI Clean Diesel model will be powered by a new 2.0-liter common-rail,  
15 turbocharged, direct-injection diesel engine.

16 \* \* \*

17 **The TDI Clean Diesel model** will use the new EA288 turbocharged, common-rail,  
18 direct-injection four-cylinder engine . . . . **A number of changes have been made**  
19 **to help reduce emissions, such as: use of a complex exhaust gas recirculation**  
20 **system (with a cooled low-pressure AGR); integration of the intercooler with**  
21 **the intake manifold, which also improves throttle response; and packaging the**  
22 **exhaust after-treatment components close to the engine.**

23 485. VWoA/VWGoA's model-year 2013 Beetle press kit, dated May 3, 2013, stated:

24 **Clean Diesel Leadership:** Volkswagen pioneered the use of turbocharging and  
25 direct injection in diesel engines and continues to lead the industry in this  
26 technology. This isn't the first Beetle to be sold in the U.S. market with a diesel  
27 engine. From 1998 until 2006, the New Beetle was fitted with a 1.9-liter  
28 turbocharged four-cylinder diesel engine.

**Since then this engine has been heavily revised to accommodate increasing**  
**demand for improvements in exhaust emissions and acoustics.** One of the most  
fundamental improvements was converting the fuel-injection system to a common-  
rail design, as well as increasing the capacity by 72 cc thanks to a 1.5-mm wider  
bore.

\* \* \*

1  
2 The engine's turbocharger features adjustable guide vanes that maintain the best  
3 aspect ratio for low- and high-speed performance. **In order to meet current**  
4 **tailpipe emissions standards in all 50 states, the engine makes use of both high-**  
5 **and low-pressure exhaust gas recirculation over all engine speeds, as well as**  
6 **an exhaust system that has a particulate filter and no fewer than three catalytic**  
7 **convertors: for oxidation, oxides of nitrogen (NOx), and hydrogen sulfide.**

8 486. An August 6, 2013 VWoA/VWGoA press release entitled "Volkswagen Group of  
9 America Underlines Diesel Strategy with New Engine Line" stated:

10 Oliver Schmidt, General Manager, Energy and Environmental Office, Volkswagen  
11 Group of America . . . [said that] **"The Volkswagen Group is a leader in clean**  
12 **diesel technology. . . . With the introduction of the new EA288 engine, we are**  
13 **excited that our family of TDI Clean Diesel vehicles is continuing to improve**  
14 **and will be even more clean, fuel efficient and powerful."**

15 The new EA288 will eventually replace all the 2.0-liter TDI Clean Diesel engines  
16 fitted in Audi and Volkswagen TDI Clean Diesel models. The engine is a  
17 turbocharged, common-rail, direct-injection four-cylinder engine that makes 150  
18 horsepower—an increase of 10 hp over the current engine—and 236 pound-feet of  
19 torque. This powerplant shares only the bore spacing with the previous diesel  
20 engine that shared the same designation. **A number of changes have been made**  
21 **to help reduce emissions, such as: use of a complex exhaust gas recirculation**  
22 **system (with high pressure EGR and a cooled low-pressure EGR); integration**  
23 **of the water-cooled intercooler and the EGR valve with the intake manifold,**  
24 **which also improves throttle response; and packaging the exhaust after-**  
25 **treatment components close to the engine by combining the DPF with the SCR**  
26 **Catalyst.**

27 487. An August 25, 2013 VWoA/VWGoA press release entitled "2014 Volkswagen  
28 Beetle: Improving the Icon" stated:

29 **Clean Diesel Leadership:** Volkswagen pioneered the use of turbocharging and  
30 direct injection in diesel engines and continues to lead the industry in this  
31 technology. This isn't the first Beetle to be sold in the U.S. market with a diesel  
32 engine. From 1998 until 2006, the New Beetle was fitted with a 1.9-liter  
33 turbocharged four-cylinder diesel engine.

34 **Since then, this engine has been heavily revised to accommodate increasing**  
35 **demand for improvements in exhaust emissions and acoustics.** One of the most  
36 fundamental improvements was converting the fuel-injection system to a common-  
37 rail design, as well as increasing the capacity by 72 cc thanks to a 1.5-mm wider  
38 bore.

\* \* \*

1           **In order to meet current tailpipe emissions standards in all 50 states, the**  
2           **engine makes use of both high- and low-pressure exhaust gas recirculation**  
3           **over all engine speeds, as well as an exhaust system that has a particulate filter**  
4           **and no fewer than three catalytic convertors: for oxidation, oxides of nitrogen**  
          **(NOx), and hydrogen sulfide**

5           488. VWoA/VWGoA's model-year 2014 Beetle press kit, which is believed to have  
6           been published by VWoA/VWGoA in 2013 and to have continued to be publicly distributed by  
7           VWoA/VWGoA throughout the Class Period, stated:

8           **Clean Diesel Leadership:** Volkswagen pioneered the use of turbocharging and  
9           direct injection in diesel engines and continues to lead the industry in this  
10          technology. This isn't the first Beetle to be sold in the U.S. market with a diesel  
11          engine. From 1998 until 2006, the New Beetle was fitted with a 1.9-liter  
12          turbocharged four-cylinder diesel engine.

13          **Since then this engine has been heavily revised to accommodate increasing**  
14          **demand for improvements in exhaust emissions and acoustics.** One of the most  
15          fundamental improvements was converting the fuel-injection system to a common-  
16          rail design, as well as increasing the capacity by 72 cc thanks to a 1.5-mm wider  
17          bore.

18          The engine's turbocharger features adjustable guide vanes that maintain the best  
19          aspect ratio for low- and high-speed performance. **In order to meet current**  
20          **tailpipe emissions standards in all 50 states, the engine makes use of both high-**  
21          **and low-pressure exhaust gas recirculation over all engine speeds, as well as**  
22          **an exhaust system that has a particulate filter and no fewer than three catalytic**  
23          **convertors: for oxidation, oxides of nitrogen (NOx), and hydrogen sulfide.**

24          489. VWoA/VWGoA's model-year 2014 Passat press kit, which is believed to have been  
25          published by VWoA/VWGoA in 2013 and to have continued to be publicly distributed by  
26          VWoA/VWGoA throughout the Class Period, stated that "[t]he TDI engine is equipped with a  
27          **Selective Catalytic Reduction System (SCR) that fulfills emissions requirements in all 50**  
28          **states.**"

          490. VWoA/VWGoA's model-year 2014 Touareg press kit, which is believed to have  
          been published by VWoA/VWGoA in 2013 and to have continued to be publicly distributed by  
          VWoA/VWGoA throughout the Class Period, stated that "[t]o achieve its 50 state emissions  
          **qualification, a deNOx catalytic converter, augmented by a special injection system that**

1 **sprays AdBlue® into the exhaust, helps reduce NOx emissions by up to 90 percent. This lets**  
2 **the engine meet the ULEV/Tier 2, BIN 5 standards imposed across all 50 U.S. states.”**

3 491. AoA’s model-year 2014 Media Information Kits for the Audi A7/TDI/S7/RS7 and  
4 Audi A8/TDI/S7/S8.W12, which are believed to have been published by AoA in 2013 and to have  
5 continued to be publicly distributed by AoA throughout the Class Period, stated that the emissions  
6 of the A7 TDI and A8 TDI, respectively, complied with the ULEV2 regulatory standard.

7 492. A March 18, 2014 VWoA/VWGoA press release entitled “Volkswagen Group Of  
8 America Confirms Timing For New TDI® Clean Diesel Engine” stated:

9 “The Volkswagen Group is a leader in Clean Diesel technology,” said  
10 [VWoA/VWGoA’s Manager of Technical Strategy, Douglas] Skorupski. “With the  
11 introduction of the new EA288 engine, **we are excited that our family of TDI**  
12 **Clean Diesel vehicles is continuing to improve and will be even cleaner** and  
13 more fuel efficient and powerful. We’re excited to see the increasing numbers of  
14 customers able to enjoy the reliability, durability, fuel-efficiency and power of  
15 Clean Diesel engines.”

16 \* \* \*

17 The new EA288 engine will eventually replace all the 2.0-liter TDI Clean Diesel  
18 engines currently fitted in Audi and Volkswagen TDI Clean Diesel models. This  
19 turbocharged, common-rail, direct-injection four-cylinder engine makes 150  
20 horsepower—an increase of 10 hp over the current engine—and 236 pound-feet of  
21 torque. This powerplant shares only the bore spacing with the previous diesel  
22 engine that had the same designation. **A number of changes have been made to**  
23 **help reduce emissions, such as: use of a complex exhaust gas recirculation**  
24 **system; integration of the intercooler with the intake manifold, which also**  
25 **improves throttle response; and packaging the exhaust after-treatment**  
26 **components close to the engine.**

27 493. A May 12, 2014 VWoA/VWGoA press release entitled “2015 Volkswagen Golf:  
28 The Best Hatchback Just Got Even Better” stated:

29 **The compact EA288 engine has the intercooler for its turbocharger system**  
30 **integrated directly into the intake manifold, which serves a two-fold purpose**  
31 **of increasing throttle response and performance as well as helping lower**  
32 **emissions.**

33 \* \* \*

1 **Compared to the previous engine, emissions are reduced by up to 40 percent,**  
2 **helped by siting the exhaust after-treatment module close to the engine and by**  
3 **the use of a low-pressure exhaust gas recirculation system.**

4 494. An August 27, 2014 VVoA/VWGoA press release entitled “2015 Volkswagen  
5 Jetta: Volkswagen’s Best-Selling Sedan, Refined” stated:

6 **Volkswagen’s all-new diesel engine platform, the EA288, powers the 2015**  
7 **Jetta TDI Clean Diesel model. It is one of the most fuel-efficient engines in its**  
8 **class, and already conforms to the upcoming LEV3 emissions standard in the**  
9 **U.S.**

10 \* \* \*

11 **The compact EA288 engine has the intercooler for its turbocharger system**  
12 **integrated directly into the intake manifold, which serves a two-fold purpose**  
13 **of increasing throttle response and performance as well as helping lower**  
14 **emissions.**

15 495. An August 27, 2014 VVoA/VWGoA press release entitled “2015 Volkswagen  
16 Passat: Built in America, for America” and VVoA/VWGoA’s model-year 2015 Passat press kit  
17 dated the same day both stated:

18 [T]he EA288 Clean Diesel TDI engine places strong emphasis on thermal  
19 management, which is evident in the cylinder head’s two-section coolant jacket, as  
20 well as a three-part cooling circuit and switchable coolant pump. **Compared to the**  
21 **previous engine, emissions are reduced by up to 40 percent, helped by siting**  
22 **the exhaust after-treatment module close to the engine and by the use of a low-**  
23 **pressure exhaust gas recirculation system.**

24 496. An August 27, 2014 VVoA/VWGoA press release entitled “2015 Volkswagen  
25 Beetle: Iconic Looks, Modern Interpretation” stated:

26 **Clean Diesel Leadership:** Volkswagen pioneered the use of turbocharging and  
27 direct injection in diesel engines and continues to lead the industry in this  
28 technology. This isn’t the first Beetle to be sold in the U.S. market with a diesel  
engine. From 1998 until 2006, the New Beetle was fitted with a 1.9-liter  
turbocharged four-cylinder diesel engine.

**Since then, this engine has been heavily revised to accommodate increasing**  
**demand for improvements in exhaust emissions** and acoustics. One of the most  
fundamental improvements was converting the fuel-injection system to a common-  
rail design, as well as increasing the capacity by 72 cc thanks to a 1.5-mm wider  
bore.



\* \* \*

1 The compact EA288 engine has the intercooler for its turbocharger system  
2 integrated directly into the intake manifold, which serves a two-fold purpose of  
3 increasing throttle response and performance as well as helping lower emissions.

\* \* \*

4 **Compared to the previous engine, emissions are reduced by up to 40 percent,**  
5 **helped by siting the exhaust after-treatment module close to the engine and by**  
6 **the use of a low-pressure exhaust gas recirculation system.**

7 497. An August 27, 2014 VWoA/VWGoA press release entitled “2015 Volkswagen  
8 Beetle Convertible: Everyday Drop-Top Fun For Four” stated:

9 The compact EA288 engine has the intercooler for its turbocharger system  
10 integrated directly into the intake manifold, which serves a two-fold purpose of  
11 increasing throttle response and performance as well as helping lower emissions.

\* \* \*

12 **Compared to the previous engine, emissions are reduced by up to 40 percent,**  
13 **helped by siting the exhaust after-treatment module close to the engine and by**  
14 **the use of a low-pressure exhaust gas recirculation system.**

15 498. VWoA/VWGoA’s model-year 2015 Touareg press kit, which is believed to have  
16 been published by VWoA/VWGoA in 2014 and to have continued to be publicly distributed by  
17 VWoA/VWGoA throughout the Class Period, stated: “To achieve its 50-state emissions  
18 qualification, the 2015 Touareg is equipped with a deNOx catalytic converter augmented by  
19 a special injection system that sprays AdBlue® into the exhaust, helping to reduce NOx  
20 emissions. Thanks to this, the TDI meets ULEV/Tier 2, BIN 5 standards imposed across all  
21 50 states.”

22 499. AoA’s Media Information Kits for the model-year 2015 Audi A3.TDI/S31, Audi  
23 A7/TDI/S7/RS7, and Audi Q7/TDI, which are believed to have been published by AoA in 2014  
24 and to have continued to be publicly distributed by AoA throughout the Class Period, stated that  
25 the emissions of the A3 TDI, A7 TDI, and Q7 TDI, respectively, complied with the ULEV2  
26 regulatory standard.



1 “Emissionsklasse.” A footnote stated that “[v]ehicles with Emissionsklasse Euro 5 get the green  
2 sticker.”

3 504. AoA’s model-year 2011 Audi A3 marketing brochure, which is believed to have  
4 been published by AoA in 2010 and to have continued to be publicly distributed by AoA during  
5 and throughout the Class Period, stated:

6 **[T]he 2.0 TDI clean diesel also meets or exceeds the 50 state emissions**  
7 **requirements.**

8 \*\*\*\*\*

9 **TDI clean diesel is compliant with California’s ULEV II requirement—the**  
10 **world’s most stringent emission standard. The result is a significant reduction**  
11 **in emissions that contribute to global warming.**

12 505. AoA’s model-year 2011 Audi Q7 marketing brochure, which is believed to have  
13 been published by AoA in 2010 and to have continued to be publicly distributed by AoA during  
14 and throughout the Class Period, stated:

15 **[TDI] produces fewer emissions thanks to the AdBlue system. As a particulate-**  
16 **neutralizing system, it essentially scrubs the exhaust, helping the 3.0 TDI**  
17 **attain Ultra-Low Emissions Vehicle certification.**

18 \*\*\*\*\*

19 **[T]he 3.0 TDI clean diesel also meets or exceeds 50 state emissions**  
20 **requirements.**

21 \*\*\*\*\*

22 **One reason TDI clean diesel is so clean is because of the AdBlue® technology**  
23 **found in the TDI clean diesel exhaust system. AdBlue uses a urea-based**  
24 **solution that scrubs the exhaust gases and removes 90 percent of the nitrogen**  
25 **oxides and 20 percent of carbon emissions, making it compliant with ULEV II**  
26 **BIN 5. The result is a significant reduction in emissions that contribute to**  
27 **global warming.**

28 506. AoA’s 2012 Audi Family marketing brochure, which is believed to have been  
published by AoA in 2011 and to have continued to be publicly distributed by AoA throughout the  
Class Period, stated that “America is increasingly consuming Audi TDI® clean diesel technology.

1 . . . **Maybe it's because the Audi TDI® clean diesel engine has achieved ultra-low emissions**  
2 **vehicle (Bin-5/ULEV) status in all 50 states . . . .”**

3 507. AoA's 2012 Audi Q7 marketing brochure, which is believed to have been published  
4 by AoA in 2011 and to have continued to be publicly distributed by AoA throughout the Class  
5 Period, stated that “**the Audi TDI® clean diesel engine . . . has achieved ultra-low emissions**  
6 **vehicle (Bin5/ULEV) status in all 50 states . . . .”**

7 508. AoA's model-year 2013 Audi Q7 Product Information Book, which is believed to  
8 have been published by AoA in 2012 and to have continued to be publicly distributed by AoA  
9 throughout the Class Period, stated that the Q7 TDI's emissions complied with the “Tier 2  
10 BIN5/ULEV II” regulatory standards.

11 509. AoA's 2013 Audi Q7 marketing brochure, which is believed to have been published  
12 by AoA in 2012 and to have continued to be publicly distributed by AoA throughout the Class  
13 Period, stated:

14 **Factor in the ultra-low emissions (Bin5/ULEV) status in all 50 states** with a 20  
15 percent reduction in CO<sub>2</sub> emissions over comparably sized gasoline engines, and  
16 you understand the true power of progress.

17 \*\*\*\*\*

18 **Innovative, advanced direct injection technology makes the Q7 TDI® clean**  
19 **diesel very responsive to the throttle, yet more fuel-efficient and emissions-low**  
20 **in output.**

21 **Combustion**  
22 **Combining the high compression ratio with direct injection allows for a more**  
23 **thorough combustion, helping to ensure a highly efficient and lower emission**  
24 **process.**

25 510. AoA's 2013 Audi Truth in Engineering marketing brochure, which is believed to  
26 have been published by AoA in 2012 and to have continued to be publicly distributed by AoA  
27 throughout the Class Period, stated: “America is increasingly consuming Audi TDI® clean diesel  
28 technology. . . . **Maybe it's because the Audi TDI® clean diesel engine has achieved ultra-low**  
**emissions vehicle (Bin-5/ULEV) status in all 50 states . . . .”**

1 511. AoA's model-year 2014 Audi A6, Audi A7, and Audi Q7 marketing brochures,  
 2 which are believed to have been published by AoA in 2013, and AoA's model-year 2015 Audi  
 3 A3, Audi A7, Audi A8, and Audi Q7 marketing brochures, which are believed to have been  
 4 published by AoA in 2014, all stated:

5 **The Audi TDI® clean diesel engine has achieved ultra-low emissions vehicle**  
 6 **(Bin-5/ULEV II) status in all 50 states . . .**

7 [TDI] After-exhaust treatment

8 **With innovative diesel particulate filters and the nontoxic AdBlue® reducing**  
 9 **agent, we eliminate up to 95% of diesel NOX emissions.**

10 512. AoA's 2014 Audi Clean Diesel Brochure, which is believed to have been published  
 11 by AoA in 2013 and to have continued to be publicly distributed by AoA throughout the Class  
 12 Period, stated:

13 Clean diesel, the kind that powers Audi TDI® clean diesel technology, is  
 14 demonstrably cleaner than the fuel used in previous generations of diesel engines.  
 15 Innovations have removed much of the pollutants, resulting in lower CO2  
 16 emissions than even the output from comparable gasoline engines—while still  
 17 delivering greater fuel efficiency. So what's the catch? We have a few that further  
 18 clean the diesel exhaust. The names might sound daunting—close-coupled  
 19 oxidation catalysts, coated particle filters, active exhaust gas after-treatment  
 20 systems utilizing AdBlue® reducing agent, but the thing they do is simple. Audi  
 21 employs these systems via sensors which detect the soot level and emissions of the  
 22 exhaust to work at maximum efficiency, filtering excess pollutants and particles,  
 23 which allows you, and everyone else, to breathe easier about clean diesel.

24 \*\*\*\*\*

25 AdBlue® system

26 Featuring a reducing agent that is a pure, **transparent solution of 32.5% urea and**  
 27 **water, AdBlue® is a diesel exhaust after-treatment that further purifies the**  
 28 **exhaust by helping turn NOX emissions into harmless nitrogen and oxygen.**  
**AdBlue® is a nontoxic, noncombustible, biodegradable innovation that has**  
**helped make the use of diesel fuel in passenger cars OK in all 50 states, and**  
**has helped make diesel even cleaner.**

\*\*\*\*\*

**Yes, Audi TDI® clean diesel vehicles can be purchased in all 50 states.**

1           513. The statements quoted in ¶¶504-12 were materially false and misleading because  
 2 the vehicles in question actually did not comply with the cited regulatory standards for emissions;  
 3 the vehicles (as demonstrated by the ICCT/WVU testing and as acknowledged by US, State, and  
 4 European regulators) actually emitted NOx at levels far higher than permitted by the regulatory  
 5 standards; the emissions-control technologies described in the statements did not reduce NOx  
 6 emissions as much as Defendants said they did; and the vehicles only purported to achieve the low  
 7 emissions represented by Defendants and to comply with the regulatory standards because the  
 8 vehicles were secretly equipped with illegal defeat devices.

9           514. The statements quoted in ¶¶504-12 also included material omissions because they  
 10 failed to disclose that the vehicles at issue contained illegal defeat devices, emitted NOx in amounts  
 11 far larger than represented by Defendants and permitted by applicable regulatory limits, and could  
 12 not have been legally sold in the United States or Europe had the truth about the defeat devices  
 13 and actual emission levels been revealed. Defendants were obligated to disclose these facts  
 14 because they chose to speak about the vehicles' NOx emissions and compliance with emissions  
 15 regulations.

16           515. The following table summarizes which of the false statements quoted above were  
 17 made by each Defendant:

18	<b>Defendant(s)</b>	<b>False or Misleading Statement</b>	<b>Date</b>	<b>Complaint Paragraph(s)</b>
19	VWoA/VWGoA	Press release entitled "Volkswagen's 2.0L Turbo Clean Diesel Engine Recognized as 2009 Ward's 10 Best Engine"	January 4, 2009	417
20				
21	AoA	Press release entitled "Audi Covers the 24 Hours of Le Mans Race Stateside on Social Media Websites"	June 11, 2009	418
22				
23	VWoA/VWGoA	Press release entitled "Volkswagen's 2.0L TDI Clean Diesel Engine Named a 'Ward's 10 Best Engine' for 2010"	February 1, 2010	419
24				
25	VWoA/VWGoA	Model-year 2010 Beetle, Touareg, and Passat marketing brochures	2009 through end of Class Period	421
26				
27	VWoA/VWGoA	Model-year 2010 Golf marketing brochure	2009 through end of Class Period	422
28				

<b>Defendant(s)</b>	<b>False or Misleading Statement</b>	<b>Date</b>	<b>Complaint Paragraph(s)</b>
VWoA/VWGoA	Model-year 2010 Jetta marketing brochure	2009 through end of Class Period	423
AoA	Model-year 2010 Audi A3 marketing brochure	2009 through end of Class Period	424
AoA	Model-year 2010 Audi Q7 marketing brochure	2009 through end of Class Period	425
VW AG and Winterkorn	2010 Annual Report	February 25, 2011	431-35
VW AG and Winterkorn	First Quarter 2011 Interim Report	April 27, 2011	431, 436
VW AG and Winterkorn	Second Quarter 2011 Interim Report	July 28, 2011	431, 437
VW AG and Winterkorn	Third Quarter 2011 Interim Report	October 27, 2011	431, 438
VW AG and Winterkorn	2011 Annual Report	February 15, 2012	431, 439-42
VW AG and Winterkorn	First Quarter 2012 Interim Report	April 26, 2012	431, 443
VW AG and Winterkorn	Second Quarter 2012 Interim Report	July 26, 2012	431, 444
VW AG and Winterkorn	Third Quarter 2012 Interim Report	October 24, 2012	431, 444
VW AG and Winterkorn	2012 Annual Report	February 22, 2013	431, 445-51
VW AG and Winterkorn	First Quarter 2013 Interim Report	April 29, 2013	431, 452
VW AG and Winterkorn	Second Quarter 2013 Interim Report	July 31, 2013	431, 453
VW AG and Winterkorn	Third Quarter 2013 Interim Report	October 30, 2013	431, 454
VW AG and Winterkorn	2013 Annual Report	February 21, 2014	431, 455-57
VW AG and Winterkorn	First Quarter 2014 Interim Report	April 29, 2014	431, 458
VW AG and Winterkorn	Second Quarter 2014 Interim Report	July 31, 2014	431, 459
VW AG and Winterkorn	Third Quarter 2014 Interim Report	October 30, 2014	431, 459
VW AG and Winterkorn	2014 Annual Report	February 17, 2015	431, 460-62
VW AG and Winterkorn	First Quarter 2015 Interim Report	April 29, 2015	431, 463

<b>Defendant(s)</b>	<b>False or Misleading Statement</b>	<b>Date</b>	<b>Complaint Paragraph(s)</b>
VW AG, Winterkorn, and Diess	Second Quarter 2015 Interim Report	July 29, 2015	431, 464
VW AG and Diess	Third Quarter 2015 Interim Report	October 28, 2015	431
VW AG, VWGoA, VWoA, AoA	Emissions regulation compliance sticker	Throughout Class Period	428
AoA	Press release entitled “Inside the U.S. Audi Momentum Story”	January 7, 2011	470
VWoA/VWGoA	Press release entitled “Volkswagen Reveals the All-New Passat—A First-In-Class Vehicle That Delivers Superior German Engineering and Is Built in America”	January 9, 2011	471
VW AG	Press release entitled “Initial Facts: The Beetle”	April 18, 2011	472
VWoA/VWGoA	Press release entitled “Volkswagen Debuts the Sportiest, Most Fuel-Efficient Beetle Ever; Automotive Icon Gets a Major 21st Century Update”	April 18, 2011	473
VW AG	Press release entitled “32nd International Vienna Motor Symposium: Volkswagen steps up its use of plug-in hybrid technology”	May 6, 2011	474
VWoA/VWGoA	Press release entitled “To the point: The Beetle”	July 11, 2011	475
VW AG, Winterkorn	Press release entitled “Modern-day sustainability made by Volkswagen”	September 13, 2011	476
VWoA/VWGoA	Model-year 2012 Beetle press kit	2011 through end of Class Period	477
VWoA/VWGoA	Model-year 2012 Golf press kit	2011 through end of Class Period	478
VWoA/VWGoA	Model-year 2012 Passat press kit	2011 through end of Class Period	479
VWoA/VWGoA	Model-year 2012 Touareg press kit	2011 through end of Class Period	480
VWoA/VWGoA	Press release entitled “Volkswagen Passat Sets World Record for Longest Distance on One Tank of Clean Diesel Fuel”	May 7, 2012	481



<b>Defendant(s)</b>	<b>False or Misleading Statement</b>	<b>Date</b>	<b>Complaint Paragraph(s)</b>
VWoA/VWGoA	Press release entitled "It's Official: 2012, the Best Year Ever for the Volkswagen Passat"	September 19, 2012	481
VWoA/VWGoA	Model-year 2013 Passat press kit	August 8, 2012	482
VWoA/VWGoA	Model-year 2013 Touareg press kit	2012 through end of Class Period	483
VWoA/VWGoA	Press release entitled "Seventh-Generation Volkswagen Golf Makes Its North American Debut At The New York International Auto Show"	March 27, 2013	484
VWoA/VWGoA	Model-year 2013 Beetle press kit	May 3, 2013	485
VWoA/VWGoA	Press release entitled "Volkswagen Group of America Underlines Diesel Strategy with New Engine Line"	August 6, 2013	486
VWoA/VWGoA	Press release entitled "2014 Volkswagen Beetle: Improving the Icon"	August 25, 2013	487
VWoA/VWGoA	Model-year 2014 Beetle press kit	2013 through end of Class Period	488
VWoA/VWGoA	Model-year 2014 Passat press kit	2013 through end of Class Period	489
VWoA/VWGoA	Model-year 2014 Touareg press kit	2013 through end of Class Period	490
AoA	Model-year 2014 Media Information Kits for the Audi A7/TDI/S7/RS7 and Audi A8/TDI/S7/S8.W12	2013 through end of Class Period	491
VWoA/VWGoA	Press release entitled "Volkswagen Group Of America Confirms Timing For New TDI® Clean Diesel Engine"	March 18, 2014	492
VWoA/VWGoA	Press release entitled "2015 Volkswagen Golf: The Best Hatchback Just Got Even Better"	May 12, 2014	493
VWoA/VWGoA	Press release entitled "2015 Volkswagen Jetta: Volkswagen's Best-Selling Sedan, Refined"	August 27, 2014	494
VWoA/VWGoA	Press release entitled "2015 Volkswagen Passat: Built in America, for America" and model-year 2015 Passat press kit	August 27, 2014	495
VWoA/VWGoA	Press release entitled "2015 Volkswagen Beetle: Iconic Looks, Modern Interpretation"	August 27, 2014	496

<b>Defendant(s)</b>	<b>False or Misleading Statement</b>	<b>Date</b>	<b>Complaint Paragraph(s)</b>
VWoA/VWGoA	Press release entitled “2015 Volkswagen Beetle Convertible: Everyday Drop-Top Fun For Four”	August 27, 2014	497
VWoA/VWGoA	Model-year 2015 Touareg press kit	2014 through the end of the Class Period	498
AoA	Media Information Kits for the model-year 2015 Audi A3.TDI/S31, Audi A7/TDI/S7/RS7, and Audi Q7/TDI	2014 through the end of the Class Period	499
VW AG, VWoA/VWGoA	Press release entitled “New Guinness world record: Golf TDI Clean Diesel attains lowest fuel consumption on 48-state tour of the USA”	July 10, 2015	500
VW AG	Specifications for the Golf, Jetta, and Passat 2012	2010 through the end of the Class Period	503
AoA	Model-year 2011 Audi A3 marketing brochure	2010 through the end of the Class Period	504
AoA	Model-year 2011 Audi Q7 marketing brochure	2010 through the end of the Class Period	505
AoA	2012 Audi Family marketing brochure	2011 through the end of the Class Period	506
AoA	2012 Audi Q7 marketing brochure	2011 through the end of the Class Period	507
AoA	Model-year 2013 Audi Q7 Product Information Book	2012 through the end of the Class Period	508
AoA	2013 Audi Q7 marketing brochure	2012 through the end of the Class Period	509
AoA	2013 Audi Truth in Engineering marketing brochure	2012 through the end of the Class Period	510
AoA	Model-year 2014 Audi A6, Audi A7, and Audi Q7 marketing brochures	2013 through the end of the Class Period	511

Defendant(s)	False or Misleading Statement	Date	Complaint Paragraph(s)
AoA	Model-year 2015 Audi A3, Audi A7, Audi A8, and Audi Q7 marketing brochures	2014 through the end of the Class Period	511
AoA	2014 Audi Clean Diesel Brochure	2013 through the end of the Class Period	512

**C. Defendants' False Statements and Omissions About Emissions Technology and Compliance Were Material to Investors**

516. The false statements quoted above were highly material to investors, as demonstrated by, among other things, Defendants' own statements.

517. In a January 31, 2011 VW AG press release, Defendant Winterkorn was quoted as saying that "Volkswagen's good name is our most valuable asset. There can be no compromises as far as complying with our code of conduct is concerned."

518. A May 4, 2015 VW AG press release entitled "Volkswagen Group publishes new sustainability report" again quoted Winterkorn concerning the importance of VW cars' environmental features to VW AG's value:

"As one of the world's largest industrial companies, we bear a special responsibility," emphasizes Prof. Dr. Martin Winterkorn, Chairman of the Board of Management of Volkswagen Aktiengesellschaft. "And we want to use our power for the benefit of people, the environment and society. **For us, sustainability is not a 'nice to have'. Sustainability is a real, measurable value driver for our business.**"

519. A December 20, 2013 VWoA/VWGoA press release entitled "It's Official: Volkswagen Group of America Has Sold More Than 100,000 TDI® Clean Diesel Vehicles in 2013" similarly quoted Scott Keogh, President of AoA, as attributing AoA's strong sales to its purportedly low emissions of "greenhouse gases," which include NOx:

The past year has shown that American consumers clearly recognize the benefits of clean diesel TDI vehicles. . . . They 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.

1           520. Furthermore, AoA and VWoA/VWGoA's monthly press releases reporting on their  
2 vehicle sales regularly reported the percentages of sales by model or by total sales that were the  
3 "TDI clean diesel" version.

#### 4 **XI. LOSS CAUSATION**

5           521. During the Class Period, as detailed in this Complaint, Defendants engaged in a  
6 course of conduct that knowingly or recklessly violated the law and regulatory standards, misstated  
7 the effectiveness of the Company's purportedly "clean diesel" technology, and underreported or  
8 understated Volkswagen's liabilities, costs, and reserves and therefore artificially inflated the price  
9 of Volkswagen ordinary and preference ADRs. As a result, Plaintiffs and members of the Class  
10 purchased Volkswagen ordinary and preference ADRs at artificially inflated prices and were  
11 damaged when the artificial inflation gradually dissipated when a series of corrective disclosures  
12 entered the market concerning Volkswagen's emissions scandal.

13           522. As alleged in this Complaint, the true facts concerning Volkswagen's undisclosed  
14 problems existed before the beginning of the Class Period and contradicted Defendants' repeated  
15 statements and disclosures concerning Volkswagen's cars' compliance with regulations, the  
16 accuracy of the Company's financial statements, and the effectiveness of Volkswagen's "clean  
17 diesel" technology and commitment to producing environmentally friendly cars. Given  
18 Volkswagen's active concealment of the emissions scandal, had the true facts been disclosed at  
19 any point during the Class Period, the effect of the revelations would have been the same as  
20 described below, and the artificial inflation in the price of Volkswagen's ordinary and preference  
21 ADRs would have dissipated earlier in the Class Period.

22           523. The artificial inflation in the price of Volkswagen's ordinary and preference ADRs  
23 began to be removed when the Company's emissions scandal began to be revealed to the market  
24 through a series of partial disclosures. Investors suffered significant losses as the prices of  
25 Volkswagen ordinary and preference ADRs declined when the revelation of the Company's  
26 misconduct corrected its prior misstatements and the risks concealed by Defendants materialized.  
27 Accordingly, the decline in the prices of Volkswagen's ordinary and preference ADRs was a direct

1 and proximate result of Defendants' fraudulent conduct being revealed to investors and to the  
2 market. The timing and magnitude of the decline in the prices of the Company's ordinary and  
3 preference ADRs negates any inference that the economic losses and damages suffered by  
4 Plaintiffs and the other members of the Class were caused by changed market conditions,  
5 macroeconomic factors, or Company-specific facts unrelated to Defendants' fraudulent conduct.

6       524. **First**, and as discussed more fully above, on September 18, 2015, the EPA and  
7 CARB announced that Volkswagen admitted to systematically defrauding investors and the public  
8 for years by deliberately cheating on US emissions tests and making its 2.0 liter diesel vehicles  
9 appear cleaner and more powerful than they actually were. Specifically, Volkswagen utilized in  
10 these cars an illegal defeat device that caused its vehicles to meet emissions standards when  
11 undergoing official testing, but during normal operation, caused the cars to emit NOx at up to 40  
12 times the legal limit. Given the magnitude of the scandal, Volkswagen faced, at the time, potential  
13 fines and penalties of up to \$18 billion. This disclosure caused the price of the Company's ordinary  
14 ADRs to decline from \$38.03 per ADR on September 17, 2015 to \$36.31 per ADR on September  
15 18, 2015, or approximately 5%. This disclosure also caused the price of Volkswagen's preference  
16 ADRs to decline from \$38.05 per ADR on September 17, 2015, to \$36.47 per ADR on September  
17 18, 2015, or approximately 4%. Investors continued to assess and digest the significance of the  
18 announcement over the next several days, as additional information and details continued to be  
19 disseminated into the market.

20       525. **Second**, on Sunday, September 20, 2015, Defendant Winterkorn admitted that  
21 Volkswagen broke the public's trust by defrauding federal and state regulators, adding that he was  
22 "personally . . . deeply sorry for the breach of trust." Volkswagen announced that it would stop  
23 selling the affected vehicles in the United States. The next day, on Monday, September 21, 2015,  
24 the DoJ opened a criminal probe into the Company's scandal and the German government stated  
25 that it would investigate whether VW AG cheated emissions tests in Europe. Also on September  
26 21, 2015, numerous authorities, regulators, professors, and analysts strongly denounced  
27 Volkswagen's actions and further exhibited the severity of Defendants' misconduct. On this news,

1 the price of the Company's ordinary ADRs declined from \$36.31 per ADR on September 18, 2015  
2 to \$30.10 per ADR on September 21, 2015, or approximately 17%. This disclosure also caused  
3 the price of Volkswagen's preference ADRs to decline from \$36.47 per ADR on September 18,  
4 2015 to \$29.77 per ADR on September 21, 2015, or approximately 18%.

5 526. **Third**, on September 22, 2015, Volkswagen's emissions crisis deepened as it  
6 revealed that 11 million vehicles worldwide contained the defeat devices used to evade emissions  
7 tests and that the Company would take a \$7.3 billion charge to earnings and cut its full-year  
8 outlook. Defendant Winterkorn again acknowledged "misconduct" on September 22, and  
9 Defendant Horn stated that "[o]ur company was dishonest with the [EPA], and the [CARB] and  
10 with all of you . . . [W]e've totally screwed up." On this news the price of the Company's ordinary  
11 ADRs declined from \$30.10 per ADR on September 21, 2015 to \$25.44 per ADR on September  
12 22, 2015, or approximately 16%. This news also caused the price of the Company's preference  
13 ADRs to drop from \$29.77 per ADR on September 21, 2015 to \$23.98 per ADR on September 22,  
14 2015—a decline of nearly 20%.

15 527. **Fourth**, on September 25, 2015, Volkswagen announced that it suspended a group  
16 of senior engineers involved in developing the Company's "clean diesel" technology and that it  
17 hired the Jones Day law firm to conduct an investigation into the diesel scandal. Also on September  
18 25, the EPA initiated testing of all Volkswagen model-year 2015 and 2016 light-duty diesel models  
19 available in the United States using updated procedures specifically designed to detect potential  
20 defeat devices. These disclosures caused the price of the Company's ordinary ADRs to drop from  
21 \$27.16 per ADR on September 24, 2015 to \$25.68 per ADR on September 25, 2015, or over 5%,  
22 and the price of its preference ADRs to drop from \$25.53 per ADR on September 24, 2015 to  
23 \$23.98 per ADR on September 25, 2015, or approximately 6%.

24 528. **Fifth**, on Saturday, September 26, 2015, *Frankfurter Allgemeine Zeitung* reported  
25 that Volkswagen's own technicians warned the Company at least as early as 2011 about the  
26 illegality of its emissions practices. Corroborating those claims, on Sunday, September 27, 2015,  
27 *Bild* reported that Bosch warned Volkswagen's "top circles" as early as 2007 not to use the devices

1 for illegal purposes and that the Company's plans for the devices were, in fact, "illegal." Further,  
2 on September 28, 2015, prosecutors in Germany announced that they opened a criminal  
3 investigation into Defendant Winterkorn and other Volkswagen executives to determine whether  
4 they committed fraud through the sale of vehicles with manipulated emissions data. This news  
5 caused the price of Volkswagen's ordinary ADRs to decline from \$25.68 per ADR on September  
6 25, 2015 to \$23.97 per ADR on September 28, 2015, or almost 7%. The disclosures also caused  
7 the price of Volkswagen's preference ADRs to drop from \$23.98 per ADR on September 25, 2015  
8 to \$22.39 per ADR on September 28, 2015, a similar 7% decline.

9       529. **Sixth**, on October 2, 2015, Volkswagen's scandal expanded further as France and  
10 Italy launched probes into the Company to investigate suspicions of "aggravated deception."  
11 Further, the *New York Times* reported on October 2 that Attorneys General from at least 30 states  
12 and the District of Columbia were quickly progressing with their bipartisan investigation into  
13 allegations of consumer fraud and violations of environmental regulations by Volkswagen, and  
14 that they had served subpoenas on the Company and its divisions. These disclosures caused the  
15 price of Volkswagen ordinary ADRs to decline from \$23.72 per ADR on October 1, 2015 to \$23.07  
16 per ADR on October 2, 2015, or approximately 3%. These disclosures also caused the price of  
17 Volkswagen preference ADRs to decline from \$21.75 per ADR on October 1, 2015 to \$20.99 per  
18 ADR on October 2, 2015, or approximately 3%.

19       530. **Seventh**, on October 15, 2015, Volkswagen was ordered to recall 8.5 million diesel  
20 cars in Europe equipped with emissions-cheating technology. On this news, the price of  
21 Volkswagen ordinary ADRs declined from \$29.24 per ADR on October 14, 2015 to \$28.19 per  
22 ADR on October 15, 2015, or approximately 4%. This news also caused the price of Volkswagen  
23 preference ADRs to decline from \$24.55 per ADR on October 14, 2015 to \$23.54 per ADR on  
24 October 15, 2015, or approximately 4%.

25       531. **Eighth**, on November 2, 2015, the EPA issued a second NOV to Volkswagen  
26 stating that the Company also developed and installed defeat devices in larger vehicles equipped  
27 with 3.0 liter diesel engines for model-years 2014 through 2016. Those cars, when being driven

1 under normal conditions, emitted NOx up to nine times the EPA's standard. The disclosure of the  
2 second NOV caused the price of Volkswagen ordinary ADRs to decline from \$27.00 per ADR on  
3 November 2, 2015 to \$25.49 per ADR on November 3, 2015, or approximately 6%. This disclosure  
4 also caused the price of Volkswagen preference ADRs to decline from \$24.12 per ADR on  
5 November 2, 2015 to \$23.20 per ADR on November 3, 2015, or approximately 4%.

6 532. **Ninth**, on January 4, 2016, the DoJ sued Volkswagen for illegally selling  
7 approximately 580,000 vehicles equipped with 2.0 and 3.0 liter diesel engines that contained  
8 illegal defeat devices, were not properly certified by the EPA, and violated environmental laws,  
9 among other things. The DoJ suit seeks up to \$48 billion in damages. On this news, the price of  
10 Volkswagen ordinary ADRs declined from \$30.10 per ADR on January 4, 2016 to \$28.34 per  
11 ADR on January 5, 2016, or approximately 6%. This news also caused the price of the Company's  
12 preference ADRs to decline from \$27.30 per ADR on January 4, 2016 to \$26.16 per ADR on  
13 January 5, 2016, or approximately 4%.

## 14 **XII. PRESUMPTION OF RELIANCE**

15 533. Plaintiffs and Class members are entitled to a presumption of reliance on  
16 Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market  
17 doctrine because, at all relevant times, the market for Volkswagen ordinary and preference ADRs  
18 was open, efficient, and well-developed for the following reasons, among others:

- 19 (a) Volkswagen ordinary and preference ADRs met the requirements for listing, and were  
20 listed and actively traded on the over-the-counter market, a highly liquid and efficient  
21 market;
- 22 (b) The prices of Volkswagen ordinary and preference ADRs reacted promptly to the  
23 dissemination of new information regarding the Company. Volkswagen ordinary and  
24 preference ADRs were actively traded throughout the Class Period, with substantial  
25 trading volume and average weekly turnover and high institutional-investor  
26 participation.



- 1 (c) At all relevant times during the Class Period, the price of Volkswagen ordinary ADRs  
2 traded in strict correlation with the price of Volkswagen ordinary shares, and the price  
3 of Volkswagen preference ADRs traded in strict correlation with the price of  
4 Volkswagen preferred stock;
- 5 (d) Volkswagen ordinary and preferred stock met the requirements for listing, and were  
6 listed and actively traded on the Xetra Stock Exchange, a highly liquid and efficient  
7 market;
- 8 (e) The prices of Volkswagen ordinary and preferred stock reacted promptly to the  
9 dissemination of new information regarding the Company. Volkswagen ordinary and  
10 preferred stock were actively traded throughout the Class Period, with substantial  
11 trading volume and average weekly turnover and high institutional-investor  
12 participation;
- 13 (f) As a regulated issuer, Volkswagen filed periodic and annual reports with the company  
14 register in Germany (Unternehmensregister) and the over-the-counter market;
- 15 (g) Volkswagen regularly communicated with public investors via established market  
16 communication mechanisms, including through regular dissemination of press releases  
17 on the national circuits of major newswire services and through other wide-ranging  
18 public disclosures, such as communications with the financial press and other similar  
19 reporting services; and
- 20 (h) Volkswagen was followed extensively by the media and by at least 25 securities  
21 analysts employed by major brokerage firms who wrote well in excess of 1,100 analyst  
22 reports about Volkswagen during the Class Period, which were distributed to those  
23 brokerage firms' sales forces and certain customers. Each of these reports was publicly  
24 available and entered the public market place.

25 534. As a result of the foregoing, the market for Volkswagen ordinary and preference  
26 ADRs promptly digested current information regarding Volkswagen from all publicly available  
27 sources and reflected that information in the prices of Volkswagen's ordinary and preference

1 ADRs. Under these circumstances, all purchasers of Volkswagen ordinary and preference ADRs  
2 during the Class Period suffered similar injury through their purchase of Volkswagen ordinary and  
3 preference ADRs at artificially inflated prices, and a presumption of reliance applies.

4 535. Plaintiffs and Class members are also entitled to a presumption of reliance under  
5 *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the claims asserted  
6 in this Complaint against Defendants are predicated in part upon material omissions of facts that  
7 Defendants had a duty to disclose.

8 **XIII. INAPPLICABILITY OF THE STATUTORY SAFE**  
9 **HARBOR AND BESPEAKS CAUTION DOCTRINE**

10 536. The statutory safe harbor and bespeaks caution doctrine applicable to forward-  
11 looking statements under certain circumstances do not apply to any of the false and misleading  
12 statements pleaded in this Complaint. Nor can Defendants' omissions of material fact be subject  
13 to the safe harbor or bespeaks caution doctrine.

14 537. None of the statements complained of in this Complaint was a forward-looking  
15 statement. Rather, they were historical statements or statements of purportedly current facts and  
16 conditions at the time the statements were made, including statements about the effectiveness of  
17 the Company's "clean diesel" technology, its cars' compliance with environmental regulations  
18 and true level of performance, and the accuracy of Volkswagen's financial statements.

19 538. To the extent that any of the false and misleading statements alleged in this  
20 Complaint can be construed as forward-looking, those statements were not accompanied by  
21 meaningful cautionary language identifying important facts that could cause actual results to differ  
22 materially from those in the statements. As alleged above in detail, then-existing facts contradicted  
23 Defendants' statements regarding Volkswagen's reported profits and contingencies, the  
24 effectiveness of the Company's "Clean Diesel" technology, and its cars' compliance with  
25 environmental regulations and true level of performance, among other things. Given the then-  
26 existing facts contradicting Defendants' statements, any risk disclosures made by Volkswagen  
27

1 were not sufficient to insulate Defendants from liability for their materially false and misleading  
2 statements.

3 539. To the extent that the statutory safe harbor does apply to any forward-looking  
4 statements pleaded in this Complaint, Defendants are liable for those materially false and  
5 misleading forward-looking statements because at the time each of those statements was made, the  
6 particular speaker knew that the particular forward-looking statement was false or misleading, or  
7 the false and misleading forward-looking statement was authorized or approved by an executive  
8 officer of Volkswagen who knew that the statement was false or misleading when made.

#### 9 **XIV. CLASS ACTION ALLEGATIONS**

10 540. Plaintiffs bring this action as a class action under Fed. R. Civ. P. 23(a) and 23(b)(3)  
11 on behalf of a class consisting of all those who purchased or otherwise acquired Volkswagen  
12 ordinary ADRs (CUSIP: 928662303) and all those who purchased or otherwise acquired  
13 Volkswagen preference ADRs (CUSIP: 928662402) from November 19, 2010 through January 4,  
14 2016, inclusive (the “Class Period”), and who were damaged thereby (the “Class”). Excluded from  
15 the Class are Defendants, the officers and directors of VW AG, VWGoA/VWoA, and AoA at all  
16 relevant times, members of their immediate families and their legal representatives, heirs, agents,  
17 affiliates, successors or assigns, and any entity in which Defendants or their immediate families  
18 have or had a controlling interest. For the avoidance of doubt, “affiliates” are persons or entities  
19 that directly, or indirectly through one or more intermediaries, control, are controlled by, or are  
20 under common control with one of the Defendants, and include any employee benefit plan  
21 organized for the benefit of Volkswagen’s employees.

22 541. The members of the Class are so numerous that joinder of all members is  
23 impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and  
24 can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least tens  
25 of thousands of members of the proposed Class. Class members who purchased Volkswagen  
26 ordinary or preference ADRs may be identified from records maintained by Volkswagen, its  
27

1 transfer agent(s), or the sponsor of the ADR programs, J.P. Morgan, and may be notified of this  
2 class action using a form of notice similar to that customarily used in securities class actions.

3 542. Plaintiffs' claims are typical of Class members' claims, as all members of the Class  
4 were similarly affected by Defendants' wrongful conduct in violation of federal law that is  
5 complained of in this Complaint.

6 543. Plaintiffs will fairly and adequately protect Class members' interests and have  
7 retained competent counsel experienced in class actions and securities litigation.

8 544. Common questions of law and fact exist as to all Class members and predominate  
9 over any questions solely affecting individual Class members. Among the questions of law and  
10 fact common to the Class are:

- 11 (a) Whether the federal securities laws were violated by Defendants' acts as alleged in this  
12 Complaint;
- 13 (b) Whether Defendants' regulatory filings, press releases, reports, and other public  
14 statements disseminated to the investing public during the Class Period contained  
15 material misstatements or omitted to state material information;
- 16 (c) Whether and to what the extent the market prices of the Company's securities were  
17 artificially inflated during the Class Period due to the non-disclosures and  
18 misrepresentations complained of in this Complaint;
- 19 (d) Whether Defendants acted with scienter; and
- 20 (e) Whether the members of the Class have sustained damages as a result of the misconduct  
21 complained of in this Complaint, and if so, the proper measure of damages.

22 545. A class action is superior to all other available methods for the fair and efficient  
23 adjudication of this action because joinder of all Class members is impracticable. In addition, the  
24 damage suffered by some individual Class members may be relatively small so that the burden and  
25 expense of individual litigation make it impossible for those members to individually redress the  
26 wrong done to them. There will be no difficulty in the management of this action as a class action.  
27

**XV. CLAIMS FOR RELIEF**

**COUNT ONE**

**For Violations of Section 10(b) of the Exchange Act and Rule 10b-5,  
Asserted Against VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess**

546. Plaintiffs repeat and reallege each of the allegations above as if fully alleged in this Count.

547. This claim is brought under Section 10(b) of the Exchange Act and Rule 10b-5 on behalf of Plaintiffs and the other members of the Class against VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess.

548. As alleged in this Complaint, throughout the Class Period, VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess, individually and in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, including without limitation the US mails and interstate telephone communications, made untrue statements of material fact and omitted to state material facts necessary to make their statements not misleading and carried out a plan, scheme, and course of conduct, in violation of Section 10(b) of the Exchange Act and Rule 10b-5. VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess intended to and did, as alleged in this Complaint, (1) deceive the investing public, including Plaintiffs and the other members of the Class; (2) artificially inflate and maintain the prices of Volkswagen ADRs; and (3) cause Plaintiffs and the other members of the Class to purchase or acquire Volkswagen ADRs at artificially inflated prices.

549. VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess were individually and collectively responsible for making the material misstatements and omissions alleged in this Complaint and for engaging in a plan, scheme, and course of conduct designed to deceive Plaintiffs and the other members of the Class, by virtue of having spoken, written, prepared, approved, signed, and disseminated documents that contained untrue statements of material fact and omitted facts necessary to make the statements in the documents not misleading.

550. As alleged in this Complaint, VW AG, VWGoA, VWoA, AoA, Winterkorn, and Diess made their false and misleading statements and omissions and engaged in the activity

1 described in this Complaint knowingly and intentionally or in such a reckless manner as to  
2 constitute willful deceit and fraud upon Plaintiffs and the other members of the Class who  
3 purchased or acquired Volkswagen ADRs during the Class Period.

4 551. In ignorance of the false and misleading nature of Defendants' statements and  
5 omissions, and relying directly or indirectly on those statements and omissions or upon the  
6 integrity of the market prices for Volkswagen ADRs, Plaintiffs and the other members of the Class  
7 purchased or acquired Volkswagen ADRs at artificially inflated prices during the Class Period.  
8 But for the material misstatements and omissions, Plaintiffs and the other members of the Class  
9 would not have purchased or acquired Volkswagen ADRs at artificially inflated prices. As alleged  
10 in this Complaint, when the true facts were subsequently disclosed, the prices of Volkswagen  
11 ADRs declined precipitously. Plaintiffs and the other members of the Class were harmed and  
12 damaged as a direct and proximate result of their purchases of Volkswagen ADRs at artificially  
13 inflated prices and the subsequent declines in the prices of Volkswagen ADRs when the truth was  
14 disclosed.

15 552. By reason of the foregoing, VW AG, VWGoA, VWoA, AoA, Winterkorn, and  
16 Diess are liable to Plaintiffs and the other members of the Class for violations of Section 10(b) of  
17 the Exchange Act and Rule 10b-5.

18 **COUNT TWO**  
19 **For Violations of Section 20(a) of the Exchange Act,**  
20 **Asserted Against VW AG and the Officer Defendants**

21 553. Plaintiffs repeat and reallege each of the allegations above as if fully alleged in this  
22 Count.

23 554. This claim is brought under Section 20(a) of the Exchange Act against VW AG and  
24 the Officer Defendants (Winterkorn, Horn, and Diess) on behalf of Plaintiffs and the other  
25 members of the Class.

26 555. As alleged in this Complaint, Defendants Winterkorn and Diess caused VW AG,  
27 VWGoA, VWoA, and AoA to violate Section 10(b) and Rule 10b-5 by making material  
28 misstatements and omissions in connection with the purchase and sale of securities and by

1 participating in a scheme and course of business or conduct throughout the Class Period. This  
2 conduct was undertaken with the scienter of Defendants Winterkorn and Diess, who knew of or  
3 recklessly disregarded the falsity of VW AG's, VWGoA's, VWoA's, and AoA's statements or  
4 their omissions of material fact and the nature of their scheme during the Class Period.

5 556. As alleged in this Complaint, Defendant VW AG caused VWGoA, VWoA, and  
6 AoA to violate Section 10(b) and Rule 10b-5 by making material misstatements and omissions in  
7 connection with the purchase and sale of securities and by participating in a scheme and course of  
8 business or conduct throughout the Class Period. This conduct was undertaken with the scienter  
9 of VW AG, which knew of or recklessly disregarded the falsity of VWGoA's, VWoA's, and  
10 AoA's statements or their omissions of material fact and the nature of their scheme during the  
11 Class Period.

12 557. As alleged in this Complaint, Defendant Horn caused VWGoA and VWoA to  
13 violate Section 10(b) and Rule 10b-5 by making material misstatements and omissions in  
14 connection with the purchase and sale of securities and by participating in a scheme and course of  
15 business or conduct throughout the Class Period. This conduct was undertaken with the scienter  
16 of Defendant Horn, who knew of or recklessly disregarded the falsity of VWGoA's and VWoA's  
17 statements or their omissions of material fact and the nature of their scheme during the Class  
18 Period.

19 558. Winterkorn and Diess were controlling persons of VW AG, VWGoA, VWoA, and  
20 AoA during the Class Period, due to (a) Winterkorn's and Diess's senior executive positions at  
21 VW AG; (b) Winterkorn's and Diess's direct involvement in VW AG's day-to-day operations,  
22 financial reporting, and accounting and Winterkorn's and Diess's signatures on and participation  
23 in the preparation and dissemination of VW AG's public statements and regulatory actions; (c)  
24 VW AG's ownership of 100% of VWGoA's and VWoA's America's stock and approximately  
25 99.55% of AoA's stock; (d) VW AG's possession and exercise of the authority to appoint all of  
26 VWGoA's, VWoA's, and AoA's directors and executive officers; (e) VW AG's direct  
27 involvement in VWGoA's, VWoA's and AoA's day-to-day operations, financial reporting,

1 accounting, and regulatory actions; (f) Winterkorn's position as chair of VWGoA's board of  
2 directors; and (g) Winterkorn's and Diess's participation in the preparation and dissemination of  
3 VWGoA's, VWoA's, and AoA's public statements.

4 559. By virtue of the foregoing, Winterkorn and Diess each had the power to influence  
5 and control, and did influence and control, directly or indirectly, VW AG's, VWGoA's, VWoA's,  
6 and AoA's decision-making, including the content of VW AG, VWGoA's, VWoA's, and AoA's  
7 public statements.

8 560. VW AG was a controlling person of VWGoA, VWoA, and AoA during the Class  
9 Period, due to VW AG's (a) ownership of 100% of VWGoA's and VWoA's America's stock and  
10 approximately 99.55% of AoA's stock; (b) possession and exercise of the authority to appoint all  
11 of VWGoA's, VWoA's, and AoA's directors and executive officers; (c) direct involvement in  
12 VWGoA's and AoA's day-to-day operations, financial reporting, accounting, and regulatory  
13 actions; and (d) participation in the preparation and dissemination of VWGoA's, VWoA's, and  
14 AoA's public statements.

15 561. By virtue of the foregoing, VW AG had the power to influence and control, and did  
16 influence and control, directly or indirectly, VWGoA's, VWoA's, and AoA's decision-making,  
17 including the content of VWGoA's, VWoA's, and AoA's public statements.

18 562. Horn was a controlling person of VWGoA and VWoA during the Class Period. He  
19 was a longtime veteran of VW AG in Germany, having joined the Company in 1990 and served  
20 as head of sales and marketing for Volkswagen's premium vehicles, then as head of European  
21 sales, and then as head of global after sales. He was handpicked by Winterkorn (according to a  
22 Dow Jones report on July 14, 2014) to "reboot[] [VWGoA's] U.S. strategy," and turn VWGoA  
23 around after a period of slumping sales. Horn was considered "a seasoned VW executive with deep  
24 ties to Wolfsburg," VW AG's headquarters. *Automotive News*, Jan. 24, 2015. As *Automotive News*  
25 reported in January 2015, "[i]t appears that the management team in Wolfsburg trusts him, believes  
26 in him and fully supports him." *Automotive News* further reported in February 2015 that US VW  
27 dealers "value the fact that [Horn]'s a German schooled in VW's inner workings, giving him the



1 clout to win what the U.S. market needs to thrive.” The *Wall Street Journal* reported on December  
2 11, 2014 that “[f]rustrated with slow U.S. progress, Mr. Winterkorn last December fired the head  
3 of Volkswagen of America and appointed a Wolfsburg insider, Michael Horn. Mr. Horn argued  
4 for profound change to make VW more American and give its U.S. operation more autonomy from  
5 Wolfsburg. . . . With that goal in mind, Mr. Winterkorn formed a new North America Committee.  
6 The group, consisting of U.S. executives [including, on information and belief, Horn] and about  
7 half of VW’s management board, has met at least five times since February.” Horn was personally  
8 involved in VWGoA’s response to the ICCT report starting on or about March 31, 2014 (¶241);  
9 he personally received notice no later than May 20, 2014 that VWGoA could face EPA fines of up  
10 to \$37,500 for each of 500,000–600,000 vehicles equipped with illegal defeat devices and that  
11 “Intent = penalty!” (Crim. Compl. ¶37); and he sent an email to multiple VW AG board members  
12 and executives in Germany on July 21, 2015 warning that certification of the MY 2016 Generation  
13 3 vehicles was at risk if Volkswagen did not satisfy CARB’s requests for information (¶213).  
14 These facts, combined with (a) Horn’s senior executive position at VWGoA and VWoA; (b) direct  
15 involvement in VWGoA’s and VWoA’s day-to-day operations, financial reporting, and  
16 accounting and signatures on and participation in the preparation and dissemination of VWGoA’s  
17 and VWoA’s public statements and regulatory actions; and (c) possession and exercise of the  
18 authority to appoint all of VWGoA’s and VWoA’s directors and executive officers, made him a  
19 controlling person of VWGoA and VWoA. By virtue of the foregoing, Horn had the power to  
20 influence and control, and did influence and control, directly or indirectly, VWGoA’s and  
21 VWoA’s decision-making, including the content of VWGoA’s and VWoA’s public statements.

22 563. In ignorance of the false and misleading nature of Defendants’ statements and  
23 omissions, and relying directly or indirectly on those statements and omissions or upon the  
24 integrity of the market prices for Volkswagen ADRs, Plaintiffs and the other members of the Class  
25 purchased or acquired Volkswagen ADRs at artificially inflated prices during the Class Period.  
26 But for the material misstatements and omissions, Plaintiffs and the other members of the Class  
27 would not have purchased or acquired Volkswagen ADRs at artificially inflated prices. As alleged

1 in this Complaint, when the true facts were subsequently disclosed, the prices of Volkswagen  
2 ADRs declined precipitously. Plaintiffs and the other members of the Class were harmed and  
3 damaged as a direct and proximate result of their purchases of Volkswagen ADRs at artificially  
4 inflated prices and the subsequent decline in the prices of those securities when the truth was  
5 disclosed.

6 564. By reason of the foregoing, VW AG and the Officer Defendants are liable to  
7 Plaintiffs and the other members of the Class for violations of Section 20(a) of the Exchange Act.

8 **XVI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for relief and judgment individually, and on behalf of the  
10 Class, as follows:

11 (a) Declaring this action to be a proper class action under Rule 23 of the Federal Rules  
12 of Civil Procedure;

13 (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members  
14 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'  
15 wrongdoing, in an amount to be proven at trial, including interest on that amount;

16 (c) Awarding Plaintiffs and members of the Class their reasonable costs and expenses  
17 incurred in this action, including attorneys' and experts' fees and expenses; and

18 (d) Awarding such equitable, injunctive, and other relief as the Court may deem just  
19 and proper.

20 **XVII. JURY DEMAND**

21 Plaintiffs hereby demand a trial by jury for all issues so triable.  
22  
23  
24  
25  
26  
27

1 Dated: February 3, 2017

Respectfully submitted,

2 **BERNSTEIN LITOWITZ BERGER**  
3 **& GROSSMANN LLP**

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
 MARKETING, SALES PRACTICES, AND  
 PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**CLASS ACTION**

This Document Relates To:

- City of St. Clair Shores*, 15-1228 (E.D. Va.)
- Travalio*, 15-7157 (D.N.J.)
- George Leon Family Trust*, 15-7283 (D.N.J.)
- Charter Twp. of Clinton*, 15-13999 (E.D. Mich.)
- Wolfenbarger*, 15-326 (E.D. Tenn.)

**FIRST AMENDED CONSOLIDATED  
 SECURITIES CLASS ACTION  
 COMPLAINT**

Judge: Hon. Charles R. Breyer  
 Courtroom: 6, 17th Floor

**GLOSSARY OF DEFINED AND KEY TERMS, ENTITIES, AND INDIVIDUALS**

ASHERS	Court-appointed Lead Plaintiff Arkansas State Highway Employees’ Retirement System.
ADRs	American Depositary Receipts, a US dollar denominated form of equity ownership in a non-US company, representing the foreign shares of the company and carrying the corporate and economic rights of the foreign shares.
AoA	Defendant Audi of America, Inc., the US operating subsidiary of Defendant VW AG responsible for Audi AG’s domestic business.
Audi AG	Audi Aktiengesellschaft.
Auxiliary emission control device	An automotive design element that senses temperature, vehicle speed, engine revolutions per minute, or other parameters for the purpose of activating, modulating, delaying, or deactivating the vehicle’s emission control system.
Barnes	Mark Barnes, VWGoA’s Vice President of Sales and Aftersales.
Bernhard	Wolfgang Bernhard, CEO of the Volkswagen brand from 2005 to 2007.
Bin 5	An EPA Tier 2 emissions certification category that requires certified vehicles to emit less than 0.05 grams per mile of NOx during their intermediate life and 0.07 grams per mile of NOx during their full useful life.
BlueTec	Marketing name for a Mercedes-designed SCR system.
Bosch	Robert Bosch GmbH.
Brauer	Karl Brauer, an analyst at Kelley Blue Book.

CARB	California Air Resources Board.
CEO	Chief Executive Officer.
Christoph R.	Pseudonym given to a high-level official in Volkswagen's legal department who is reported to have directed colleagues to delete incriminating material days before sending out a litigation hold.
Class	All those who purchased or otherwise acquired Volkswagen Ordinary ADRs and all those who purchased or otherwise acquired Volkswagen Preference ADRs from November 19, 2010 through January 4, 2016, inclusive, and who were damaged thereby.
Class Period	November 19, 2010 through January 4, 2016, inclusive.
"Clean diesel"	Volkswagen's diesel vehicles, equipped with TDI engines, which purportedly met governing emissions standards while providing a high-performance driving experience.
CO2	Carbon dioxide.
Company	VW AG.
Crim. Cmplt.	<i>United States v. Schmidt</i> , No. 2:16-mj-30588, Criminal Complaint (E.D. Mich. filed Dec. 30, 2016) (Exhibit 3 to this Complaint).
DBSI	Deutsche Bank Securities, Inc.
DEF	Diesel exhaust fluid containing urea, used as part of an SCR system to treat exhaust gases and reduce NOx emissions.
Defeat device	An auxiliary emission control device that reduces the effectiveness of emissions control systems under conditions that may reasonably be expected to be encountered in normal vehicle operation and use.
Defendants	VW AG, VWGoA, VWoA, AoA, Winterkorn, Diess, and Horn.
Diess	Defendant Herbert Diess, member of the VW AG Management Board and Chairman of the Volkswagen Passenger Cars Brand since July 2015.
Dobrindt	Alexander Dobrindt, German Minister of Transportation.
Doerfler	Peter Doerfler, Volkswagen's head of group auditing and anti-corruption officer, whose departure was announced on October 21, 2015.
DoJ	US Department of Justice.
Donovan	Daniel Donovan, a former VWGoA employee who has sued VWGoA claiming wrongful termination for reporting and objecting to the intentional spoliation of evidence by VWGoA.
Dorenkamp	Richard Dorenkamp, Volkswagen's former head of technical development for low-emission engines, who was suspended on October 21, 2015.
DTC	Depository Trust Company, the entity that runs the principal US securities clearing and settlement system.
Dudenhoefler	Ferdinand Dudenhoefler, a leading automotive expert and director of the Center for Automotive Research at the University of Duisberg-Essen.
Dyno calibration	The code name for the settings that the defeat devices in Volkswagen's vehicles triggered when the vehicles were undergoing

	emissions testing on a dynamometer, such that the vehicles produced NOx emissions that complied with governing standards.
Dyno mode	Dyno calibration.
EDC	Electronic diesel control computer systems.
EDC17	The EDC, manufactured by Bosch, that Volkswagen used to control its engine emissions.
Eichler	Friedrich Eichler, a supervisor in charge of the VW Brand Engine Development department from in or about October 2013 to at least January 11, 2017.
EPA	The United States Environmental Protection Agency.
Euro-5	European Union emissions standard implemented in September 2009.
Euro-6	European Union emissions standard implemented in September 2014.
Exchange Act	The Securities Exchange Act of 1934, 15 U.S.C. § 78, <i>et seq.</i>
FIRREA	The Financial Institutions Reform, Recovery and Enforcement Act.
FTC	The United States Federal Trade Commission.
GM	General Motors.
Gottweis	Bernd Gottweis, a veteran Volkswagen quality-assurance executive also known as the “fireman.”
Hackenberg	Dr. Ulrich Hackenberg, a longtime confidant and coworker of Winterkorn, whom Winterkorn named as a senior VW AG engineer in charge of research and development.
Hadler	Jens Hadler, a supervisor in charge of the VW Brand Engine Development department from in or about May 2007 to in or about March 2011.
Hatz	Wolfgang Hatz, a longtime confidant and coworker of Winterkorn, whom Winterkorn named as a senior VW AG engineer in charge of engine development.
Horn	Defendant Michael Horn, President and CEO of VWGoA and president of VWoA from January 2014 until his resignation on March 9, 2016.
IAS	International Accounting Standards.
IAS 37	IAS standard governing when a company is required to recognize a “provision” for contingencies.
ICCT	International Council on Clean Transportation.
IFRS	International Financial Reporting Standards
Jelden	Hanno Jelden, Volkswagen’s head of powertrain electronics, who was suspended on October 25, 2015.
Jones Day	Law firm Jones Day, which is conducting an internal investigation into Volkswagen’s emissions-cheating scandal.
KBA	Kraftfahrt-Bundesamt, the German Federal Motor Transport Authority.
Krebs	Rudolf Krebs, a supervisor in charge of the VW Brand Engine Development department from in or about May 2005 to in or about April 2007.
Lead Plaintiff	ASHERS.

1	LEV	CARB's Low Emission Vehicle standards.
2	LEV II	Low Emission Vehicle II standards, adopted by CARB in 1998 and phased in from 2004 to 2010.
3	LEV III	Low Emission Vehicle III standards, adopted by CARB in January 2012 and to be phased in from 2015 to 2025.
4	Lutz	Bob Lutz, a longtime high-ranking executive at numerous car companies.
5	Miami Police	Plaintiff Miami Police Relief and Pension Fund.
6	MSRP	Manufacturer suggested retail price.
7	Müller	Matthias Müller, VW AG CEO since September 2015.
8	Neußer	Hanz-Jakob Neußer, a member of the VW AG Management Board and head of development at VW AG.
9	NOV	Notice of Violation issued by the EPA.
10	NOx	Nitrogen oxides, a family of highly reactive gases that interact with volatile organic compounds in the atmosphere to form ozone, a principal component of smog.
11	NOx traps	A NOx emissions-reduction system used by Volkswagen in many of its TDI vehicles during the Class Period.
12	Officer Defendants	Defendants Winterkorn, Horn, and Diess.
13	Peter	Jürgen Peter, who worked for VW AG's certification group from in or about 1990 until at least January 11, 2017 and was one of VW AG's liaisons with US regulatory agencies between about March 2015 and about July 2015.
14	Piech	Ferdinand Piech, VW AG's CEO from 1992 to 2002 and Supervisory Board Chairman from 2002 until early 2015.
15	Pischetsrieder	Bernd Pischetsrieder, Volkswagen AG CEO from 2002 to 2006.
16	Plaintiffs	ASHERS and Miami Police.
17	Poetsch	Hans Dieter Poetsch, Chairman of VW AG's Supervisory Board since October 2015.
18	Porsche	Porsche Automobil Holding SE (a 50.7% owner of VW AG).
19	PZEV	Partial Zero Emission Vehicles, an emissions category under the LEV II standards.
20	Road calibration	The code name for the settings in which Volkswagen's vehicles installed with defeat devices operated when driven on the road, such that the vehicles produced full power and torque but reduced the effectiveness of emissions controls and produced NOx emissions in excess of governing standards.
21	Rudolph	Falko Rudolph, head of Volkswagen's main transmissions plant in Kassel, Germany.
22	Rule 10b-5	17 C.F.R. § 240.10b-5.
23	Schmidt	Oliver Schmidt, former General Manager, Energy and Environmental Office, VWGoA.
24	SCR	Selective catalytic reduction, a system used to reduce NOx emissions from diesel vehicles by injecting urea-containing DEF.
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1	SOF	The Statement of Facts attached as Exhibit 2 to <i>United States v. Volkswagen AG</i> , Rule 11 Plea Agreement, No. 16-CR-20394 (E.D. Mich. filed Jan. 11, 2017) (attached as Exhibit 1 to this Complaint).
2	SSI	<i>United States v. Dorenkamp, et al.</i> , No. 2:16-cr-20394, Second Superseding Indictment (E.D. Mich. filed Jan. 11, 2017) (Exhibit 2 to this Complaint).
3	SULEV II	Super Ultra Low Emission Vehicles II, an emissions category under the CARB LEV II standards.
4	SULEV III	Super Ultra Low Emission Vehicles III, an emissions category under the CARB LEV III standards.
5	TDI	Turbocharged direct injection, a type of diesel engine developed and produced by VW AG and used in Volkswagen's "clean diesel" vehicles.
6	Tier 2	EPA emission standards phased in between 2004 and 2009, with full compliance required by 2009.
7	Tier 3	EPA emission standards enacted in March 2014, to be phased in from 2017 through 2025.
8	Tuch	Frank Tuch, VW AG's chief quality officer and head of Group Quality Assurance beginning in September 2010, until his resignation in February 2016.
9	UBSFSI	UBS Financial Services, Inc.
10	ULEV II	Ultra Low Emission Vehicles II, an emissions category under the CARB LEV II standards.
11	ULEV III	Ultra Low Emission Vehicles III, an emissions category under the CARB LEV II standards.
12	Vahland	Winifried Vahland, who spent 25 years at the Company and was named head of its North America division on September 15, 2015 before resigning on October 14, 2015.
13	Volkswagen	Defendants VW AG, VWGoA, VWoA, and AoA.
14	VW AG	Defendant Volkswagen Aktiengesellschaft. VW AG is the parent company of the Volkswagen Group, which comprises twelve brands, including Volkswagen, Audi, Seat, Skoda, Bentley, Bugatti, Lamborghini, Porsche, Ducati, Scania, Man, and Volkswagen Commercial Vehicles.
15	VWGoA	Defendant Volkswagen Group of America, Inc., a wholly owned subsidiary of VW AG that houses the US operations of VW AG's brands.
16	VWoA	Defendant Volkswagen Group of America, Inc. d/b/a/ Volkswagen of America, Inc., an operating unit of VWGoA and a subsidiary of VW AG.
17	Winterkorn	Defendant Martin Winterkorn, CEO and Chairman of the VW AG Management Board from January 1, 2007 until his resignation on September 23, 2015.
18	WVU	West Virginia University.



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**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

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