

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ICONIC MOTORS, INC. d/b/a ELGIN )  
VOLKSWAGEN, an Illinois corporation; and )  
SLEVIN CAPITAL INVESTMENTS, INC., )  
an Illinois corporation )

Plaintiffs, )

v. )

Case No. 17-cv-3728

VOLKSWAGEN GROUP OF AMERICA, )  
INC., a New Jersey Corporation; )  
VOLKSWAGEN AG, a German corporation, )  
ROBERT BOSCH, LLC, a Michigan limited )  
liability company, and ROBERT BOSCH )  
GmbH, a German private limited company. )

Defendants. )

**COMPLAINT**

Plaintiffs Iconic Motors, Inc. d/b/a Elgin Volkswagen (“Elgin VW”) and Slevin Capital Investments, Inc. (“SCI”) (Elgin VW and SCI collectively, “Plaintiffs”), for their Complaint against Volkswagen Group of America, Inc., a New Jersey Corporation (“VGoA”), Volkswagen Aktiengesellschaft, a German corporation, (“VWAG”) (VGoA and VWAG, collectively, “Volkswagen” or “VW”), Robert Bosch, LLC, a Michigan limited liability company (“Bosch LLC”) and Robert Bosch GmbH, a German private limited company (“Bosch GmbH”) (Bosch America and Bosch Germany, collectively, “Bosch”) (Volkswagen and Bosch collectively, the “Defendants”) state and allege as follows:

**NATURE OF THE CASE**

1. This case arises from the fraudulent and conspiratorial conduct of Volkswagen and its co-defendants in installing “defeat devices” in Volkswagen’s Turbocharged Direct Injection or “TDI®” vehicles. These devices were installed in order to trick American regulators,

motor vehicle dealers, and consumers into believing that the vehicles met U.S. emission standards. From 2009 to 2015, Volkswagen sold and/or leased in the United States over 500,000 of these “dirty” TDI diesels (the “Affected Vehicles”) to U.S. Consumers through Volkswagen’s franchised dealers.

2. Volkswagen was substantially assisted by Bosch, who made the defeat devices knowing that they were destined to be installed in Volkswagen vehicles and that they would be used by Volkswagen for an unlawful and illegal purpose. In so doing, Defendants conspired to defraud Volkswagen-branded franchise dealers, including Plaintiffs, with respect to the cars Volkswagen sold, as well as the value, viability, expected return, of Plaintiffs’ Volkswagen dealership in the years and decades to come.

3. Elgin VW is a Volkswagen-franchised dealership owned and operated by established motor vehicle dealer, William Slevin. Slevin has been an automotive dealer for over 35 years and operates multiple successful franchises. Slevin has never been involved in litigation with any automotive manufacturer in his entire career, but has been left with no choice but to file suit in order to recoup his losses caused by the Defendants.

4. In 2013, at the height of its active fraud, Volkswagen was pushing forward with an expansion of its existing dealer network. Slevin was specifically selected by Volkswagen for a new “add point” in Elgin, Illinois because of his expertise and reputation for operating successful automotive dealerships, particularly in the Chicago metropolitan market. To convince Slevin to represent the brand, Volkswagen lauded its past and expected future performance, including the success of the TDI vehicles and Volkswagen’s future as a leader in clean diesel technology.

5. Volkswagen designated the location for Slevin's dealership, stating that it was an optimal location to serve Volkswagen's market. In reliance on Volkswagen's representations about its products and brand, and its concealment of the emerging emissions scandal, Slevin invested millions of dollars to acquire and construct a new state-of-the-art facility that met Volkswagen's strict facility imagining and size requirements.

6. However, weeks before Elgin VW was set to open its doors, the EPA announced that Volkswagen had defrauded the American people, and indeed the world, with its clean diesel technology. As a direct and proximate result of the emissions scandal, Plaintiffs have suffered millions of dollars in financial losses, lost profits, and diminution in value that they would not have suffered but for Volkswagen's and Bosch's illegal conduct. Plaintiffs are entitled to compensation for these losses, as well as their attorneys' fees and experts' fees.

7. Worse, Volkswagen has failed to take responsibility for the damage it has caused Elgin VW, instead suggesting (implausibly) that Elgin VW's loss of sales are the result of its own marketing and management efforts. In one specific shocking example, less than 10 days after Elgin VW opened and in the midst of the emissions scandal, Volkswagen accused Elgin VW of "wasting" money marketing to certain demographics of customers within its diverse market area. Volkswagen's agent specifically stated by email on November 11, 2015: "[Hispanic and African-American] demos [sic] do not typically buy VWs for a number of reasons – too girly, never see the ads and if they do they aren't macho enough, don't lease, etc. Marketing to these groups is a waste of money . . . ." (*See infra*, ¶¶ 217 – 20.)

8. While Volkswagen has scurried to settle various class actions related to the emissions crisis, Volkswagen knew that Elgin VW was not eligible to be a member of the Volkswagen dealer class and is therefore left to fight the Defendants alone. As a result,

Volkswagen has failed to take the claims of Elgin VW seriously or compensate Elgin VW fairly for its unique damages. Volkswagen's belief that Elgin VW will be deterred from seeking fair treatment in court is misplaced.

9. The Defendants unabashed and intentional attempt to defraud Plaintiffs and mislead the public entitles Plaintiffs to punitive damages. In total, Plaintiffs seek compensation in excess of \$40,000,000—an amount necessary to make Elgin VW whole and ensure that Volkswagen's crimes are never repeated by any automotive manufacturer.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, because Plaintiffs' claims arise, in part, under RICO, 18 U.S.C. § 1962, and the Dealer's Day in Court Act, 15 U.S.C. § 1221, and therefore present federal questions.

11. The Court also has diversity jurisdiction under 28 U.S.C. § 1332, because Plaintiffs are citizens of Illinois and Defendants are citizens of different states or foreign nations and the amount in controversy is greater than \$75,000. The citizenship of each party is described further below in the "Parties" Section.

12. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

13. This Court has personal jurisdiction over each Defendant pursuant to RICO, 18 U.S.C. §§ 1965(b) because it would serve the ends of justice to compel the Defendants, which are national and international companies doing business in this State and District, to answer for their illegal acts in the Northern District of Illinois, where Plaintiffs are located.

14. This Court also has personal jurisdiction over the Defendants pursuant to Federal Rule of Civil Procedure 4 and 735 ILCS 5/2-209(a)(1), (2) and (7), as Plaintiffs claims arise from

the transaction of business in Illinois, the Defendants' tortious conduct in Illinois, and the making of a promise and/or contract substantially connected with Illinois, and (b)-(d) because the Defendants are all corporations doing business in Illinois. The Defendants have minimum contacts with the United States, this judicial District and this State, and intentionally availed themselves of the laws of the United States and this State by conducting a substantial amount of business throughout the State, including the franchise, distribution, sale, lease, and/or warranty of Volkswagen products in this State and District. At least in part because of Defendants' misconduct as alleged in this lawsuit, Affected Vehicles ended up on this State's roads and in dozens of franchised dealerships.

15. Venue is proper in this Court under 28 U.S.C. § 1391, because: (i) Defendants conduct substantial business in this District and have intentionally availed themselves of the laws and markets of the United States and this District; and/or (ii) many of the acts and transactions giving rise to this action occurred in this District, including, *inter alia*, Defendants' promotion, marketing, distribution and sale of the Affected Vehicles to Plaintiffs and other franchised Volkswagen dealers in this District. Defendants sell a substantial number of automobiles in this District, have dealerships located throughout this District, and the misconduct occurred in part in this District. Venue is also proper under 18 U.S.C. § 1965(a), because Defendants are subject to personal jurisdiction in this District as alleged in the preceding paragraph, and Defendants have agents located in this District.

## **PARTIES**

### **Plaintiffs**

16. Plaintiff Iconic Motors, Inc. d/b/a Elgin Volkswagen ("Elgin VW") is an Illinois corporation with its principal place of business in Kane County, Illinois. Elgin VW is a

Volkswagen franchised dealership. William Slevin (“Slevin”) is the owner, Dealer Operator, and President of Elgin VW.

17. Plaintiff Slevin Capital Investments, Inc. (“SCI”) is an Illinois corporation with its principal place of business in Cook County, Illinois. SCI is the capital investment and holding company owned and operated by Slevin. SCI owns the property and building where Elgin VW is located.

### **The Volkswagen Defendants**

18. Volkswagen Group of America, Inc. (“VGoA”) is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. VGoA is a wholly-owned subsidiary of Volkswagen AG, and it engages in business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50 states. In 2014 alone, VGoA sold 552,729 vehicles from its 1,018 dealer locations in all 50 states, including 95,240 TDI “clean” diesel vehicles. VGoA maintains offices for its Midwest Region in Rosemont, Cook County, Illinois.

19. Volkswagen AG (“VWAG”) is a German Aktiengesellschaft (corporation), organized under German law with its principal place of business in Wolfsburg, Germany. VWAG is one of the largest automobile manufacturers in the world, and is in the business of designing, developing, manufacturing, and selling automobiles. VWAG is the parent corporation of VGoA, Audi AG, and Porsche AG. According to VWAG, it sold 10.14 million cars worldwide in 2014 — including 6.12 million VW-branded cars, 1.74 million Audi-Branded cars, and 189,849 Porsche-branded cars. Combined with other brands, VWAG boasts a 12.9% share of the worldwide passenger car market. VWAG’s sales revenue in 2014 totaled €202 billion

(approximately \$221 billion) and sales revenue in 2013 totaled €197 billion (approximately \$215 billion). At €12.7 billion (approximately \$13.9 billion), VWAG generated its highest ever operating profit in fiscal year 2014, beating the previous record set in 2013 by €1.0 billion (approximately \$1.1 billion).

20. With the help of Defendant Bosch, VWAG engineered, designed, developed, manufactured, and installed the defeat device software in the Affected Vehicles equipped with the 2.0-liter and 3.0 liter TDI engines and exported these vehicles with the knowledge and understanding that they would be sold throughout the United States at VW-branded franchise dealerships, including Plaintiff Elgin VW. VWAG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Affected Vehicles.

21. VGoA and VWAG were and are at all times relevant to the allegations in this complaint working in concert under the common objective to engage in the emissions scheme described in this complaint. Each of VGoA and VWAG were and are the agents of each other and have acted and act for their common goals and profit. Therefore, all acts and knowledge ascribed to one of VGoA or VWAG are properly imputed to the other. VGoA and VWAG are referred to collectively herein as “Volkswagen” or “VW.”

22. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen, Audi, and Porsche brand names throughout the United States. Volkswagen and/or its parents, affiliates and agents designed, manufactured, and installed the CleanDiesel engine systems in the Affected Vehicles, which included the “defeat device,” manufactured by Bosch Defendants. Volkswagen and/or its parents, affiliates, and agents developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

### **The Bosch Defendants**

23. From at least 2005 to 2015, Bosch GmbH and Bosch LLC were knowing and active participants in the creation, development, marketing, and sale of illegal defeat devices specifically designed to evade U.S. emissions requirements in vehicles sold solely in the United States. Bosch participated not just in the development of the defeat device, but in the scheme to prevent U.S. regulators from uncovering the device's true functionality. Moreover, Bosch's participation was not limited to engineering the defeat device (in a collaboration described as unusually close). Rather, Bosch marketed "Clean Diesel" in the United States and lobbied U.S. regulators to approve Affected Vehicles, another highly unusual activity for a mere supplier. These lobbying efforts, taken together with evidence of Bosch's actual knowledge that its products operated as a defeat device, and participation in concealing the true functionality of the device from U.S. regulators, can be interpreted only one way under U.S. law: Bosch was a knowing and active participant in a massive, decade-long conspiracy with VW to defraud U.S. consumers, regulators and VW-branded franchise dealers.

24. Robert Bosch GmbH ("Bosch GmbH") is a German multinational engineering and electronics company headquartered in Gerlingen, Germany. Bosch GmbH is the parent company of Robert Bosch LLC. Bosch GmbH, directly and/or through its North-American subsidiary Bosch LLC, at all material times, designed, manufactured, and supplied elements of the defeat device to Volkswagen for use in the Affected Vehicles. Bosch GmbH is subject to the personal jurisdiction of this Court because it has availed itself of the laws of the United States through its management and control over Bosch, LLC, and over the design, development, manufacture, distribution, testing, and sale of hundreds of thousands of the defeat devices installed in the Affected Vehicles sold or leased in the U.S.

25. Robert Bosch LLC (“Bosch LLC”) is a Delaware limited liability company with its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Bosch LLC is a wholly-owned subsidiary of Bosch GmbH. Bosch LLC, directly and/or in conjunction with its parent Bosch GmbH, at all material times, designed, manufactured, and supplied elements of the defeat device to Volkswagen for use in the Affected Vehicles. Bosch LLC, through itself or its subsidiaries and affiliates, maintains offices and locations throughout the United States, at least three of which are in this District: Downtown Chicago, Mount Prospect, and Broadview.

26. Both Bosch GmbH and Bosch LLC (together “Bosch”) operate under the umbrella of the Bosch Group, which encompasses some 340 subsidiaries and companies. The Bosch Group is divided into four business sectors: Mobility Solutions (formerly Automotive Technology), Industrial Technology, Consumer Goods, and Energy and Building Technology. The Mobility Solutions sector, which supplies parts to the automotive industry, and its Diesel Systems division, which develops, manufactures and applies diesel systems, are particularly at issue here, and include the relevant individuals at both Bosch GmbH and Bosch LLC. Bosch’s sectors and divisions are grouped not by location, but by subject matter. Mobility Solutions includes the relevant individuals at both Bosch GmbH and Bosch LLC. Regardless of whether an individual works for Bosch in Germany or the U.S., the individual holds him or herself out as working for Bosch. This collective identity is captured by Bosch’s mission statement: “We are Bosch,” a unifying principle that links each entity and person within the Bosch Group.<sup>1</sup>

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<sup>1</sup> Bosch 2014 Annual Report: “Experiencing quality of life,” available at [http://www.bosch.com/en/com/bosch\\_group/bosch\\_figures/publications/archive/archive-cg12.php](http://www.bosch.com/en/com/bosch_group/bosch_figures/publications/archive/archive-cg12.php).

## ALLEGATIONS COMMON TO ALL COUNTS<sup>2</sup>

### I. THE TDI CLEAN DIESEL EMISSIONS SCANDAL.

27. Volkswagen's monumental fraud in the certification of its so-called "CleanDiesel" automobiles in the U.S. and worldwide through the use of illegal "defeat devices" was certainly one of the most significant fraudulent events in the automotive industry in the last decade, and one of the most significant environmental crimes in history. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA: "Using a defeat device in cars to evade clean air standards is illegal and a threat to public health." Yet that is exactly what Volkswagen did in its 2009-2015 Volkswagen, Audi, and Porsche CleanDiesel vehicles.<sup>3</sup> The software that enables the defeat device at issue was supplied to Volkswagen by Defendant Bosch. Everything about Volkswagen's fraudulent scheme was coolly calculated, as defendant Michael Horn, the newly departed CEO of VWoA, confessed in the fall of 2015 at Congressional hearings: "[the defeat device] was installed for this purpose, yes."<sup>4</sup>

28. The United States Government has passed and enforced laws designed to protect citizens from pollution and in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these laws and must adhere to state and EPA rules and regulations. Following revelations of Volkswagen's widespread use of defeat devices, made possible by Bosch's software, to defraud the EPA and state regulators, hundreds of class

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<sup>2</sup> Many of the allegations detailed in this Complaint are substantially adopted from the Amended Complaint filed by the Franchised Dealer Class in *Napleton Orlando Imports LLC, et al. v. Volkswagen Group of America, Inc., et al.*, No. 3:16-cv-02086-CRB (N.D. Cal.) (Dkt. No. 11; Sept. 30, 2016.)

<sup>3</sup> See Sept. 18, 2015 EPA News Release; Nov. 2, 2015 EPA News Release.

<sup>4</sup> See Bill Chappell, 'It Was Installed For This Purpose,' *VW's U.S. CEO Tells Congress About Defeat Device*, NPR (Oct. 8, 2015), available at <http://www.npr.org/sections/thetwo-way/2015/10/08/446861855/volkswagen-us-ceo-faces-questions-on-capitol-hill>.

action lawsuits were filed on behalf of consumers who purchased the affected vehicles, and independent dealers who owned the affected vehicles, but were unable to sell them because of Volkswagen's fraud. Stop sale orders were placed on all vehicles with defect devices that franchised dealers had paid for.

29. Volkswagen promised low-emission environmentally friendly vehicles, with high fuel economy and exceptional performance. In response to Volkswagen's aggressive advertising of "Clean" diesel, consumers bought them in record numbers. Volkswagen has sold more diesel cars in the United States than every other brand combined.

30. The Affected Vehicles include the following line makes and models:

<b>2.0 Liter Diesel Models and Years</b>	
Volkswagen Jetta	2009-2015
Volkswagen Jetta SportWagen	2009-2014
Volkswagen Beetle	2012-2015
Volkswagen Beetle Convertible	2012-2015
Audi A3	2010-2015
Volkswagen Golf	2010-2015
Volkswagen Golf SportWagen	2015
Volkswagen Passat	2012-2015

<b>3.0 Liter Diesel Models and Years</b>	
Volkswagen Touareg	2009-2016
Porsche Cayenne	2013-2016
Audi A6 Quattro	2014-2016
Audi A7 Quattro	2014-2016
Audi A8	2014-2016
Audi A8L	2014-2016
Audi Q5	2014-2016
Audi Q7	2009-2016

31. Now, “there are half a million cars running an emissions setup that never should’ve left the factory.”<sup>5</sup> Each of these Affected Vehicles is illegal and never should have been sold because Volkswagen’s fraudulently obtained EPA certificates of conformity were invalid.

32. As detailed in the EPA’s September 18, 2015 Notice of Violation (“First NOV”), sophisticated software in the Affected Vehicles developed jointly by Volkswagen and Bosch detects when the vehicle is undergoing emissions testing and engages full emissions controls during the test. At all other times that the vehicle is running, the emissions controls are suppressed. Thus, the Affected Vehicles meet emissions standards in the laboratory or testing station, but during normal operation they emit oxides of nitrogen (NO<sub>x</sub>) at up to 40 times the standard allowed under federal and state laws and regulations.

33. The software was produced by Defendants Bosch and contained in an Electronic Diesel Control Module (“EDC”) that Bosch provided to Volkswagen. The EDC with Bosch’s software is a prohibited device, also known as a “defeat device, as defined by the Clean Air Act. *See* 42 U.S.C.A. § 7522; 40 C.F.R. § 86.1803-01.

34. By manufacturing and selling cars with defeat devices, Volkswagen violated the Clean Air Act and state environmental regulations, breached franchisee protection laws, breached its VW-branded franchise dealer agreements, defrauded its VW-branded franchise dealers, engaged in a criminal racketeering enterprise and engaged in unfair competition under state and federal law.

35. Substantial diminution in the value of Affected Vehicles has already been reported. The precipitous drop in the value of Affected Vehicles, the inability of VW-branded

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<sup>5</sup> <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/> (last visited on Sept. 28, 2015).

franchise dealers to sell Affected Vehicles, and the tremendous diminution in the Volkswagen brand value has caused direct and quantifiable harm to Plaintiffs.

**A. Non-Party Participants of the Criminal Conspiracy.**

36. Martin Winterkorn was CEO of VWAG until he resigned on September 23, 2015, in the wake of the diesel emissions scandal. Notably, Winterkorn was widely regarded as a detail-oriented, micromanaging CEO, who retained control over engineering details that many other CEOs would relinquish fully to deputies. Winterkorn is presently being investigated by the German government for allegations of fraud. Winterkorn reportedly hand-picked the engineers who designed the defeat devices. Winterkorn received compensation from the illegal scheme and course of conduct based on the revenues and profits from the Affected Vehicles and Volkswagen's increased market share. Winterkorn approved, authorized, directed, ratified, and/or participated in the acts complained of herein.

37. Matthias Muller is a 40-year veteran of Volkswagen, where he began as an apprentice toolmaker at Audi AG in 1977. Muller was appointed coordinator of the Audi model lines in 2002, after Winterkorn took over the management of Audi AG. In 2007, when Winterkorn became CEO of VWAG, Winterkorn appointed Muller as Head of Product Management across all Volkswagen brands. In 2010, Muller was appointed CEO of Porsche AG. In 2014, Muller became the Chief Information Officer of Porsche Automobil Holding SE. Muller became the CEO of VWAG on September 25, 2015, upon Winterkorn's resignation amidst the emissions scandal. Muller profited millions of dollars from the illegal scheme and course of conduct based on the revenues and profits from the Affected Vehicles and Volkswagen's increased market share. Muller approved, authorized, directed, ratified, and/or participated in the acts complained of herein.

38. Until March, 2016, Michael Horn was President and CEO of VGoA. Horn received compensation from the illegal scheme and course of conduct based on the revenues and profits from the Affected Vehicles and Volkswagen's increased market share. Horn approved, authorized, directed, ratified, and/or participated in the acts complained of herein. Horn has admitted that he was aware of the vehicles' emissions non-compliance since at least 2014.

39. Rupert Stadler became the CEO of Audi AG on January 1, 2010. Stadler joined Audi AG in 1990 and has held various roles at Audi and VW, including the Head of the Board of Management's Office for Volkswagen and the Head of Group Product Planning. In 2003, Stadler became an Audi AG Board Member and was later responsible for the Finance and Organization Division. Stadler joined the Board of Management of Volkswagen when he was appointed to his current role as CEO of Audi AG. Stadler received millions of dollars from the illegal scheme and course of conduct based on the revenues and profits from the Affected Vehicles and Volkswagen's increased market share. Stadler approved, authorized, directed, ratified, and/or participated in the acts complained of herein.

40. Volkmar Denner has been the Chairman CEO of Robert Bosch GmbH since July 1, 2012. Denner contemporaneously holds the position of Chief Technology Officer. Denner joined Bosch in 1986, and has held numerous positions within the company, including Director of ECU Development, Vice-President of Sales and Development, Semiconductors and Electronic Control Units division, and President of Automotive Electronics division. In 2006, Denner became a member of Robert Bosch GmbH's Board of Management and was later responsible for research and advance engineering, product planning, and technology coordination across the company's three business sectors from July 2010 until his appointment as CEO. Denner received millions of dollars from the illegal scheme and course of conduct based on the revenues and

profits from the sale of defeat devices to Volkswagen. Denner approved, authorized, directed, ratified, and/or participated in the acts complained of herein.

41. IAV GmbH (“IAV”) is a private limited company headquartered in Berlin, Germany. IAV is an engineering company in the automotive industry and designs products for powertrain, electronics and vehicle development. Volkswagen is an IAV client and owns a controlling share of IAV’s stock.

42. IAV Automotive Engineering Inc. is a subsidiary of IAV based in the USA.

43. IAV employees were part of working group that included Bosch and Volkswagen that had a common purpose of designing and implementing a defeat device in U.S.-based diesel Volkswagens. The United States Department of Justice has been investigating IAV’s role in the dieselgate emissions scandal as a possible co-conspirator with Volkswagen and Bosch.<sup>6</sup>

**B. Volkswagen’s Plot to Dominate the Automotive Market**

44. Volkswagen’s illegal diesel emissions scheme was borne out of greed and ambition to dominate the global automotive market at any cost. By Volkswagen’s own admissions, the seeds for the scandal were planted in 2005, as Volkswagen was repositioning itself in light of tightening U.S. emission regulations, “with a strategic decision to launch a large-scale promotion of diesel vehicles in the United States in 2005.”<sup>7</sup> While other automakers focused on hybrid, electric or hydrogen fueled vehicles, Volkswagen pivoted toward “clean diesel” technology to reach the growing market of environmentally conscious consumers.

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<sup>6</sup> <https://www.bloomberg.com/news/articles/2016-09-16/vw-diesel-cheat-probe-widens-as-u-s-said-to-investigate-bosch>

<sup>7</sup> *Volkswagen making good progress with its investigation, technical solutions, and Group realignment*, VOLKSWAGEN AG (Dec. 10, 2015), [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2015/12/VW\\_PK.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/12/VW_PK.html).

45. In 2004, the second generation Toyota Prius became an explosive success, tripling global sales from years prior and changing environmentally-friendly vehicles from a niche market to a standard consumer option. Although it was the first mainstream hybrid vehicle, the Prius was widely viewed as “boring,” because the improvements in fuel efficiency and emissions were offset by relatively bland styling and lackluster driving performance.

46. Volkswagen took note of the success of the Prius and sought to achieve the same (or better) efficiency benchmarks, but in a “fun-to-drive,” high-performance vehicle. This was to be achieved with a purported remarkable breakthrough in diesel technology: the EA189 TDI engine. TDI, short for “turbocharged diesel injection,” was the culmination of millions of dollars in research and development, and was heralded by VW as the critical factor that would be responsible for its growth and success in the U.S.

47. In 2007, Martin Winterkorn left his position at Audi to become VWAG’s CEO. Winterkorn set goals for Volkswagen to become a world leader in automobile manufacturing. This included a target of tripling U.S. sales to at least 800,000 vehicles by 2018.<sup>8</sup> At the time, diesel-engine vehicles made up just 5% of the U.S. car market, and Winterkorn recognized this as the perfect opportunity to expand Volkswagen’s market share.

48. To expand its diesel market penetration in the U.S., Volkswagen needed to overcome the stigmas associated with diesel vehicles. Foremost among these was the consumer perception that diesel engines emitted thick, toxic smoke full of dangerous and destructive pollutants, and should be relegated to the smog-filled cities of the past. In developing and marketing a new kind of diesel vehicle, Volkswagen claimed to have solved the environmental

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<sup>8</sup> William Boston, *Volkswagen Emissions Investigation Zeroes In on Two Engineers*, WALL STREET JOURNAL (Oct. 5, 2015), <http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-ontwo-engineers-1444011602>.

problems with its new EA189 engine, which it aggressively marketed as the clean, green, sporty alternative to hybrid engines, such as those in the Prius.

49. Behind the scenes, however, Volkswagen realized that it was not possible to roll out these so-called “clean” diesel vehicles within its self-imposed budgets and engineering constraints. To get the job done, Winterkorn appointed two engineers with whom he had worked closely at Audi (Ulrich Hackenberg and Wolfgang Hatz) to lead up R&D and engine development for this project. These two engineers were the chief developers of the TDI engine.<sup>9</sup> Their primary mandate from management was to develop a diesel engine that maintained the performance of traditional gasoline engines with reduced CO<sub>2</sub> emissions and lower gas mileage, all while meeting the strict NO<sub>x</sub> emission standards in the U.S.

50. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can convert over 45% of fuel energy into useful mechanical energy, whereas gasoline engines convert only 30% of fuel into energy.<sup>10</sup> To make use of this dense diesel fuel, diesel engines combine high temperatures and high compression to produce a pressure-cooker of mechanical energy, as opposed to a spark ignition in the typical gasoline engine. Though more efficient, diesel engines come with their own set of challenges, as highly-compressed diesel emissions produce high levels of NO<sub>x</sub>. These NO<sub>x</sub> emissions can be reduced by adjusting the compression and temperature, but that in turn produces soot, a similarly-undesirable hydrocarbon emission. Diesel engines exist in a state of balance between these conditions, known as “rich”

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<sup>9</sup> Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, N.Y. TIMES (Oct. 5, 2015), <http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagento-evade-emissions-testing.html>.

<sup>10</sup> *Just the Basics, Diesel Engine*, U.S. DEPT. OF ENERGY, OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY (last visited Feb. 8, 2016), available at [http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb\\_diesel\\_engine.pdf](http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf).

and “lean” states. A diesel engine in a rich state contains more fuel than air, which in turn tends to burn off less fuel and thereby produces higher amounts of soot, reduced fuel efficiency, and sluggish driving performance. On the other hand, the lean state contains more air than fuel and produces higher amounts of NO<sub>x</sub>. Neither of these discharges is desirable, and for the EPA to designate a diesel car as a “clean” vehicle, it must produce **both** low soot and low NO<sub>x</sub>.

51. In recent years, the EPA and the California Air Resources Board (“CARB”) have promulgated stricter NO<sub>x</sub> emission standards, requiring all diesel models starting in 2007 to produce 90% less NO<sub>x</sub> than years prior.<sup>11</sup> These strict emission standards posed a challenge to Volkswagen’s engineers in developing the EA189 engines. In fact, during a 2007 demonstration in San Francisco, engine R&D chief Hatz lamented presciently that “[Volkswagen] can do quite a bit and we will do a bit, but ‘impossible’ we cannot do. . . . From my point of view, the CARB is not realistic . . . . I see it as nearly impossible for [Volkswagen].”<sup>12</sup>

52. Yet, the “impossible” is just what Volkswagen set out to do. In order to successfully grow the U.S. diesel market and meet its ambitious goals, Volkswagen needed to develop the technology to reduce NO<sub>x</sub> emissions, while maintaining the efficient, powerful performance of a lean-state diesel engine. This seemingly impossible dilemma mired Volkswagen in an internal struggle about how to best proceed, with two divergent technological solutions available: selective catalytic reduction (“SCR”), or use of a lean NO<sub>x</sub> trap (“LNT”).

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<sup>11</sup> *Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements* ENVIRONMENTAL PROTECTION AGENCY (Dec. 2000), <http://www3.epa.gov/otaq/highway-diesel/regs/f00057.pdf>.

<sup>12</sup> Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With Emissions*, N.Y. TIMES (Dec. 21, 2015), <http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pay>.

53. Advocating the former of these solutions, in 2006, Wolfgang Bernhard, then a top executive at VWAG (and former Daimler executive), championed a technology-sharing agreement with Mercedes-Benz and BMW to jointly develop a SCR system using urea. This system, which assists in neutralizing emissions of NO<sub>x</sub>, was generically known as a “Diesel Exhaust Fluid” system and marketed as “Bluetec” by Mercedes and “AdBlue” by Volkswagen and other German vehicle manufacturers. This solution, touted by Bernhard, worked by injecting urea into a diesel vehicle’s exhaust stream to react with the NON, converting it into harmless nitrogen and oxygen.

54. While Hatz initially supported this solution, stating publicly at the Detroit Auto Show in early 2007 that “Bluetec technology allows us to demonstrate Audi’s commitment to always being at the very forefront of diesel technology,”<sup>13</sup> his support dissipated as Volkswagen’s leadership factionalized — split between those who balked at the \$350 per-vehicle cost of the SCR system advocated by Bernhard, and those who thought that the SCR system was the only technologically feasible method to meet emission regulations.

55. Bernhard, the advocate for SCR, ultimately lost the internal battle at Volkswagen and resigned. Consequently, Hatz remained and was tasked with implementing the alternative strategy: the lower-cost LNT. This relatively inexpensive technology involved the storage of NO<sub>x</sub> emissions in a separate compartment during vehicle operation. Once that compartment filled up, the system burned off the stored NO<sub>x</sub> by pumping an extra burst of fuel into the cylinders, most of which passed through to the converter, where it then burned the NO<sub>x</sub> into nitrogen and oxygen. While this method was cheaper and easier to implement than the SCR system advocated by Bernhard, it was less effective and resulted in lower fuel efficiency.

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<sup>13</sup> *Id.*

56. According to many sources (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen's top brass issued a directive to its engineers to find a way to meet emission standards despite tight budgetary and technical constraints, or suffer the consequences. Volkswagen AG's former CEO, Ferdinand Piech, created "a culture where performance was driven by fear and intimidation" and whose leadership was characterized as "a reign of terror."<sup>14</sup> Employees were told, "[y]ou will sell diesels in the U.S., and you will not fail. Do it, or I'll find somebody who will."<sup>15</sup> Piech was infamous for firing subordinates who failed to meet his exacting standards: "Stories are legion in the industry about Volkswagen engineers and executives shaking in their boots prior to presentations before Piech, knowing that if he was displeased, they might be fired instantly."<sup>16</sup> And so it seems, out of self-preservation, the defeat device scandal was borne.

### **C. Defendants' Dirty "Defeat Device" Scheme**

57. Volkswagen engineers had to find a solution to the "impossible" problem of passing stricter emission standards while maintaining performance and fuel efficiency, all while hamstrung by cost-cutting measures. And it had to be done fast, because the new diesel vehicles were scheduled for imminent release in the U.S.

58. It became clear that the TDI engine could not meet U.S. emission regulations when the launch of the Jetta TDI "clean" diesel, initially scheduled for 2007, had to be delayed

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<sup>14</sup> Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, ROAD & TRACK (Nov. 4, 2015), <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-dieselfiasco/>.

<sup>15</sup> *Id.*

<sup>16</sup> Doron Levin, *The man who created VW's toxic culture still looms large*, FORTUNE (Oct. 16, 2015), <http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.

after initial emission testing failed.<sup>17</sup> The prospect of failure was unacceptable, so Volkswagen decided to cheat instead. It has been reported that the decision to cheat the EPA, CARB, and countless other regulators worldwide was an “open secret” in Volkswagen’s engine development department,<sup>18</sup> as it was necessary for the “EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted.”<sup>19</sup>

59. All modern engines are integrated with sophisticated computer components to manage the vehicle’s operation, such as an electronic diesel control. Bosch tested, manufactured and sold the EDC system used by Volkswagen in the Affected Vehicles, which is more formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”). Upon its introduction, EDC Unit 17 was publicly-touted by Bosch as follows:

. . . EDC17 . . . controls every parameter that is important for effective, low-emission combustion.

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world’s markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle’s entire

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<sup>17</sup> *VW delays Jetta TDI diesel into the US*, Clean MPG (last visited Feb. 8, 2016), <http://www.cleanmpg.com/community/index.php?threads/7254/>.

<sup>18</sup> Georgina Prodhon, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigationidUSKCN0V02E7>.

<sup>19</sup> Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-companytolerated-breaches-rules>.

service life. The system therefore makes an important contribution to observing future exhaust gas emission limits<sup>[20]</sup>

60. EDC Unit 17 was widely used throughout the automotive industry, including by BMW and Mercedes, to operate modern clean diesel engines. Bosch worked with each vehicle manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code to manage the vehicle's engine operation.

61. With respect to the Affected Vehicles, however, EDC Unit 17 was also enabled by Bosch and Volkswagen to surreptitiously evade emissions regulations. Bosch and Volkswagen worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, which enabled Volkswagen to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea injection rates (for applicable vehicles).<sup>21</sup>

62. When carmakers test their vehicles against EPA emission standards, they place their cars on dynamometers (large rollers) and then perform a series of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen the power to detect test scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure, and even the position of the steering wheel. When the EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration" to cause a

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<sup>20</sup> See February 28, 2006 Bosch press release, "The brain of diesel injection: New Bosch EDC17 engine management system," <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

<sup>21</sup> See, e.g., *Engine management*, Bosch Auto Parts (last visited February 8, 2016), [http://de.bosch-automotive.com/en/parts\\_and\\_accessories/motor\\_and\\_sytems/diesel/engine\\_management\\_2/engine\\_control\\_unit\\_1](http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1).

subsequent reduction in emissions to legal levels. Once the EDC Unit 17 detected that the emission test was complete, the EDC Unit would then enable a different “road calibration” that caused the engine to return to full power while reducing the emissions control systems’ performance, and consequently, caused the car to spew the full amount of illegal NO<sub>x</sub> emissions out on the road.<sup>22</sup>

63. This workaround was illegal. The Clean Air Act expressly prohibits “defeat devices,” defined as any auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01; *see also id.* § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”). Moreover, the Clean Air Act prohibits the sale of components used as defeat devices, “where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3).

64. Finally, in order to obtain a COC, automakers must submit an application, which lists all auxiliary emission control devices installed in the vehicle, a justification for each, and an explanation of why the control device is not a defeat device.

65. In order to obtain the COCs necessary to sell their vehicles, Volkswagen did not disclose, and affirmatively concealed, the presence of the test-detecting and performance altering software code that it developed with Bosch within the EDC Unit 17. In other words, Volkswagen lied to the government, its customers, its dealers and the public at large. An example of one of Volkswagen’s vehicle stickers reflecting its fraudulently-obtained COCs is pictured below:

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<sup>22</sup> Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.



66. Volkswagen’s illegal workaround was enabled by its close partnership with defendant Bosch, which enjoyed a sizable portion of its annual revenue from manufacturing parts used in Volkswagen’s diesel vehicles.<sup>23</sup> Bosch was well aware that Volkswagen was using its emissions control components as a defeat device and, in fact, worked with Volkswagen to develop the software algorithm specifically tailored for the Affected Vehicles. Although Bosch reportedly “advised” Volkswagen as early as 2007 that the components should only be used for internal testing, not for manipulation of the engine in emission testing,<sup>24</sup> it knew (or certainly should have known) that the components were being used as defeat devices. Bosch supplied Volkswagen with approximately 11 million such emission control components over seven years.

67. Volkswagen, likewise, knew better — VGoA itself is a recidivist violator of the Clean Air Act. In July of 1973, the EPA sought legal action against VGoA based on a claim that

<sup>23</sup> Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel-technology operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See Bosch probes whether its staff helped VW’s emissions rigging*, Automotive News (Jan. 27, 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staffhelped-vws-emissions-rigging>.

<sup>24</sup> *VW scandal: Company warned over test cheating years ago*, BBC (Sept. 27, 2015), <http://www.bbc.com/news/business-34373637>

defeat devices were installed in 1973 Volkswagen vehicles. The matter was swiftly settled for \$120,000 the following year.<sup>25</sup> And, in June of 2005, VW America entered into a consent decree with the DOJ, wherein it paid a \$1 1 million penalty for failing to notify the EPA of emissions problems in certain vehicles manufactured by VW in Mexico.<sup>26</sup>

68. Volkswagen could not help but repeat its cheating ways. With respect to the Affected Vehicles, Volkswagen hid the fact of the defeat devices from the EPA, such that the COCs were fraudulently obtained. Specifically, VGoA submitted COC applications on behalf of VWAG, Audi AG, and itself, for the 2.0-liter and VW-and Audi-branded 3.0-liter Affected Vehicles, describing compliant specifications and concealing the dual-calibration strategy of the defeat device. But, the Affected Vehicles differed in “material respects” from the specifications described in the COC applications because they were equipped with undisclosed auxiliary emissions control devices, specifically, the software code described above, that improperly functioned as a banned “defeat device.”

69. Because the Affected Vehicles did not conform “in all material respects” to the specifications provided in the COC applications, the Affected Vehicles were never covered by a valid COC, and thus, were never legal for sale, nor were they EPA and/or CARB compliant, as represented. Volkswagen and Bosch hid these facts from the EPA, other regulators, its dealers and consumers, and it continued to sell and lease the Affected Vehicles to the driving public, despite their illegality, and with the complicity of Bosch.

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<sup>25</sup> Rich Gardellsa, *et al.*, *VW had previous run-in over ‘defeat devices’*, NBC News (Sept. 23, 2015), <http://www.cnbc.com/2015/09/23/vw-had-previous-run-in-over-defeat-devices.html>.

<sup>26</sup> Consent Decree, *United States v. Volkswagen of Am., Inc.*, Case No. 1:05-cv-01193-GK (D.D.C. June 15, 2005 and Nov. 4, 2005), ECF Nos. 1-2. Case 3:16-cv-02086-CRB Document 11 Filed 09/30/16 Page 30 of 137

**D. Bosch Played a Critical Role in the Defeat Device Scheme**

70. Information and evidence adduced in other TDI lawsuits already indicates that Bosch played a critical role in scheme to evade U.S. emission requirements in the Affected Vehicles.<sup>27</sup> *In 2008, Bosch wrote Volkswagen and expressly demanded that Volkswagen indemnify Bosch for anticipated liability arising from the use of the Bosch-created “defeat device” (Bosch’s words), which Bosch knew was “prohibited pursuant to . . . US Law.”*<sup>28</sup> Volkswagen apparently refused to indemnify Bosch, but Bosch nevertheless continued to develop the so-called “akustikfunktion” device (the code name used for the defeat device) for Volkswagen for another seven years.

71. During that period, Bosch concealed the defeat device in communications with U.S. regulators once questions were raised about the emission control system, and went so far as to actively lobby lawmakers to promote Volkswagen’s “Clean Diesel” system in the U.S. Bosch’s efforts, taken together with evidence of Bosch’s actual knowledge that the “akustikfunktion” operated as an illegal defeat device, demonstrate that Bosch was a knowing and active participant in the decade-long illegal enterprise to defraud U.S. consumers.

**1. Volkswagen and Bosch Conspire to Develop the Illegal Defeat Device.**

72. Bosch tightly controlled development of the control units in the Affected Vehicles, and actively participated in the development of the defeat device.

73. As discussed above, Bosch introduced a new generation of diesel ECUs for Volkswagen. The development of the EDC17 was a massive undertaking, which began years before Volkswagen began its push into the U.S. market. At least twenty Bosch engineers were

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<sup>27</sup> Plaintiffs’ detailed and specific allegations against Bosch are based almost entirely on publicly-available documents, Plaintiffs’ own research, and information produced by Volkswagen

<sup>28</sup> VW-MDL2672-02570091 (English translation) (emphasis added).

working full-time on writing the code for the EDC17 in the 2001 time frame. By 2004, long before the November 20, 2006 meeting at which Volkswagen apparently decided to use the defeat device to “pass” emission certification standards in the U.S., Bosch and Volkswagen had already entered into preliminary agreements for further development of the EDC17.<sup>29</sup>

74. A February 28, 2006, a Bosch press release introduced the “New Bosch EDC17 engine management system” as the “brain of diesel injection” which “controls every parameter that is important for effective, low-emission combustion.” The EDC17 offered “[e]ffective control of combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press release, Bosch touted the EDC17 as follows:

**EDC17: Ready for future demands**

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world’s markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle’s entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits<sup>[30]</sup>

75. The EDC17 and the development of its underlying software were integral to Volkswagen’s entire diesel strategy, which by late 2006 included creating software to sense

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<sup>29</sup> See PowerPoint presentation at VW-MDL2672-02559528. This internal Volkswagen PowerPoint describes the “akustikfunktion” as activated in “recognition of emission related environment conditions” and proposed it as a solution to the “registration/certification [problem] in the US.”

<sup>30</sup> See Feb. 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17 engine management system,” <http://www.boschpresse.de/presseforum/details.htm?txtID=2603&locale=en>.

when the vehicles were in test mode and then manipulate the emission control system at that time. This could not have been accomplished without years of collaborative work with Bosch.

76. As early as February 2005, an internal feasibility study drafted by Ulrich Hackenberg (Audi Development Chief) mentioned Bosch's EDC17 as part of a strategy to reduce diesel vehicle emissions of nitrogen oxides by creating a change in engine electronics.<sup>31</sup> The study discussed diesel strategies in the U.S. market in light of tightening U.S. emission standards. As discussed above, shortly after the cheating scandal became public, Volkswagen suspended Hackenberg, and he later resigned.<sup>32</sup>

77. Bosch made clear that the EDC17 was a "[c]oncept tailored for all vehicle classes and markets" that could "be adapted to match particular requirements [and] . . . be used very flexibly in any vehicle segment on all the world's markets." The EDC17 was tailored and adapted by modifying the sophisticated software embedded within the electronic control unit ("ECU"). Bosch manufactured, developed, and provided the ECU and its base of software to Volkswagen for the Affected Vehicles.

78. Bosch and Volkswagen worked together closely to modify the software, and to create specifications for each vehicle model. Indeed, customizing a road-ready ECU is an intensive three- to five-year endeavor involving a full-time Bosch presence at an automaker's facility. Bosch and its customers work so closely that Bosch purposefully locates its component part manufacturing facilities close to its carmaker customers' manufacturing plants.

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<sup>31</sup> VW-MDL2672-00744825.

<sup>32</sup> Jack Ewing, *Audi Executive Resigns After Suspension over VW Emissions Scandal*, NY Times (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/business/international/ulrichhackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

79. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine management software over which Bosch exerts near-total control. In fact, the software is typically locked to prevent Bosch's customers, like Volkswagen, from making significant changes on their own. Bosch boasts that its security modules protect vehicle systems against unauthorized access in every operating phase, meaning that no alteration could have been made without either a breach of that security—and no such claims have been advanced—or Bosch's knowing participation.<sup>33</sup> Thus, Volkswagen could not have tailored the EDC17 installed in the Affected Vehicles without Bosch's participation.

80. Unsurprisingly, then, at least one car-company engineer has confirmed that Bosch maintains absolute control over its software as part of its regular business practices:

I've had many arguments with Bosch, and they certainly own the dataset software and let their customers tune the curves. Before each dataset is released it goes back to Bosch for its own validation.

Bosch is involved in all the development we ever do. They insist on being present at all our physical tests and they log all their own data, so someone somewhere at Bosch will have known what was going on.

All software routines have to go through the software verification of Bosch, and they have hundreds of milestones of verification, that's the structure . . . .

The car company is never entitled by Bosch to do something on their own.<sup>[34]</sup>

Thus, the development of the "akustikfunktion" device was not the work of a small group of rogue engineers at Volkswagen, but the result of an active agreement between Volkswagen and

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<sup>33</sup> *Reliable Protection for ECUs* (May 12, 2016), <https://www.escript.com/company/singlenews/detail/reliable-protection-for-ecus/>.

<sup>34</sup> Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheatersoftware/>.

Bosch.

81. In fact, Volkswagen's and Bosch's work on the EDC17 reflected a highly unusual degree of coordination. It was a massive project that required the work of numerous Bosch coders for a period of more than ten years, or perhaps more.<sup>35</sup> Although Bosch publicly introduced the EDC17 in 2006, it had started to develop the engine management system years before.<sup>36</sup>

82. The size and complexity of the undertaking is captured by a spreadsheet that lists entries for work done by Volkswagen and Bosch employees on the EDC17 from late 2003 to 2009. Each entry is given one of six descriptors: enhancement, new feature, service, support, integration, or bug/defect. In total, the spreadsheet contains 8,565 entries and lists hundreds of Bosch individuals.<sup>37</sup>

83. The joint enterprise is also memorialized in a series of agreements between Bosch and Volkswagen dating back to as early as mid-2005, reflecting negotiations that date prior to January, 2005. On April 7, 2005, for example, Bosch GmbH executed the "Framework Development Agreement for Software Sharing in EDC/MED17 Control Unit Projects from the Robert Bosch (RB) Diesel Systems (DS) And Gasoline Systems (GS) Motor Vehicle Units." VWAG countersigned the agreement on September 26, 2005. Importantly, the agreement defined software sharing as "the handing over of BOSCH software in the form of object code by BOSCH

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<sup>35</sup> Approximately 50,000 of Bosch's 375,000 employees worked in the diesel-technology operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See Bosch Probes Whether Its Staff Helped VW's Emissions Rigging*, *Automotive News* (Jan. 27, 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whetherits-staff-helped-vws-emissions-rigging>.

<sup>36</sup> Feb. 28, 2006 Bosch press release, "The brain of diesel injection: New Bosch EDC17 engine management system," <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

<sup>37</sup> VW-MDL2672-02559780.

to VW, so that VW can use this BOSCH software as a basis for developing VW modules for specific EDC/ME(D)17 projects using software development environments from BOSCH.” The agreement states that “[p]roviding the VW modules and integrating them to form a complete software product requires close cooperation between the Parties.”

84. The contract also outlined responsibilities for software sharing and co-development. Throughout development, the contract dictated Bosch was to retain control over the software. While Bosch provided (and owned) the object code, and Volkswagen developed (and owned) the modules, the parties agreed that “BOSCH carries out any modifications to the BOSCH software that are necessary in order to integrate the intended VW modules at the expense of VW.” The agreement further specifies that Bosch would monitor the software, test the implementation of Volkswagen modules, and grant written approval to Volkswagen modules. Only if everything met Bosch’s standards would it then “deliver[] the final complete software product for VW to use in combination with a BOSCH control unit.”<sup>38</sup> Thus, Bosch needed to conduct extensive testing before delivering the product to VW.

85. Yet another document demonstrates the tight grip that Bosch maintained over EDC17 software and any modifications made to it. On February 20, 2006, VWAG and Bosch, entered into a supplemental agreement concerning the use of “expanded software” documentation for the EDC17 and EDC16 (its predecessor).<sup>39</sup> Pursuant to this agreement, Bosch identified 35 named individuals, affiliated with either VWAG or IAV (Ingenieurgesellschaft Auto and Verkehr), who were granted access to expanded documentation for the EDC17 for specific functions relating to emissions. Any changes to the list of persons to be given access

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<sup>38</sup> Volkswagen produced an English translation of the agreement at VW-MDL2672-03752699.

<sup>39</sup> Volkswagen produced an English translation of the agreement at VW-MDL2672-03752757.

required the explicit consent of Bosch GmbH, and the access was temporary and non-transferable. Critically, the agreement stated that “[t]his right of use shall not include the right to the change, modify or use the DOCUMENTATION with third-party control units.”<sup>40</sup> Bosch thereby tightly controlled both who could access the expanded documentation and the scope of their use of such materials.

86. A later agreement between Bosch GmbH and Volkswagen, this one from a June 12, 2006, governed the implementation, integration, project management, and delivery of certain EDC 17 software functions for diesel vehicles that VWAG had requested from Bosch. This agreement, too, made clear that any changes not explicitly detailed in the agreement would require further approval from Bosch.

87. Along the same lines, several years later, in a February 5, 2011 agreement, Bosch granted VWAG a license to further develop Bosch Denoxtronic functions for the treatment of exhaust from diesel engines. Again, the contract is clear that Bosch maintains rights over the Denoxtronic functions.

88. To recap, as the EA 189 project moved to series production in 2009, Bosch’s documented role was to provide to Volkswagen executable software for installation in the EDC17 controller at the VW production line.<sup>41</sup> Bosch insisted that Bosch control the definition of the EDC17 software, that Bosch test the software using bench top and vehicle testing, that Bosch produce the final software release for series production, and that Bosch deliver the software to Volkswagen for installation in the EA 189 engines used in the Affected Vehicles. Bosch’s firm control over the development of and modifications to EDC17 is undeniable. It is

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<sup>40</sup> VW-MDL2672-03752757.

<sup>41</sup> VW-MDL2672-03752699.

inconceivable, then, that Bosch did not know that the software it was responsible for defining, developing, testing, maintaining and delivering contained an illegal defeat device.

89. In fact, Bosch was in on the secret and knew that Volkswagen was using Bosch's software algorithm as an "on/off" switch for emission controls when the Class Vehicle was undergoing testing. As noted above, it has been said the decision to cheat was an "open secret" at Volkswagen.<sup>42</sup> It was an "open secret" at Bosch as well.

90. Volkswagen and Bosch personnel employed code language for the defeat device, referring to it as the "acoustic function" (in German, "akustikfunktion"). As described above, the roots of the "akustikfunktion"—and likely the cheating—can be traced back to the late 1990's when Audi devised software called the "akustikfunktion" that could switch off certain functions when the vehicle was in a test mode.<sup>43</sup> The "akustik" term is derived from the function's ability to modify the noise and vibration produced by the engine. News articles report that, in 2006, VWAG further developed this "akustikfunktion" for the Affected Vehicles.<sup>44</sup>

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<sup>42</sup> Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigationidUSKCN0V02E7>. See also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of rules'*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairmanpoetsch-company-tolerated-breaches-rules> (it was necessary for the "EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted").

<sup>43</sup> <https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgatesroots-stretch-back-to-audi?ref=MTI5ODU1>.

<sup>44</sup> Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper", Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigationidUSKCN0V02E7>. VW Group Chairman, Hans Dieter Poetsch, explained that a small group of engineers and managers was involved in the creation of the manipulating software. See VW Chairman Poetsch: Company 'Tolerated Breaches of Rules', *Auto Week* (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breachesrules>. See also "Scandal Explained", *BBC*, Dec. 10, 2015, <http://www.bbc.com/news/business34324772>; Sept. 18, 2015, <http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works>.

91. Written communications between and within Bosch and Volkswagen describe the “akustikfunktion” in surprising detail. In emails sent as early as July 2005 from VWAG’s Andreas Specht to Bosch, Specht discussed emissions measurements from vehicles using the “akustikfunktion” in connection with U.S. emission compliance.<sup>45</sup> A February 2014 PowerPoint prepared by VWAG explained that the akustikfunktion measured speed, acceleration, and engine operation to determine whether a vehicle is undergoing testing.<sup>46</sup>

92. On November 13, 2006, VWAG’s Dieter Mannigel (Software Design, U.S. Diesel Engines, Drivetrain Electronics) circulated via email a PowerPoint presentation prepared for VWAG’s Rudolf Krebs (who joined Volkswagen from Audi in 2005) about how the “akustikfunktion” is activated and deactivated in recognition of emissions-related environmental conditions, such as temperature and pressure. The presentation explained that the existing vehicles functioning with different drive cycles could not pass U.S. emission tests, and thus proposed the release of the “akustikfunktion” to be driving dependent.<sup>47</sup>

93. On November 20, 2006, Mannigel emailed his colleagues to summarize a meeting with Krebs, at which the PowerPoint described above was likely presented. Krebs had emphasized the importance of not getting caught by U.S. regulators using the “akustikfunktion,” and warned that the function must be explainable to regulators. Krebs was skeptical about using the akustikfunktion in the U.S. market due to potential regulatory and legal exposure, and Mannigel was nervous that regulators would be able to detect the “akustikfunktion.” Nevertheless, Mannigel reported, Volkswagen was going ahead with the expanded

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<sup>45</sup> VW-MDL2672-02559611.

<sup>46</sup> VW-MDL2672-02572122.

<sup>47</sup> VW-MDL2672-02559527. The email attached an internal Volkswagen PowerPoint that describes the “akustikfunktion” as activated in recognition of emission related environment conditions and proposed it as a solution to the registration emissions certification problems in the U.S. (VW-MDL2672-02559528).

“akustikfunktion” with Bosch.<sup>48</sup> It is likely this was the meeting at which VW decided to use the “akustikfunktion” as a defeat device to evade compliance with U.S. emission requirements.

94. Well after the defeat device was developed and integrated into hundreds of thousands of Affected Vehicles, Volkswagen and Bosch continued to work together to refine and maintain it. For example, both Bosch and Volkswagen were involved in the calibration of the defeat devices for the Affected Vehicles. A November 2014 email from VWAG’s Juergen Hintz, entitled “Akustikfunktion,” relayed a telephone call with Bosch about the “akustikfunktion” and Volkswagen’s role. VWAG’s C. Arenz responded that while he had been responsible for the operation of the “akustikfunktion,” Bosch was responsible for its calibration. In fact, Arenz disclosed that he planned to meet with Bosch (along with Michael Brand) about calibrating the “akustikfunktion” the following week.<sup>49</sup> In another email, Hintz wrote that Bosch told him that Bosch would be making certain changes to the “akustikfunktion” based on Volkswagen’s specifications.<sup>50</sup>

95. In sum, Bosch worked hand-in-glove with Volkswagen to develop and maintain the akustikfunktion/defeat device.<sup>51</sup>

## **2. Volkswagen and Bosch Conspire to Conceal the Illegal Defeat Device.**

96. By 2007, and likely earlier, Bosch was critical not only in developing the “akustikfunktion,” but also in concealing it. On March 9, 2007, a Bosch employee emailed VW AG’s Mathias Klapproth (a technical developer) and Mannigel with the subject of “Erweiterungen

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<sup>48</sup> VW-MDL2672-02559526.

<sup>49</sup> VW-MDL2672-02569895.

<sup>50</sup> Translation at 00387135.

<sup>51</sup> VW-MDL2672-02570091; VW-MDL2672-02559611; VW-MDL2672-02559515.

Akustikfunktion” (in English, “Further Development of the Acoustic Function”).<sup>52</sup> The employee *confirmed that Bosch would remove the description of the enhanced “akustikfunktion” from Volkswagen’s fuel pump specification sheets D2250 and D2278.* Klaproth and Mannigel agreed not to list the function in documentation in the U.S., but disagreed whether to disclose it in Europe. Klaproth then took the employee off the email chain and insisted the “akustikfunktion” would be applied to the European projects, to which Mannigel responded that he would contact Klaproth off-line.

97. Bosch was concerned about getting caught participating in the defeat device fraud. As reported in the German newspaper, Bild am Sonntag, and a French publication, a Volkswagen internal inquiry found that in 2007 Bosch warned Volkswagen by letter that using the emissions-altering software in production vehicles would constitute an “offense.”<sup>53, 54</sup>

98. Bosch expressed similar concerns that use of the defeat device it had created would violate U.S. law. These concerns culminated in a June 2, 2008 letter from Bosch to Volkswagen’s Thorsten Schmidt in which Bosch demanded that Volkswagen indemnify Bosch for any liability arising from the creation of a “defeat device,” as Bosch itself called it in English. Through the letter, Bosch sought to clarify the roles and responsibilities of Volkswagen and Bosch regarding the development of the EDC 17, and demanded that Volkswagen indemnify Bosch for any legal exposure arising from work on the defeat device:

The further development [of the EDC17] requested by your company will result, in addition to the already existing

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<sup>52</sup> VW-MDL2672-02559515.

<sup>53</sup> Automotive News (Sept. 27, 2015) (<http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegalsoftware-use-in-diesel-cars-report-says>); VW Scandal: Company Warned over Test Cheating Years Ago”, *BBC*, Sept. 27, 2015, <http://www.bbc.com/news/business-34373637>.

<sup>54</sup> <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-aboutillegal-software-use-in-diesel-cars-report-says>.

possibility of activating enriched data manually, *in an additional path for the potential to reset data to act as a “defeat device.”* We ask you to have the attached disclaimers executed by your company.<sup>[55]</sup>

The letter uses the words “defeat device” in English, and further explained that “[t]he usage of a defeat device is prohibited pursuant to . . . US Law (CARB/EPA) (see definition footnote 2).”<sup>56</sup>

99. Bosch’s June 2, 2008 letter also warned Volkswagen that the software modifications Volkswagen requested could allow “the certified dataset [to be] replaced with another, possibly non-certified data set[,]” which could, in turn, cause “the vehicle’s general operating license (registration) [to] become void.”<sup>57</sup> Creating two data sets on emission compliance was illegal under U.S. law. Bosch knew this, and that is why it requested indemnification from Volkswagen.

100. Bosch signed the proposed indemnification; the signature lines for Volkswagen were left blank. When Volkswagen’s Hermann Middendorf responded to Bosch, he did not deny the existence of a defeat device, but instead attacked Bosch for involving “the lawyers.”

101. Plaintiffs have not yet commenced discovery and therefore do not have a full record of what unfolded in response to Bosch’s June 2, 2008 letter. However, it is indisputable that Bosch continued to develop and sell to Volkswagen hundreds of thousands of the defeat devices for U.S. vehicles following Bosch’s express, written recognition that its software was being used in the Affected Vehicles as a “defeat device” that was “prohibited pursuant to . . . US Law.”

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<sup>55</sup> VW-MDL2672-02570091 (English translation) (emphasis added).

<sup>56</sup> *Id.* at -92 (emphasis added).

<sup>57</sup> *Id.* at -93.

102. VWAG and Bosch continued over the next few years to refine the defeat device. This was a lengthy and complicated process that required concealing its existence from the onboard diagnostic system, which was intended to report emission controls to comply with U.S., and particularly California's, requirements. In a July 18, 2011 email, Audi's Olaf Busse proposed tying the activation of the "akustikfunktion" more directly to steering angle, instead of vehicle temperature, which was proving to be problematic. This request coincided with inquiries from CARB about on-board diagnostics issues. VWAG's Hanno Jelden (Head of Powertrain Electronics), worried that the change would be too obvious and could not be explained to regulators.<sup>58</sup>

103. Denner and others were also in on the secret. Notes from a May 28, 2014 meeting between Bosch and Volkswagen executives at VW headquarters reflect that the topic of "akustikfunktion" was discussed in the context of Volkswagen's and Bosch's partnership in the U.S. market. VWAG's Friedrich Eichler (Powertrain Development Chief) mentioned the importance of the "akustikfunktion" in Bosch diesel engines.

### **3. Volkswagen and Bosch Conspire to Elude U.S. Regulators.**

104. The purpose of the defeat device was to evade stringent U.S. emissions standards. Once Bosch and VW perfected the defeat device, therefore, their attention turned to deceiving U.S. regulators.

105. Evidence already shows that Bosch GmbH employees expressly conspired with VW to hide the function of the defeat device. Shortly after the March 2007 email exchange detailed above, in which VWAG's Klaproth and Mannigel confirmed to Bosch GmbH that the "akustikfunktion" would not be listed in the U.S. documentation for the Affected Vehicles, an

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<sup>58</sup> VW-MDL2672-0259489. Jelden was subsequently suspended in connection with the emissions scandal.

internal email from VWAG's Frank Alich (Development, OBD Diesel) to various individuals at VWAG about scheduling a May 9, 2007 meeting, lamented the trouble distinguishing between acoustic and non-acoustic modes relating to soot simulation. Alich complained that he did not know how he would explain the problem to CARB.<sup>59</sup>

106. Bosch's North American subsidiary, Defendant Bosch LLC, was also part of and essential to the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the United States and in Germany, to ensure that the non-compliant Affected Vehicles passed U.S. emission tests. As set forth below, Bosch LLC employees frequently communicated with U.S. regulators, and actively worked to ensure the Affected Vehicles were approved by regulators.

107. Employees of Bosch LLC, Bosch GmbH and IAV provided specific information to U.S. regulators about how Volkswagen's vehicles functioned and unambiguously stated that the vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and clients in Germany about ways to deflect and diffuse questions from US regulators about the Affected Vehicles—particularly CARB. For example, in a May 15, 2008 email from Audi AG's Martin Hierse to Bosch GmbH (Diesel Systems, Engineering Powertrain Diagnosis), copying Audi's Stefan Forthmann, Hierse noted that auxiliary emission control devices ("AECDs") were a very important subject for certification of U.S. diesels, and admitted discrepancies with the U.S. authorities in AECD documentation.<sup>60</sup> The regulators' questions were chipping away at the discrepancies between on board diagnostic systems, and the emission controls.

108. Accordingly, Hierse worried that there was a possibility that one of the Volkswagen Group's representatives in the U.S. was providing the regulators too much information and data concerning AECD disclosure. He then asked to discuss the matter with

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<sup>59</sup> VW-MDL2672-02555825.

<sup>60</sup> VW-MDL2672-02555825.

Bosch either by telephone or in private at one of their offices due to the confidentiality of the issue.

109. Bosch and Volkswagen worked together to craft responses to CARB's questions. For example, in an April 2009 email, Suanne Thomas (VGoA Regulatory Strategist) and Bosch LLC discussed results from tests sent from an individual at IAV showing defects in the Affected Vehicles' in-use ratios and missing readiness information.

110. On July 1, 2009, VGoA's Thomas emailed colleagues, again raising concerns about documenting AECDs in Model Year 2010-11 Affected Vehicles to U.S. authorities. At issue was the "low level of detail in the AECD documents [so that] ARB is not able to confirm which strategies are for component protection." Thomas then relayed that CARB asked whether there was a problem getting Bosch to disclose its strategy.<sup>61</sup> In a related email, Thomas commented: "I was not involved in the discussions . . . with ARB on diesel, however I get the impression that there is a misunderstanding at VW regarding AECDs. That this misunderstanding is the root of the issue — why ARB is not satisfied with the AECD disclosure for diesels."<sup>62</sup> CARB was asking the right questions, and not getting honest answers.

111. Nor can Bosch persuasively distance Bosch GmbH from the communications with regulators, as Bosch GmbH employees directly participated in meetings with CARB. For example, in January, 2015, Bosch GmbH conferred about setting up a conference call with Audi and CARB to explain problems with the diagnostics relating to faulty fuel pumps, issues that likely arose because the defeat device was causing problems with the on board diagnostic system in certain Affected Vehicles. Suanne Thomas of VW coordinated the call between Bosch and CARB.

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<sup>61</sup> VW-MDL2672-02469411.

<sup>62</sup> VW-MDL2672-02120937.

112. Volkswagen and Bosch held CARB and the EPA at bay with finesse (and fraud) to obtain the necessary COCs and EOs to keep Affected Vehicles on the road. In an August 2009 email from VWGoA shared a comment from CARB regarding 2009 Volkswagen Jetta TDIs test results that “VW ‘blatantly did the wrong thing’ and asking Volkswagen if this “is a base strategy from Bosch.” Volkswagen responded, “yes.”<sup>63</sup>

113. This is not the only document crediting Bosch strategies to obtain regulatory approval. A May 17, 2011 email from CARB to Thomas regarding Volkswagen 2014 TDIs referenced a 2010 conference call where they discussed “the bosch ZFC [Zero Fuel Calibration] strategy and a possible fuel rail pressure disablement.” VWAG’s Alich then relayed that “ARB accepted our proposal to implement the ZFC ‘time to closed loop’ monitor with MY [model year] 2013.”<sup>64</sup> And in a May 31, 2013 email regarding 2.0-liter Affected Vehicles, Thomas referenced a “[p]roposed strategy” to “get the executive order [from CARB] based on the ‘Bosch’ strategy.”<sup>65</sup> These communications demonstrate Bosch’s deep understanding of what regulators allowed and would not allow, and what Bosch did to help VW obtain approval.

114. In short, there can be no argument that Bosch left communications with the regulators to VW, or that Bosch did not understand the regulatory implications of the defeat device software VW paid Bosch to develop. Employees of Bosch GmbH and Bosch LLC worked together with VW to convince U.S. regulators to approve the Affected Vehicles for sale and use in this country. The examples below identify at least six additional instances in which Bosch communicated directly with U.S. regulators to discuss concerns with emissions detection and compliance in the Affected Vehicles. During each communication, Bosch LLC provided specific

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<sup>63</sup> VW-MDL2672-00912096.

<sup>64</sup> VW-MDL-2672-02464246.

<sup>65</sup> VW-MDL2672-00530556.

information about how Volkswagen's vehicles functioned and unambiguously stated that the vehicles met emissions standards:

- a. In December 2009, Bosch presented CARB with a strategy to allow usage of Injection Quantity Adjustment codes in 2013 Volkswagen diesel models.<sup>66</sup>
- b. In or around December 2012, Volkswagen and Bosch submitted separate written responses, including requested documents, to the U.S. National Highway Traffic Safety Administration in response to its investigation into high-pressure fuel pump failures in certain Affected Vehicles.<sup>67</sup>
- c. A January 15, 2014 email from CARB to Thomas with the subject, "RE: VW response Re: V6TDI clarifications," CARB's Peter Ho referenced "previous discussions with Bosch," and inquired about false detections in the field.<sup>68</sup>
- d. July 23, 2014 notes from Volkswagen referenced a phone call between Volkswagen, Bosch, CARB, and other automakers during which Bosch raised the issue of pin-pointing of wire faults of NO<sub>x</sub> and particulate matter sensors with a separate control unit.<sup>69</sup>
- e. A February 9, 2015 email from VWAG's Steffen Vieser relayed an update from Bosch GmbH about a discussion between CARB and Bosch LLC re: a "non-erasable permanent fault code issue of the fuel pump electronic driver stage diagnostic," which Volkswagen suggested could be fixed by a "software update" requiring Bosch's assistance, which CARB approved.<sup>70</sup>
- f. Notes from a June 10-11, 2015 meeting between CARB and Volkswagen reference a "Bosch discussion with ARB regarding PM [particulate matter] sensor introduction with Fe-doping." The meeting notes also record that CARB told Volkswagen that CARB did not want the emission monitors in a "contrived condition."<sup>71</sup>

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<sup>66</sup> VW-MDL2672-07235955.

<sup>67</sup> VW-MDL2672-00762181.

<sup>68</sup> VW-MDL2672-00465156 (emphasis added). These discussions began in 2011.

<sup>69</sup> VW-MDL2672-00887996.

<sup>70</sup> VW-MDL2672-00902633; VW-MDL2672-02449923.

<sup>71</sup> VW-MDL2672-02296983.

115. Bosch did not disclose its knowledge of the illegal defeat device in any of these meetings or communications with U.S. regulators.

**4. Bosch Keeps Volkswagen's Secret Safe and Pushes "Clean" Diesel in the U.S.**

116. Bosch not only kept Volkswagen's dirty secret safe, it went a step further and actively lobbied lawmakers to push "Clean Diesel" in the U.S., including making Affected Vehicles available for regulators to drive.

117. As early as 2004, Bosch announced a push to convince U.S. automakers that its diesel technology could meet tougher 2007 U.S. emission standards.<sup>72</sup> Its efforts ended up being a multiple-year, multi-million dollar effort, involving key players from both Bosch in Germany and Bosch in the U.S. Following the launch of its new EDC systems in 2006, Bosch hired mcapitol Managers, a lobbying firm to promote its "Clean Diesel" products on Capitol Hill and with the EPA. In Washington, DC, mcapitol Managers lobbied on Bosch's behalf to defeat a proposal that would have favored hybrid vehicle technology over "Clean Diesel" vehicles.

118. Bosch also coordinated studies to advance diesel technology in the U.S. In September 2006, Bosch reached out to Volkswagen and Audi to request their participation in the "Martec Light Duty Diesel Market Opportunity Assessment." The study's goal was to develop coordinated strategies to accelerate advancements of light duty diesel technology in the U.S.<sup>73</sup>

119. Bosch's promotion of diesel technology specifically targeted the U.S. For example, Bosch put on "Diesel Days in California," "Deer Conference: EGT Focus," and "SAE World Congress in Detroit." In 2008, Bosch LLC and VW America co-sponsored the "Future Motion Made in Germany-Second Symposium on Modern Drive Technologies" at the German

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<sup>72</sup> Mar. 8, 2004, Edmund Chew, Autonews.

<sup>73</sup> VW-MDL2672-06136031.

Embassy in Washington, D.C., with the aim of providing a venue for “stakeholders to gain insight into the latest technology trends and engage in a vital dialogue with industry leaders and policymakers.”<sup>74</sup>

120. Bosch LLC hosted multi-day conferences open to many regulators and legislators and held private meetings with regulators, in which it proclaimed extensive knowledge of the specifics of Volkswagen technology, including calibrations necessary for the Affected Vehicles to comply with emissions regulations.

121. For example, in April 2009, Bosch organized and hosted a two-day “California Diesel Days” event in Sacramento, California. Bosch invited a roster of lawmakers, journalists, executives, regulators, and NGOs with the aim of changing perceptions of diesel from “dirty” to “clean.” The event featured Affected Vehicles as ambassadors of “Clean Diesel” technology, including a 2009 VW Jetta “green car.” The stated goals were to “generat[e] a positive perception of Clean Diesel in passenger vehicles” and to “educate California stakeholders about the immediate benefits [of] Clean Diesel passenger vehicles” in reducing emissions. A key feature of the event included “Bosch Vehicles Being Deployed.”<sup>75</sup>

122. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced Diesel Cars. One of this advocacy group’s purposes included “generating awareness to legislators and regulators on the benefits of “Clean Diesel” technology for passenger cars, through engagement in policy, regulatory and advocacy activities.”

123. Another example of Bosch’s U.S. lobbying is the 2009 “California Green Summit.” As part of its “Clean Diesel” partnership with Volkswagen, Bosch deployed two 2009

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<sup>74</sup> VW-MDL2672-00234383.

<sup>75</sup> *Id.* 115-45; VW-MDL2672-03331605.

Jetta TDI Volkswagens to attendees with the express purpose of “Influencing California,” and inviting CARB, the Western Automotive Journalist Organization, and many others.

124. In September 2009, Bosch held a Diesel Technology Forum in California. Following this forum, in October 2009, Mightycomm (Bosch’s California lobbyist) outlined a proposal for “OEM Vehicle Placement Program targeting influential California NGOs and Regulators.”<sup>76</sup>

125. **Mightycomm specifically stated “[v]ehicles placed with CARB would have to be . . . newer models that can withstand possible dynamometer testing. While we do not anticipate a vehicle placed with CARB would be inspected, examined, or tested on a dynamometer, there is no assurance some CARB staff won’t want to do this.”**<sup>77</sup> On the other hand, Mightycomm advised not to worry about a vehicle being tested by the California Energy Commission (“CEC”) “as the CEC is not equipped to conduct such inspections.”<sup>78</sup>

126. In 2010, Bosch sponsored the Virginia International Raceway with the support of the 2010 Volkswagen Jetta Cup Series. This included the 2009 “Sidewinder” which Bosch featured for its “performance exhaust system.”

127. In its lobbying on behalf of “Clean Diesel,” Bosch had to continually cover up the dirty secret of the defeat device in the Affected Vehicles. In a January 13, 2010 memo addressed to Bosch, Mightycomm noted that “Clean Diesel has been ranked the green car of the year” two years in a row-2009 and 2010. And yet Bosch knew the Affected Vehicles could not obtain the results being advertised without activating the defeat device.

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<sup>76</sup> VW-MDL2672-15182932

<sup>77</sup> *Id.* (emphasis added)

<sup>78</sup> *Id.*

128. Bosch presented on “Clean Diesel” technology before the CEC on June 19, 2013, specifically pinpointing “key influencers,” such as specific NGOs that have not traditionally engaged CARB, “who we need to reach, rally and motivate.”<sup>79</sup>

129. In its efforts to promote “Clean Diesel,” including the Affected Vehicles, Bosch acted on behalf of its global group. As an example, Bosch put on a two-day presentation on June 27-28, 2007, about meeting the demands of U.S. emission legislation, where it focused on lowering emissions in diesel vehicles. Each of the presentation’s 30 pages bears both the “Bosch” name and “Bosch Engineering GmbH” but makes no mention of Bosch LLC.<sup>80</sup> The aforementioned memo from Mightycomm was addressed to “Bosch Diesel Systems.” And each page of the presentation for California Diesel Days bears the label “BOSCH” in emboldened red type.<sup>81</sup> This is consistent with the ongoing representations that the Bosch entities, overseas and in the U.S. were “one-for-all-and-all-for-one” in promoting “Clean Diesel” technology to U.S. stakeholders.

##### **5. Denner Also Played a Critical Role in the Scheme.**

130. Prior to becoming CEO in 2012, Denner climbed the corporate ladder in Bosch’s Engine ECU Development division, managing the development and sale of automotive engine computers, such as the EDC units that Volkswagen used as defeat devices. In 2006, Denner joined Bosch Germany’s Board of Management and was later responsible for research and advance engineering, product planning, and technology coordination across the company’s three business sectors from July 2010 until his appointment as CEO. Denner has agitated for the

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<sup>79</sup> VW-MDL2672-00885348.

<sup>80</sup> VW-MDL2672-05676990.

<sup>81</sup> VW-MDL2672-03331605.

company to become more like a “start-up,”<sup>82</sup> and to develop a “culture of failure,”<sup>83</sup> where risk taking is rewarded, in an attempt to replicate the “California venture capitalist model.”<sup>84</sup> Denner set the tone at the top of Bosch as a member of Bosch’s Board of Management and later CEO. He embraced the Silicon Valley culture of moving fast, taking risks, and asking for forgiveness rather than permission.

131. As he rose in the ranks, Denner worked to foster Bosch’s relationship with key corporate partners, like Volkswagen, which brought in billions of dollars in annual revenues. Denner immersed himself in the day-to-day business of Bosch’s important customers. Illustrating how important Volkswagen was to Bosch, Denner communicated directly with Volkswagen’s Winterkorn about the companies’ relationship and Bosch products sold to Volkswagen. For example, when Bosch ran out of oxygen sensor parts that Volkswagen ordered for its vehicles, Denner reached out directly to Winterkorn. Denner and Winterkorn directly communicated over parts delays and shortages, implying that each was not a manager who governed from afar, but rather was intricately involved in the details of operations.

132. In May 28, 2014, Denner participated in a meeting with Defendant Winterkorn and other Bosch and Volkswagen executives at Volkswagen headquarters concerning their partnership in the U.S. market. Among other topics, participants discussed the “akustikfunktion”

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<sup>82</sup> See Interview with Bosch Director Volkmar Denner, Jan. 21, 2015, available at [http://www.uni-stuttgart.de/forschung-leben/forschungpersoenlich/persoenlich\\_artikel0005.en.html](http://www.uni-stuttgart.de/forschung-leben/forschungpersoenlich/persoenlich_artikel0005.en.html).

<sup>83</sup> See Martin-Werner Budchenau, The Multinational Start-up: The engineering and electronics giant Bosch is putting aside its conservative tendencies and investing in a new innovation unit that it hopes will rival successful start-up incubators, *Handelsblatt*, Nov. 28, 2014, available at <https://global.handelsblatt.com/edition/64/ressort/companies-markets/article/the-multinationalstart-up>.

<sup>84</sup> See Nick Gibbs, German auto firms try to nurture Silicon Valley boldness, *Automotive News*, Nov. 22, 2015, available at <http://www.autonews.com/article/20151122/OEM06/311239956/german-auto-firms-try-to-nurture-silicon-valley-boldness>.

in Volkswagen diesel vehicles.<sup>85</sup> Thus, Denner and Winterkorn were aware of the illegal use of the defeat devices at least by May 2014.

133. In sum, Bosch played a crucial role in the fraudulent enterprise and profited handsomely from it. It is no exaggeration to say that Bosch provided Volkswagen with the most critical elements necessary to create an engine capable of being (fraudulently) represented as achieving the most stringent U.S. emission standards. All of the Bosch content provided to the Volkswagen production line combined—including the ECU, software, fuel system, sensors, and harness—accounted for a sizeable portion of the total material cost of the engines. This is very big business for Bosch.

**E. Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues**

134. Despite Volkswagen's ascension to become the world's biggest automaker, Volkswagen sales lagged in the United States. Volkswagen has sought to improve sales in the United States by touting the performance and reliability of its vehicles and its environmental leadership. Volkswagen's 2013 Annual Report emphasizes that "Volkswagen intends to become the global economic and environmental leader among automobile manufactures by 2018" and that "[w]e are focusing in particular on the environmentally friendly orientation and profitability of our vehicle projects." Volkswagen's false proclamations of environmental friendliness were calculated to, and did artificially increase its public goodwill and brand value, and the price dealerships paid for the rights to sell VW cars.<sup>86</sup>

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<sup>85</sup> VW-MDL2672-02569909.

<sup>86</sup> The fraudulently inflated costs to dealers not only included amounts dealers paid to acquire dealerships and franchise rights, but also capital investment costs. By artificially and fraudulently inflating its brand value, VW could impose and require franchise dealers to make capital investments, such as building new showrooms.

135. While secretly using defeat devices to bypass emission testing, Volkswagen publicly declared a landmark victory—touting that it had successfully optimized its engines to maintain legal emissions, while simultaneously enjoying the cost savings of a LNT system. Volkswagen claimed it accomplished this by monitoring and adjusting combustion conditions and using a two-stage exhaust gas recirculation system to reduce initial emissions, while neutralizing the remaining ones with a LNT to comply with U.S. law.<sup>87</sup> Volkswagen branded and advertised this purportedly revolutionary technology to American consumers as “Clean Diesel” TDI technology.

136. Volkswagen broadly boasted about the performance and environmental cleanliness of its engine systems. In an October 2008 release, Volkswagen bragged:

The Jetta TDI is amongst the ten most fuel efficient vehicles on the US market. In the recently published “Fuel Economy Guide 2009” the EPA (Environmental Protection Agency) listed the Jetta TDI in the top ten low consumption and low emissions vehicles.

In the current edition of the publication, the Jetta 2.0 1 Clean TDI, introduced to the market two months ago, is praised particularly for its excellent consumption figures - it has a fuel consumption of 5.7 litre per 100 kilometre. Moreover, the Jetta Clean TDI also fulfils stringent Californian emission standards. This was achieved through modifications within the engine and *by implementing an exhaust treatment system developed especially by Volkswagen and which reduces nitrogen oxide emissions (NO<sub>x</sub>) by up to 90 percent.* The central element of the exhaust treatment system is the NO<sub>x</sub> storage catalytic converter. [<sup>88</sup>]

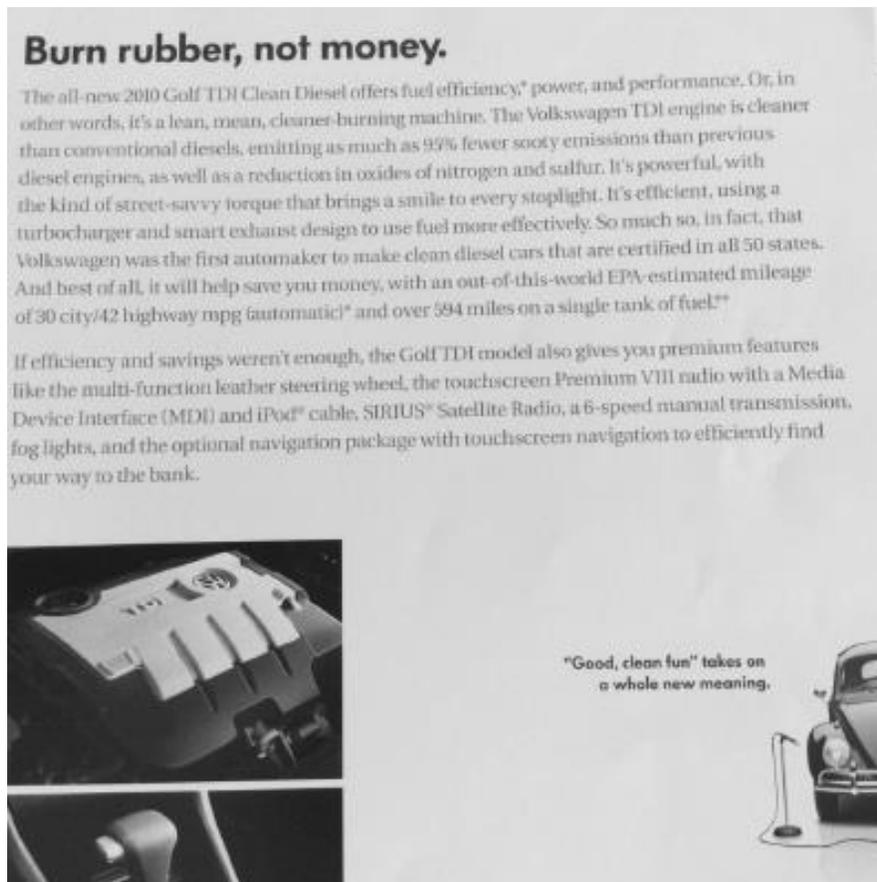
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<sup>87</sup> See Hadler, *et al.*, *Volkswagen’s New 2.0l TDI Engine Fulfils the Most Stringent Emission Standards*, *INTERNATIONALES WIENER MOTORENSYMPIUM 2008*; see also *Self Study Program 826803: 2.0 Liter TDI Common Rail BinS ULEV Engine*, VOLKSWAGEN OF AMERICA, INC. (2008).

<sup>88</sup> See [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2008/10/vw\\_in\\_fuel\\_economy\\_guide.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html) (last accessed Sept. 23, 2015) (emphasis added).

137. Since introducing the 2.0L TDI CleanDiesel engine in 2008, Volkswagen has touted it as a “fantastic power train” that “gives very good fuel economy” and “is also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would . . . cuts out the particulate emissions by 90% and the emissions of nitrous [sic] oxide are cut by 95% . . . [and is] clean enough to be certified in all 50 states.”<sup>89</sup>

138. Volkswagen has marketed and advertised its CleanDiesel models as extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the following promotional material was used in 2010, and similar materials have been used across the spectrum of models using the CleanDiesel engine system:



<sup>89</sup> Statement of Volkswagen Group of America, Inc.'s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.

139. Volkswagen's advertising, which keyed on the unique combination of clean, efficient, and highly performing, was very effective. In fact, Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

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

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



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<sup>90</sup> Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, The Business Insider, Oct. 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-adiesel-revolution-2009-10>.

The advertisement compares two engine options. On the left, the 1.8L TSI engine is shown with a horsepower of 170 and 200 lb-ft of torque. On the right, the 2.0L TDI Clean Diesel engine is shown with a horsepower of 150 and 236 lb-ft of torque. The TDI engine's specifications are highlighted in yellow.

Engine	Horsepower	Lb-ft of Torque
1.8L TSI	170	200
2.0L TDI Clean Diesel	150	236

142. Volkswagen also claimed that TDI Clean Diesel models “typically have a higher resale value versus comparable gasoline vehicles”:

The advertisement features the headline “More fuel for thought about diesel.” and a photograph of a woman in a car. A callout box contains the text: “I want a return on my investment. TDI® clean diesel models typically have a higher resale value versus comparable gasoline vehicles.”

143. But even when Volkswagen knew that EPA investigators had discovered—or at the very least suspected—their fraud and the defeat device, it continued to deceive its customers and its franchise dealers like Plaintiffs through false recalls and false advertising.

144. Beginning in April 2015, Volkswagen issued VW Action Code 2306, which was a recall for CleanDiesel equipped vehicles. Volkswagen claimed that the recall was a “repair” and that it “improved” the engine management system.

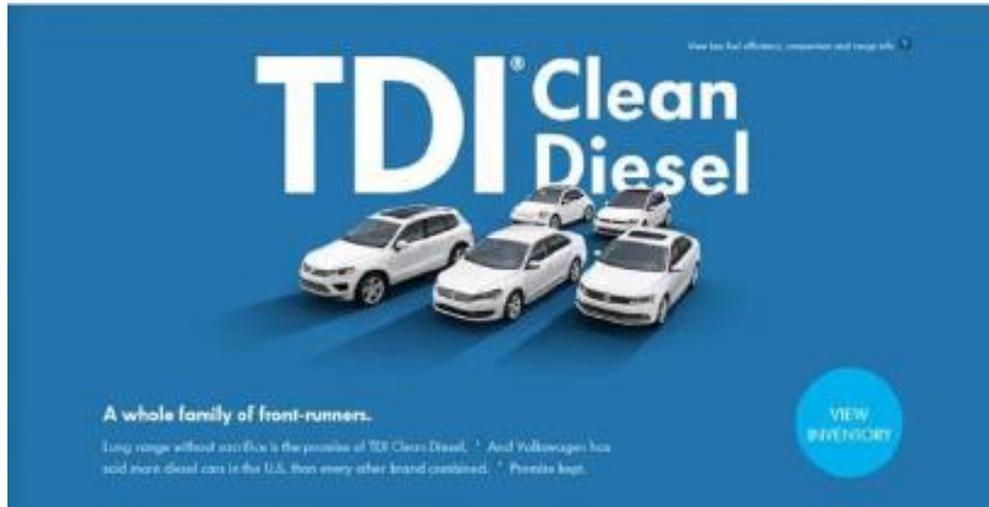
145. But many owners recorded a marked decrease in fuel efficiency and performance after the recall was completed. But after having the recall installed, A3 owners made posts on enthusiast blogs such as the following two posts:

Had my update done couple weeks ago and I've noticed a sizable performance hit afterwards, compared to previous tanks pre-update.  
38.00 MPG  
36.42 MPG  
37.77 MPG  
37.51 MPG  
37.05 MPG  
/////Recall performed  
34.13 MPG  
33.12 MPG

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edt: real data...  
bought car in jan in CA (first two is drive back)  
38.14  
36.63  
32.10  
32.99  
32.77  
32.15  
29.94 (recall done during this tank)  
26.67  
25.79  
26.10

146. Nevertheless, Volkswagen continued its aggressive campaign to dupe its customers and dealers into believing its cars were clean and environmentally friendly. In advertisements appearing on its webpage as recently as September 21, 2015, Volkswagen extended the deceit. These ads have now been stripped from Volkswagen's websites.



147. Volkswagen’s now dubious concern for the environment extended beyond its CleanDiesel campaigns. On the “Environment” page of its website, Volkswagen claims that it takes “environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world’s cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.”

148. Volkswagen trumpeted its apparent environmental bone fides when the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year. Ironically, the tag line of the most recent CleanDiesel advertisements was “*Promise kept.*”<sup>91</sup>

149. On the Volkswagen CleanDiesel webpage, it continued to mislead consumers, touting the supposedly reduced greenhouse gas emission of the CleanDiesel engine system.<sup>92</sup>

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<sup>91</sup> See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The content has since been removed.

<sup>92</sup> See <http://www.audiusa.com/technology/efficiency/tdi?csref=116751439289858719> (last visited Sept. 21, 2015). The content has since been removed.



150. Through its “Think Blue” program, Volkswagen claimed to have a policy of being “more responsible on the road and more environmentally conscious—not just in our cars.” But whether Volkswagen had any care at all for the environment is now, at best, debatable.

151. On its website to promote its “clean” diesel technology, [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org), Volkswagen falsely claimed that its CleanDiesel engine system reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

152. These themes extended to print brochures at dealerships and to VW’s website. The brochures emphasized that VW’s “clean” diesel was “clean,” “green,” and low emission. For example, a “2012 Volkswagen Family” brochure for all VW models, states:

Let TDI “clean” diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That’s all thanks to the TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.** On most models, you can even choose the available

DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.<sup>[93]</sup> [Emphasis added.]

153. Similarly, a “2013 Volkswagen Family” brochure, applicable to all models, states:

When you’ve had your fill of filling stations, hit the road in your TDI “clean” diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That’s all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels.** Far and away, it’s our best diesel yet.<sup>[94]</sup> [Emphasis added.]

154. And a 2012 “Volkswagen TDI “clean” diesel” brochure for the six models of Volkswagen TDIs then on the market (Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg) states:

**These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler.** Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.

**Think beyond green.** TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet.<sup>[95]</sup>

155. Further, a Volkswagen 2010 TDI Jetta and Jetta SportWagen brochure states:

The 2.0L TDI® “clean” diesel engine gives you 140hp and 236 lbs-ft of torque. This engine is the toast of Europe for its quickness, low emissions, and fuel efficiency—a staggering 38 city/44 highway mpg (automatic) based on real-world

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<sup>93</sup> Brochure: 2012 Volkswagen Family, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

<sup>94</sup> Brochure: 2013 Volkswagen Family, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2013-volkswagenfamily.pdf>.

<sup>95</sup> Brochure: 2012 Volkswagen TDI® Clean Diesel, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

AMCI-certified testing (30 city/42 highway mpg. EPA estimates).

...

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

There’s even a Jetta SportWagen TDI “clean” diesel, with the same astonishing clean diesel technology, plus a whopping 66.9 cubic feet of cargo room.<sup>[96]</sup> [Emphasis added.]

156. And a Volkswagen 2011 Golf TDI brochure states:

Regardless of which Golf model you get, you’ll be seeing a lot fewer gas stations and a lot more road. The 2.5L Golf comes standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg. Opt for the Golf TDI model and you’ll enjoy a turbocharged clean diesel engine with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That’s up to 609 miles per tank. **And you’ll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet.** So whether you’re in the market for IntelliChoice’s 2010 “Best Overall Value Compact Car over \$17,000,” or you want to go for a variation on that theme and get the ever-

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<sup>96</sup> Brochure: 2010 Volkswagen Jetta and Jetta SportWagen, <http://www.slideshare.net/SteveWhiteVW/2010-volkswagen-jetta-brochure-greenville>.

popular TDI model, you can't go wrong. In fact, you can go very right for a long, long time."<sup>97]</sup>

157. A Volkswagen 2012 Passat TDI brochure states:

Let the Passat TDI "clean" diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That's all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.** You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

...

The TDI "clean" diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. **So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.**<sup>[98]</sup> [Emphasis added.]

158. A Volkswagen 2013 Beetle TDI brochure states:

Start the TDI® "clean" diesel model and hear the surprisingly quiet purr of the **first clean diesel Beetle**, designed for both power and efficiency.<sup>[99]</sup> [Emphasis added.]

159. A Volkswagen 2014 Beetle TDI brochure states:

2.0L TDI "clean" diesel engine Engineered with the idea that less is more. The Beetle TDI has lower CO2 emissions compared to 84% of other vehicles. **So every getaway you make will be a cleaner one.**<sup>[100]</sup> [Emphasis added.]

160. A Volkswagen 2014 TDI Touareg brochure states:

3.0L TDI "clean" diesel engine Engineered with the idea that less is more. The Touareg TDI has lower CO2 emissions

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<sup>97</sup> Brochure: 2011 Volkswagen Golf, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2011-golf.pdf>.

<sup>98</sup> Brochure: 2012 Volkswagen Passat, <https://static.beepi.com/Brochures/17001.pdf>.

<sup>99</sup> Brochure: 2013 Volkswagen Beetle, <https://static.beepi.com/Brochures/22980.pdf>.

<sup>100</sup> Brochure: 2014 Volkswagen Beetle, <https://static.beepi.com/Brochures/23900.pdf>.

compared to 88% of other vehicles. **So every getaway you make will be a clean one.**<sup>[101]</sup> [Emphasis added.]

**F. Volkswagen's CleanDiesel Engine Systems Were a Fraud**

161. Defendants' illegal scheme started to unravel approximately five years after Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of commerce. In May 2014, West Virginia University's Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation ("ICCT"), which found that certain of the Affected Vehicles' real world NO<sub>x</sub> and other emissions exceeded the allowable EPA emission standards.<sup>102</sup>

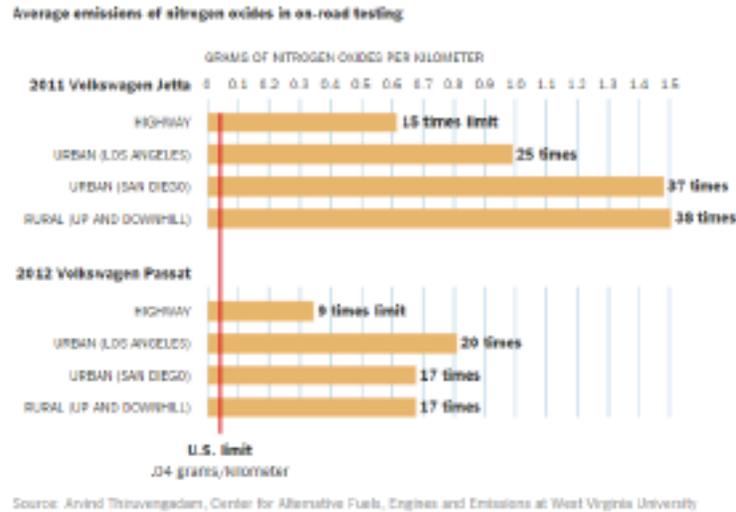
162. The ICCT researchers had been comparing the real-world performance of "clean" diesel vehicles in Europe with reported results and noted numerous discrepancies. Since the U.S. emission regulations were significantly more stringent than its European counterparts, the ICCT sought to test the equivalent U.S. "clean" diesel cars, presuming that they would run cleaner. West Virginia University was a qualified and enthusiastic partner, as they had already been engaged in the study of heavy truck emissions.

163. Shockingly, the study showed that, contrary to testing lab results, real world driving of Volkswagen "clean" diesel vehicles produced levels of NO<sub>x</sub> up to 40 times higher than legal limits promulgated by the EPA and CARB:

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<sup>101</sup> Brochure: 2014 Volkswagen Touareg, <https://static.beepi.com/Brochures/18663.pdf>.

<sup>102</sup> See *Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States*, International Council on Clean Transportation (May 15, 2015), [http://www.theicct.org/sites/default/files/publications/WVU\\_LDDVinuse\\_ICCT\\_Report\\_Final\\_may 2014.pdf](http://www.theicct.org/sites/default/files/publications/WVU_LDDVinuse_ICCT_Report_Final_may 2014.pdf).



164. The results of this study prompted an immediate investigation by the EPA and CARB, both of whom demanded an explanation from Volkswagen. Despite knowing that the Affected Vehicles contained illegal emission systems—and defeat devices intentionally designed to comply with emission standards on a test bench but not under normal driving operation and use—Volkswagen failed to come clean. Instead, Volkswagen denied the allegations and blamed faulty testing procedures.

165. In December 2014, Volkswagen issued a recall purportedly to update emission control software in the Affected Vehicles, and CARB (along with the EPA) conducted follow-up testing of the Affected Vehicles in the laboratory and during normal road operation. CARB attempted to identify the source and nature of the Affected Vehicles' poor performance and determine why their on-board diagnostic systems did not detect the increased emissions. None of the technical issues suggested by Volkswagen adequately explained the NO<sub>x</sub> test results as confirmed by CARB.

166. Dissatisfied with Volkswagen's explanations, EPA and CARB officials finally threatened to withhold the COCs for Volkswagen's 2016 diesel vehicles until it adequately

explained the anomaly of the higher emissions. Then, and only then, did Volkswagen finally relent and start to lift the curtain on its illegal scheme.

**G. Once Caught, Volkswagen Sought to Cover Up the Scope of Its Deceit**

167. On September 3, 2015, Volkswagen officials finally disclosed at a meeting with the EPA and CARB that it had installed a sophisticated software algorithm on the 2.0-liter Affected Vehicles, which could detect when the car was undergoing emission testing on a test bench and switch the car into a cleaner running mode. During that meeting, Volkswagen admitted that the software was a “defeat device” forbidden by the CAA and state regulations.

168. On September 18, 2015, the EPA issued a Notice of Violation of the Clean Air Act (the “First NOV”) to VWAG, Audi AG, and VW America for installing illegal defeat devices in 2009-2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. That same day, CARB sent a letter to VWAG, Audi AG, and VW America, advising that it had initiated an enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

169. Two days later, Volkswagen ordered dealers to stop selling both new and used vehicles with 2.0-liter diesel engines.<sup>103</sup> Volkswagen continued to sell its 3.0-liter diesel models, despite containing similar, but not-yet-disclosed defeat devices.

170. On September 21, 2015, Volkswagen spokesman John Schilling stated in an email that Volkswagen was “committed to fixing this issue as soon as possible” and to “developing a remedy that meets emissions standards and satisfies our loyal and valued customers.”<sup>104</sup>

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<sup>103</sup> Jack Ewing, *Volkswagen to Stop Sales of Diesel Cars Involved in Recall*, N.Y. Times (Sept. 20, 2015), <http://www.nytimes.com/2015/09/21/business/international/volkswagen-chief-apologizes-for-breach-of-trust-after-recall.html>.

<sup>104</sup> Jad Mouadwad, *et al.*, *The Wrath of Volkswagen’s Drivers*, N.Y. Times (Sept. 21, 2015), <http://www.nytimes.com/2015/09/22/business/the-wrath-of-volkswagens-drivers.html>.

171. Michael Horn, President and CEO of VGoA, echoed this sentiment when he took the stage later that evening at a launch event for the 2016 Volkswagen Passat in Brooklyn, New York, telling reporters:

Our company was dishonest, with the EPA and the California Air Resources Board, and with all of you and in my German words, *we have totally screwed up*. We have to make things right, with the government, the public, our customers, our employees and also very important, our dealers.<sup>[105]</sup>[Emphasis added.]

172. Horn's presentation on the new Passat, notably, did not promote the environmental efficiency of the car's "clean" diesel model.

173. On September 22, 2015, Volkswagen announced that 11 million diesel cars worldwide were installed with the same defeat device software that had evaded emission testing by U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of 6.5 billion euros (\$7.3 billion) in the third quarter to address the matter.<sup>106</sup>

174. On September 23, 2015, Winterkorn resigned from his position as CEO of VWAG. In his resignation statement, Winterkorn insisted that he was not personally involved in the emissions scandal: "Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group. I am doing this in the interests of the company even though I am not aware of any wrongdoing on my part."<sup>107</sup>

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<sup>105</sup> Christine Seib, *Volkswagen's US Boss: We Totally Screwed Up*, CNBC (Sept. 22, 2015), <http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-testtriggering.html>.

<sup>106</sup> Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected*, USA Today (Sept. 22, 2015), <http://www.usatoday.com/story/money/cars/2015/09/22/volkswagenemissions-scandal/72605874/>.

<sup>107</sup> Graham Ruddick, *Volkswagen chief quits over emissions scandal as car industry faces crisis*, The Guardian (Sept. 23, 2015), <http://www.theguardian.com/business/2015/sep/23/volkswagen-chief-martin-winterkorn-quits-emissions-scandal>.

175. Following Winterkorn's resignation, Volkswagen released a statement that it had set up a special committee to lead its own inquiry into the scandal and expected "further personnel consequences in the next days." However, the committee insisted that Winterkorn "had no knowledge of the manipulation of emissions data."<sup>108</sup>

176. Meanwhile, in Auburn Hills, Michigan, where VGoA houses its Information Technology Group, VW employees are alleged to have ignored a Department of Justice Directive to stop deleting and maintain any electronic records related to the Dieselgate scandal. In a lawsuit filed on March 8, 2016, a former VW Technical Manager named Daniel Donovan alleges that he was fired for his refusal to participate in, and his attempt to stop, destruction of electronic evidence relevant to the Dieselgate scandal.<sup>109</sup>

177. On October 8, 2015, Horn made frank admissions of culpability in his testimony before the House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations. Under oath, Horn testified: "On behalf of our Company, and my colleagues in Germany, I would like to offer a sincere apology for Volkswagen's use of a software program that served to defeat the regular emissions testing regime."<sup>110</sup> In response to a question from the Subcommittee Chairman, Representative Tim Murphy, whether the software was installed "for the express purpose of beating tests," Horn testified, "it was installed for this purpose, yes."<sup>111</sup>

## **II. VOLKSWAGEN CONCEALS ITS ILLEGAL SCHEME FROM PLAINTIFFS.**

178. In or about 2013, Volkswagen began discussions with Slevin about establishing a new Volkswagen dealership in Elgin, Illinois. The new dealership would be what is known in the

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<sup>108</sup> *Id.*

<sup>109</sup> *See Donovan v. Volkswagen Group of America, Inc. and Abdallah Shanti*, Case No. 2016-151877-CD (Oakland County Circuit Court March 8, 2016).

<sup>110</sup> *Supra* note 1.

<sup>111</sup> *Id.*

industry as an “add point”—and additional dealership within a geographic marketing area that is not replacing an existing dealer.

179. As an add point, Slevin’s new dealership would not have its own established Volkswagen sales and service customer base. Instead, the new dealership would need to build its market through Volkswagen’s reputation, competitive advertising, sales offers, and customer service in order to supply future service and sales revenue. This made Slevin’s new dealership particularly vulnerable to fluctuations in Volkswagen’s market share and brand perception. In this sense, the success of the dealership hinged entirely on the strength of the Volkswagen brand.

180. At the time Slevin was considering a Volkswagen dealership in 2013, Volkswagen had strengthened its brand image, in large part through the promotion of TDI clean diesel vehicles. As noted elsewhere in this Complaint, the TDI vehicles were particularly popular with Volkswagen’s environmentally friendly customer base. In 2013, VGoA proudly announced that it had sold over 100,000 TDI vehicles in that year alone, comprising 24 percent of new Volkswagen sales.<sup>112</sup> Believing Volkswagen’s representations, Slevin saw opportunity in Volkswagen’s fuel-efficient TDI vehicles, particularly in light of rising gas prices in 2012 and 2013.

181. As part of the dealership application process, Slevin and his colleagues gave a presentation to Volkswagen about why Slevin would make a successful Volkswagen dealer. Slevin specifically noted his success with his other franchises in the area.

182. On October 1, 2013, Slevin entered into a letter of intent (“LOI”) under which VGoA agreed to offer Slevin a Volkswagen franchise if he met certain conditions and requirements. Among other things, the LOI required Slevin to: (1) secure specific property in

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<sup>112</sup> Jonathon Ramsey, *VW says it has sold over 100,000 TDI diesels in America this year*, AutoBlog (Dec. 26, 2013); <http://www.autoblog.com/2013/12/26/vw-audi-100000-tdi-sales-us/>

Elgin, Illinois to serve as the location for Slevin's new dealership; (2) form a legal entity to serve as the operator of the dealership; (3) obtain sufficient capitalization for Volkswagen dealership operations; (4) construct a brand new dealership facility at the approved location that fully complied with VGoA's corporate brand imaging requirements; and (5) secure adequate floorplan financing to meet VGoA's criteria. Under the LOI (as later amended) Slevin was to complete construction of the new facility by August 2015. If Slevin met these conditions, then VGoA would offer him a franchise agreement.

183. On or about November 18, 2013, SCI, which is an entity that funds and holds Slevin's capital dealership assets, entered into an agreement to purchase real property located at 2630 Auto Mall Drive, Elgin, IL 60124 (the "Property") to serve as the location for Slevin's Volkswagen dealership. On or about February 18, 2014, SCI purchased the Property for \$5,498,436.

184. The Property was selected by Volkswagen based on market studies it had performed. Those market studies, Volkswagen claimed, showed that the Property was an optimal location for a Volkswagen dealership.

185. Construction of the facility commenced and continued throughout the first half of 2015. At the insistence of Volkswagen, and as required by the LOI, Slevin, SCI and their contractors and architects worked to ensure that the new Elgin VW facility complied with Volkswagen's strict corporate brand image program and facility requirements. To accomplish this, SCI was required to purchase materials and signage from Volkswagen and/or its approved vendors and to incorporate certain design elements only suited for a Volkswagen dealership.

186. As a result of Volkswagen's unique architectural requirements and design elements, the Elgin VW facility can effectively only be used as a Volkswagen facility, and is not

suited for other motor vehicle franchises. Essentially, without a Volkswagen dealership to put in it, the building is virtually worthless.

187. In early 2015, Volkswagen was insistent that Slevin and SCI finish construction of the new facility as quickly as possible, even having construction crews work night shifts (at additional expense to Slevin).

188. The construction of the new 34,000 square-foot facility, including the fixtures and equipment located therein, cost SCI and Slevin approximately \$6,532,639.

189. In addition to the land and building, SCI invested approximately \$1,025,784 to acquire fixtures, equipment and other assets for use in the new dealership.

190. In total, SCI spent approximately \$13,056,859 to purchase, construct and equip the Elgin VW dealership facility.

191. Throughout the negotiations that led up to the LOI and throughout the construction process, Volkswagen kept the TDI emissions scandal quiet and concealed from Elgin VW, SCI and Slevin.

192. In addition, Volkswagen repeatedly held out its vehicles as marketable and saleable to SCI and Elgin VW throughout the LOI and construction process. Such representations were found in marketing and promotional material, inventory information, and other documents and materials provided to SCI and Elgin VW, or that was publically available, such as those alleged above.

193. In reality, and as described elsewhere in this Complaint, this information was false because the 2.0 and 3.0 Affected Vehicles violated U.S. emissions standards and contained prohibited cheat devices making them not fit for sale to the public.

194. In reliance on these representations and omissions, Plaintiffs continued to fund the construction of the dealership, purchase equipment and inventory, hire and train staff, and make other investments necessary to open and operate a new dealership.

195. Plaintiffs would not have taken these actions had they known that Volkswagen was involved in one of the most prolific environmental and consumer frauds in history and, further, that the TDI models—comprising over 20 percent of new vehicle sales—would not be available for sale by Elgin VW.

196. Volkswagen knew that it had been caught by the EPA well before construction of Elgin VW's facility began. At no point in time prior to or during the construction process did Volkswagen alert Slevin, SCI, or Elgin VW that Volkswagen was under investigation by the United States government for cheating emissions standards and that the result would be a massive recall of TDI vehicles.

197. On September 18, 2015, after Slevin had completed the conditions of the LOI, and just weeks before he was to enter into a franchise agreement and open the doors of Elgin VW, the EPA issued its First NOV. This was the first that Slevin, SCI, or Elgin VW learned that Volkswagen had intentionally and knowingly acted to install defeat devices to cheat emissions standards.

198. The emerging scandal left Slevin, SCI, and Elgin VW in a precarious position. Slevin had just spent the last two years, and over \$13,000,000, to acquire and construct a state-of-the-art facility that was only suitable for use as a Volkswagen dealership. Without such a franchise, his investment would be virtually wasted.

199. To allay his concerns about entering into a franchise agreement, representatives at Volkswagen repeatedly reassured Slevin that the emissions scandal was limited in nature and that Volkswagen was taking steps to quickly limit the damage to its brand and image.

200. Approximately 10 days after news of the emissions scandal first broke, Volkswagen's General Manager for Network Development in the Midwest Region, Gordon Munroe, called Slevin to discuss the scandal. During the conversation, Munroe apologized for not calling Slevin sooner to discuss the scandal and the impact it would have on Slevin's new dealership.

201. During that conversation, Munroe assured Slevin that the scandal was limited and would blow over quickly. Munroe also assured Slevin that Volkswagen was taking steps to minimize the impact of the scandal on its sales and incentivize customers to purchase Volkswagen vehicles. Munroe also told Slevin that Volkswagen would fix the issue in three to four months.

202. Volkswagen reiterated these promises at a series of lunch meetings between Slevin, Munroe and Volkswagen's Director of the Midwest Region, Merriman King, in the weeks prior to Slevin signing a franchise agreement with Volkswagen.

203. During these conversations, Munroe and King promised Slevin and Elgin VW that Volkswagen would compensate Elgin VW through special subsidies to offset any losses it would incur until the scandal was resolved. Additionally, Volkswagen told Slevin it would immediately provide large customers incentives to help repair the damage caused by the scandal.

204. These statements were made in order to induce Elgin VW to enter into a dealership agreement and to commence operations as a Volkswagen franchisee. However, they were false, or at least were made with a reckless disregard of the truth.

205. Having invested over \$13,000,000 to open Elgin VW in reliance on Volkswagen's false representations and omissions, and left with a facility that could effectively only be used as a Volkswagen dealership, Slevin had no viable alternative to preserve his investments but to enter into a Volkswagen franchise agreement and commenced dealership operations. On October, 30, 2015, Slevin, on behalf of Iconic, executed Volkswagen's Dealer Agreement ("Dealer Agreement").

206. In entering into the Dealer Agreement, Slevin relied on Volkswagen's representations about the limited nature of the TDI crisis and the steps that Volkswagen was taking to minimize the impact of the scandal to its brand and address customer mistrust. Slevin also relied on Volkswagen's promises to provide adequate compensation to offset his losses resulting from the TDI emissions scandal.

207. Unbeknownst to Slevin, the First NOV was only a harbinger of a much deeper, insidious conspiracy that would irreparably harm Volkswagen's brand equity in the months and years that followed.

### **III. AS VOLKSWAGEN DENIES CULPABILITY, ITS BRAND CONTINUES TO SUFFER.**

#### **A. Volkswagen is Caught a Second Time.**

208. On November 2, 2015, three days *after* Slevin signed the Dealer Agreement for Elgin VW, the EPA issued a second Notice of Violation of the Clean Air Act (the "Second NOV") to VWAG, Audi AG, Porsche AG, and their American subsidiaries, VGoA, Audi, and Porsche America. The Second NOV alleged that Volkswagen had installed illegal defeat devices

in its larger 3.0-liter, 6-cylinder diesel models—the same vehicles that Volkswagen continued to sell through its dealers after the First NOV.<sup>113</sup>

209. On November 3, 2015, Volkswagen denied the allegations in the Second NOV, stating: “Volkswagen AG wishes to emphasize that no software has been installed in the 3.0-liter V6 diesel power units to alter emissions characteristics in a forbidden manner.”<sup>114</sup>

210. Yet, the following day, despite Volkswagen’s insistence that the 3.0-liter diesel emission system was legal, Volkswagen ordered dealers to stop selling all six models at issue in the Second NOV.<sup>115</sup>

211. The November stop sale order included 3.0-liter Touareg vehicles that Elgin VW had planned to sell to customers. In fact, on October 21, 2015, two weeks before the Second NOV was issued, Volkswagen had allocated seven Touareg 3.0 TDI vehicles to Elgin VW for purchase, never mentioning there were any problems with these vehicles.

212. Volkswagen failed to disclose to Slevin or Elgin VW that there were any problems with its 3.0 vehicles or that the Second NOV would be issued by the EPA, despite the fact that Slevin and Elgin VW had signed the Dealer Agreement just three days earlier.

**B. Volkswagen’s Lies Continue to Destroy the Brand.**

213. The Second NOV, which was concealed from Slevin, sharply compounded the damage to Volkswagen’s brand and sales.

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<sup>113</sup> Letter from Susan Shinkman, Director, EPA Office of Civil Enforcement to Volkswagen dated Nov. 2, 2015, <http://www.epa.gov/sites/production/files/2015-11/documents/vw-nov-2015-11-02.pdf>.

<sup>114</sup> Emily Field, *Volkswagen Slams Newest EPA Emissions Fraud Claims*, Law360 (Nov. 3, 2015), <http://www.law360.com/articles/722478/volkswagen-slams-newest-epa-emissions-fraudclaims>.

<sup>115</sup> Paul Lienert, *Volkswagen tells dealers to stop selling some 3.0 V6 diesel models*, Reuters (Nov. 4, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-stopsale-idUSKCN0ST2E420151104>.

214. From there, the TDI emissions scandal burgeoned beyond the limited scope Volkswagen had represented to Slevin and Elgin VW. On November 4, 2015, immediately following the stop sale order of the 3.0-liter diesel models, Volkswagen announced that an internal investigation had also revealed “unexplained inconsistencies” with the carbon-dioxide output of 800,000 of its gasoline-powered vehicles.<sup>116</sup> As one analyst noted: “You can of course argue that they pursue a rigorous approach in identifying wrongdoings in the company, but this latest news is clearly negative for the company and you will see this in tomorrow’s share price for sure.”<sup>117</sup>

215. Like the TDI scandal and the Second NOV, this internal investigation was concealed from Slevin, Elgin VW, and SCI, despite the fact that Elgin VW had entered into a franchise agreement just a few days earlier and was set to open its doors on November 6, 2015.

216. Between the various notices of violations and reports, many consumers were led to believe that the defeat device applied to all Volkswagen vehicles and not just TDI diesel vehicles, essentially wiping out trust for the brand.

217. In early November, 2015, just a few days after the Second NOV, Volkswagen sent one of its agents, John “Skip” Redman, to evaluate Elgin VW’s new dealership.

218. Rather than provide any guidance to Elgin VW about how to weather the emissions scandal or message it to customers, in a November 11, 2015 email, Redman blasted Elgin VW and its management personnel for their marketing strategy, and even took shots at the consumers in Elgin VW’s market area. Among other things, Redman stated:

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<sup>116</sup> Benedikt Kammel, *VW Emissions Issues Spread to Gasoline Cars*, Bloomberg (Nov. 3, 2015), <https://www.bloomberg.com/news/articles/2015-11-03/volkswagen-emissions-woes-deepen-as-800-000-more-cars-affected>

<sup>117</sup> *Id.*

Introductory advertising of a free oil change will break you. . . . There is a lot better use of \$65k than attracting the local ‘mooch’ customer. I’d suggest free windshield wipers given the season and dropping \$50 off any service offer and have high school kids place business card sized offers under the wipers of newer model VWs at local malls, parking garages, employers, colleges, etc.

. . . .

Bill [Slevin] apparently rules with an iron fist. . . . Roy [Elgin VW employee] relies on his intimidation, but is really an insecure person who knows that he doesn’t do/know his job very well and Chris [Elgin VW employee] believes he walks on water and everything he touches turns to gold without working very hard. . . .

219. Most shockingly, Redman derided Slevin’s inclusive marketing approach (which had been presented to Volkswagen two years earlier), stating:

Your success at Nissan has a lot to do with where your stores are and the demographics that Nissan appeals to – Hispanic and Afr/Amer [sic]. These demos [sic] do not typically buy VWs for a number of reasons – too girly, never see the ads and if they do they aren’t macho enough, don’t lease, etc. Marketing to these groups is a waste of money . . . .

220. Not once in Redman’s diatribe did he address how the emissions scandal was affecting Elgin VW’s new dealership or Volkswagen’s image among its customers. This type of behavior is consistent with Volkswagen’s “its not us, its you” approach to deflecting from the scandal.

221. Volkswagen’s brand perception continued to take hits. On November 22, 2015, after almost three weeks of denying allegations in the Second NOV, Volkswagen’s subsidiary, Audi, finally admitted that defeat device software was also installed in all of its diesel vehicles. Specifically, Audi stated that it had failed to disclose three auxiliary emissions control devices in its 3.0-liter diesel engines to U.S. regulators, and further admitted: “One of them is regarded as a

defeat device according to applicable U.S. law. Specifically, this is the software for the temperature conditioning of the exhaust-gas cleaning system.”<sup>118</sup>

222. Despite the admissions that followed each time a Volkswagen lie was exposed, Volkswagen deflected responsibility for its actions. Indeed, merely one month after Volkswagen admitted to the findings in the Second NOV, Hans-Gerd Bode, Volkswagen’s Group Communications Chief, told a group of reporters: “I can assure you that we certainly did not, at any point, knowingly lie to you. . . . We have always tried to give you the information which corresponded to the latest level of our own knowledge at the time.”<sup>119</sup>

223. At a December 10, 2015, press conference, Volkswagen executives admitted that Volkswagen had installed defeat devices to take shortcuts around engineering challenges. Faced with “[s]trict and significantly toughening NO<sub>x</sub> limits” that “could not be met with [Volkswagen’s] technological design,” Volkswagen implemented a defeat device. Volkswagen concluded its presentation by acknowledging the toxicity of its corporate culture, announcing it would establish a “new mindset” among Volkswagen leadership that has “[m]ore capacity for criticism.”<sup>120</sup>

224. On January 4, 2016, the DOJ filed a civil complaint against VWAG, VGoA, Volkswagen Group of America Chattanooga Operations LLC, Audi AG, Audi, Porsche AG, and Porsche America for their violations of the Clean Air Act. The complaint stated that the

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<sup>118</sup> *Statement on Audi’s discussions with the US environmental authorities EPA and CARB*, Volkswagen AG (Nov. 23, 2015), [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2015/11/epa.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/11/epa.html).

<sup>119</sup> Andreas Cremer, *Das Auto’ no more: Volkswagen plans image offensive*, Reuters (Dec. 22, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-communications-i-idUSKBN0U514L20151222>.

<sup>120</sup> Volkswagen AG, *The Volkswagen Group is moving ahead: Investigation, customer solutions, realignment*, Volkswagen AG (Dec. 10, 2015), <http://www.volkswagenag.com/>

Defendants impeded the government's efforts to learn the truth with material omissions and misleading information. The civil lawsuit was widely publicized by various media outlets.

225. On January 10, 2016, in an interview with NPR at the North American International Auto Show, Muller, echoing Hans-Gerd Bode, incredulously claimed that Volkswagen *did not lie* to U.S. regulators about emissions problems with its diesel engines, and suggested that the whole thing had been a misunderstanding of U.S. law. Muller stated:

Frankly spoken, it was a technical problem. We made a default, we had a . . . not the right interpretation of the American law. And we had some targets for our technical engineers, and they solved this problem and reached targets with some software solutions which haven't been compatible to the American law. That is the thing. And the other question you mentioned — it was an ethical problem? I cannot understand why you say that. . . . We didn't lie. We didn't understand the question first. And then we worked since 2014 to solve the problem.<sup>[121]</sup>

226. Volkswagen has consistently denied that its top executives were involved with, or had knowledge of, the fraudulent scheme. To date, however, at least a dozen of Volkswagen's top executives have either resigned under pressure or been fired. Among the top executives dismissed are: Winterkorn, CEO and Chairman of Volkswagen, who resigned almost immediately once the scandal became public (September 23, 2015); Dr. Ulrich Hackenberg, a top engineering boss in the Audi Group, who was suspended and later resigned (December 2015); Heinz-Jakob Neusser, described as a Volkswagen "development" boss, who was suspended and later resigned (September 2015); and Wolfgang Hatz, Porsche's "development" boss and previously Volkswagen's head of engine development, who was suspended and then resigned (May 2016). Furthermore, one of Volkswagen's top advertising executives purportedly

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<sup>121</sup> Sonari Ginton, *'We Didn't Lie,' Volkswagen CEO Says Of Emissions Scandal*, NPR (Jan. 11, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/11/462682378/we-didnt-lievolkswagen-ceo-says-of-emissions-scandal>.

“resigned” (although the company has said that the resignation was unrelated to the present scandal), and VGoA has replaced their general counsel and head of public affairs, David Geanacopoulos. Frank Tuch, VWAG’s head of quality assurance, also resigned (February 2016), his departure likely tied to leadership overhauls as Volkswagen’s internal investigations continue. Finally, Michael Horn, the centerpiece of VW’s Congressional responses and head of VGoA, has also departed the company (March 2016).

227. In early 2016, it became clear that the defeat device was not the result of a mere misunderstanding, but actually part of an active fraud perpetrated on the public. On January 22, 2016, Germany’s *Sueddeutsche Zeitung* newspaper reported that Volkswagen’s development of defeat device software to cheat diesel emissions tests was an “open secret” in its engineering development department. Staff members in engine development have stated that they felt pressure from the top of Volkswagen’s corporate hierarchy to find a cost-effective solution to develop clean diesel engines to increase U.S. market share. Rather than concede that such engines could not be built (*i.e.*, were “impossible” as R&D chief Hatz once proclaimed), the development team decided to push ahead with manipulation.<sup>122</sup>

228. As 2016 progressed, the reports of Volkswagen’s culpability worsened. In February 2016, Forbes reported that Winterkorn was personally aware that Volkswagen was rigging emissions tests on its vehicles more than a year before the scandal emerged, yet did nothing to stop the practice.<sup>123</sup>

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<sup>122</sup> Georgina Prodhan, *Volkswagen probe finds manipulation was open secret in department: newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissionsinvestigation-idUSKCN0V02E7>.

<sup>123</sup> Geoffrey Smith, *VW’s ex-CEO Winterkorn ‘Knew About Defeat Device in Early 2014,’* Fortune (Feb. 15, 2016), <http://fortune.com/2016/02/15/vw-ceo-winterkorn-defeat-device/>.

229. As culpability became clear, the criminal and civil litigation intensified. The DOJ indicted several of VGoA's executives in 2016 and 2017. In January 2017, VWAG agreed to plead guilty to conspiracy to defraud the United States, obstruction of justice, and entry of goods by false statement.<sup>124</sup>

230. Among other things, the plea agreement contains facts establishing that Volkswagen had not only installed the defeat devices, but lied about it to the American public even after the First and Second NOV's were issued.

231. The United States Government is continuing to pursue criminal charges against several Volkswagen executives. The trial of one of those executives, Oliver Schmidt, is not scheduled to occur until January 2018.<sup>125</sup> These actions continue to be highly-publicized and contribute to the continued negative brand perception of Volkswagen.

232. In addition, Volkswagen faces numerous civil suits from dealers, consumers and even the majority of States. In November, 2016, Illinois Attorney General Lisa Madigan commenced a civil suit against Volkswagen related to the damages sustained by the State as a result of the environmental fraud.<sup>126</sup>

233. Various governments around the world continue to investigate Volkswagen's crimes. Recently, Audi's offices in Germany, and the German offices of its attorneys, Jones Day,

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<sup>124</sup> <https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>; *United States v. Liang et al.*, 2:16-cr-20394-SFC-APP (E.D. Mich.), at Dkt. 68.

<sup>125</sup> Jack Ewing and Bill Vlasic, *German Authorities Raid U.S. Law Firm Leading Volkswagen's Emissions Inquiry*, N.Y. Times (March 16, 2017) [https://www.nytimes.com/2017/03/16/business/volkswagen-diesel-emissions-investigation-germany.html?\\_r=1](https://www.nytimes.com/2017/03/16/business/volkswagen-diesel-emissions-investigation-germany.html?_r=1)

<sup>126</sup> [http://www.illinoisattorneygeneral.gov/pressroom/2016\\_11/20161107.html](http://www.illinoisattorneygeneral.gov/pressroom/2016_11/20161107.html)

were raided by German prosecutors seeking information about the emissions scandal.<sup>127</sup> Undoubtedly, new facts will continue to come to light about the culpability of Volkswagen's executives, the extent of the emissions fraud, and the impact to public health and the environment.

234. The shifting, improbable explanations from Volkswagen's executives continue to deepen and compound the public distrust of the Volkswagen brand and deplete the value of the brand. Had Volkswagen and its executives immediately taken ownership of the scandal and appropriate steps to rectify it, the damage to the Volkswagen brand would not have been as severe as it has been.

**C. The Public Begins to Learn the Extent of the Devastation Caused by Volkswagen.**

235. The Volkswagen emissions scandal has also had a profoundly negative impact on Volkswagen's perception as an environmentally progressive, green company. This reputation had long been a draw for Volkswagen's loyal customer base and a significant source of the brand's value. However, through 2016, agencies and institutions reported on the adverse health impacts of Volkswagen's grossly non-EPA compliant vehicles.

236. In September 2016, researchers at Northwestern University's Feinberg School of Medicine and Columbia University's Mailman School of Public Health published a study estimating that every year during which Volkswagen vehicles were releasing elevated emissions levels could lead to 50 to 60 premature deaths, 3,000 lost work days, and \$423 million in economic costs.<sup>128</sup>

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<sup>127</sup> <http://www.reuters.com/article/us-audi-emissions-prosecutors-idUSKBN16M0XP>; see also Ewing and Vlastic, *supra* note 125.

<sup>128</sup> <https://news.northwestern.edu/stories/2016/09/vw-emissions>

237. In early 2017, a team of researchers from Harvard and MIT estimated that the emissions scandal may contribute up to as many as 1,200 premature deaths in Europe alone. PBS reported about the study: “The lingering repercussions of the Volkswagen emission scandal may be more dire than we originally thought.”

**D. Volkswagen is Unprepared to Remedy the Crisis and Earn Back Public Trust.**

238. Although VW and Bosch spent significant time and resources in developing their illegal devices, they were ill-equipped to fix the Affected Vehicles or remedy the impact of their fraud, which has contributed to Plaintiffs’ losses.

239. Initially, Volkswagen had no way to address the fraud. When Horn testified before Congress in October, 2015, after the First NOV, he stated that any fix for at least 420,000 of the Affected Vehicles would require software and hardware changes and could take over a year implement.<sup>129</sup> However, Horn insisted “We know we can fix these vehicles.”<sup>130</sup> Volkswagen did not initially offer replacement cars or a buyback program, thereby forcing unhappy and embarrassed owners to knowingly spew noxious fumes or make alternative arrangements at their own sole expense.

240. However, Horn’s confidence in Volkswagen’s ability to repair the vehicles was misplaced. Without any viable fix in sight, in late 2016, Volkswagen announced a buyback program as part of a settlement it reached with several government agencies. Under the program, Volkswagen TDI customers could bring Affected Vehicles to a nearby dealership and trade them in for compensation from Volkswagen at pre-scandal prices.

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<sup>129</sup> See <http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells>.

<sup>130</sup> *Id.*

241. As part of the settlement, Volkswagen was required to get at least 85% of the Affected Vehicles off the road by 2019. If Volkswagen fails to meet these objectives, it will be subject to massive fines.

242. To aid the buyback process, Volkswagen positioned its own personnel at its dealers' facilities to handle all aspects of the buy-back program. These employees are employed and trained by Volkswagen and are not dealership personnel. Volkswagen specifically forbid dealership personnel from trying to solicit TDI owners returning their vehicles unless the customer specifically expressed an interest.

243. Instead, the TDI owner is handed off by dealership personnel to the Volkswagen agent appointed to handle the buyback claim. Then, once the TDI owner has finished the buyback process, they are referred to dealership personnel *if* and only if they express interest in new Volkswagen vehicles.

244. In 2017, several months after the buyback program was announced and commenced, Volkswagen finally announced that it was able to fix some of the late model TDI vehicles. However, not surprisingly, very few Volkswagen customers have opted for the fix, instead taking the compensation offered by Volkswagen and fleeing the brand. As they do, these potential customers deprive franchised dealers, like Plaintiffs, of future revenue streams and contribute directly to their losses. For example, only about six percent of customers returning TDI vehicles to Elgin VW have purchased a new Volkswagen vehicle.

245. Volkswagen has done virtually nothing to improve its perception among customers or stymie its dealers' losses. For example, Volkswagen has failed to provide popular customer incentives that are usually offered by manufacturers, such as additional bonus cash during the Chicago Auto Show. Volkswagen has also failed to put in place an appropriate

advertising strategy to repair its brand's reputation, instead opting to wait out the negative public perception of Volkswagen.

#### **IV. PLAINTIFFS SUFFER LOSSES**

246. As a result of Volkswagen and Bosch's illegal, conspiratorial, and unconscionable fraud on Plaintiffs, their consumers, and the American public, Plaintiffs have suffered, and continue to suffer, millions of dollars of losses, lost profits, diminution in value, and lost opportunity costs that they would not have suffered but for the Defendants' wrongful conduct.

247. In reliance on Volkswagen's affirmative misrepresentations about the salability of its products and its omission about its involvement in a massive criminal enterprise—a material omission, to say the least—SCI spent in excess of \$13,000,000 to fund the acquisition and construction of Elgin VW's dealership facility. SCI would not have incurred these costs if it had known about the falsity of Volkswagen's representations and the material omissions about its scheme and looming violations.

248. The dealership property and facility are worth substantially less today in light of Volkswagen's fraud. Because Plaintiffs were required to construct the dealership in compliance with Volkswagen's strict corporate imaging and facility requirements, the facility is only useable as a Volkswagen dealership without substantial renovations. As a result, SCI has suffered diminution in value to its assets that it would not have suffered but for Volkswagen and Bosch's fraudulent scheme.

249. Prior to the emissions scandal, Volkswagen charged a substantial premium for the Affected Vehicles. For example, for the 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel model, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta model

is substantially higher. The highest level gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

250. The ability to sell these vehicles at a premium was a significant contributor to the high value of goodwill and franchise rights associated with owning a Volkswagen dealership. Since the First and Second NOV's, however, there are no such premiums because the Affected Vehicles cannot be legally sold in the U.S., and all Volkswagen sales have been negatively affected by the diminution in brand value and brand loyalty. As a result, franchise dealer profitability and franchise value have markedly decreased.

251. Moreover, as vehicles are removed from service, the number of units in operation ("UIO") within each dealers' market decreases. The decrease in UIOs directly impacts the ability of a dealer to generate profit from its parts and service business.

252. Elgin VW's new vehicle sales are a fraction of what they would have been if the brand continued to perform as it had in 2013. These losses are particularly compounded given that Elgin VW is an add point dealership without a built-in customer base to provide service and parts revenue, and repeat sales business.

253. The TDI buyback program has been particularly hard on Elgin VW and its employees. A significant number of TDI owners have been appointed to return their TDI vehicles to Elgin VW, even though these vehicles were not purchased from Elgin VW (which has never sold a TDI vehicle). For instance, as of March 1, 2017, Elgin VW had 101 such appointments scheduled for the month of March alone, sometimes as many as 10 in a day. None of these vehicles had been sold by Elgin VW.

254. Elgin VW and its staff have become outlets for the anger and betrayal felt by these customers. When TDI owners return vehicles to Elgin VW, they often berate Elgin VW

staff believing (incorrectly) that Elgin VW employees are employees of Volkswagen or are somehow complicit in the emissions fraud. Such outbursts in the dealership have caused potential customers to walk out.

255. Between the slow sales and open hostility from returning TDI owners, employee morale is at an all-time low, making it difficult to retain key sales personnel and further contributing to Elgin VW's losses.

256. Under present conditions, Elgin VW will continue to suffer losses, lost profits, and diminution in franchise value that it would not have suffered but for Volkswagen's and Bosch's fraudulent scheme.

257. Elgin VW has suffered millions of dollars in actual losses and lost profits from its Volkswagen operations. Since opening in November, 2015, Elgin VW's actual losses exceed \$2,250,000. Further, Elgin VW has forgone profits and return on investment that it should have obtained, estimated to be in excess of \$2,500,000. These losses continue to mount each month, with no foreseeable end in sight.

258. At the end of 2016, Volkswagen discontinued a modest subsidy of dealership operations designed to help offset losses caused by the TDI emissions scandal. Although the subsidies are gone (and were never sufficient to compensate Elgin VW for its actual losses), the effects of the TDI scandal remain.

259. The losses suffered by Elgin VW are solely attributable to Volkswagen and Bosch, and the damage they caused to Volkswagen's brand and reputation. Slevin's other non-VW automotive dealerships, including those near Elgin VW, remain successful and profitable.

260. Simply put, under present circumstances, Elgin VW's operations are no longer viable. The impact of the TDI scandal has been vastly worse than VGoA represented to Slevin

in the weeks before Elgin VW opened its doors. Additional violations, such as the Second NOV, and evidence of a broader criminal conspiracy have exacerbated the crisis and left Elgin VW with no alternative but to pursue relief in Court.

**COUNT I**  
**VIOLATIONS OF THE AUTOMOBILE DEALERS' DAY IN COURT ACT**  
**15 U.S.C. § 1221, *ET SEQ.***  
**(ELGIN VW against VGoA and VWAG)**

261. Plaintiffs incorporate by reference all general allegations as though fully set forth herein.

262. The Federal Automobile Dealer's Day in Court Act, 15 U.S.C. § 1221, *et seq.*, provides a cause of action for dealers against manufacturers that fail "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer." 15 U.S.C. § 1222.

263. Pursuant to 15 U.S.C. § 1221(e), the term "good faith" is defined as "the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith."

264. Coercion and intimidation in violation of the statute are not limited to exercise of positive force or direct threats, but may result from any pressure which puts one in actual fear of loss of property or injury to business; unfair and inequitable conduct may be of such a nature as to constitute coercion and intimidation.

265. As set forth above, Volkswagen has purposely and knowingly defrauded Plaintiffs regarding the legality, efficacy, and environmental compliance of the Affected Vehicles.

266. Volkswagen has known of the use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

267. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

268. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices.

269. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

270. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive its franchise dealers, including Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen, Audi and Porsche brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the

Affected Vehicles; all causing the true value of franchise dealerships to be substantially lower than the prices paid for such franchise dealerships.

271. Volkswagen concealed the Second NOV and the full extent of its conspiracy to defraud, as well as its inability to remedy the fraud, until after Elgin VW entered into the Dealer Agreement.

272. Although Volkswagen initially provided support for Plaintiffs' dealership to offset losses, Volkswagen has since withdrawn that support, forcing Plaintiffs to incur even more losses each month. Plaintiffs' losses threaten the viability of the dealership, resulting in a de facto termination of Elgin VW, and damaging its owners, employees, and the public.

273. Volkswagen's actions constitute a failure to carry out the terms of its franchise agreement with Elgin VW in good faith, violating the express prohibition set forth in 15 U.S.C. § 1222.

274. As a result of the illegal conduct of Volkswagen, Elgin VW has suffered damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$5,000,000.

275. Plaintiffs demand compensation for these damages, costs and expenses.

**COUNT II**  
**VIOLATIONS OF RICO, U.S.C. § 1962(C) - (D)**  
**(All PLAINTIFFS against ALL DEFENDANTS)**

276. Plaintiffs incorporate by reference all general allegations as though fully set forth herein.

277. Plaintiffs bring this Count against Defendants Volkswagen AG; Volkswagen Group of America, Inc.; Robert Bosch GmbH, Inc.; and Robert Bosch, LLC (collectively, “RICO Defendants”).

278. The RICO Defendants are all “persons” under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

279. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” Section 1962(d), in turn, makes it unlawful for “any person to conspire to violate.”

280. For years, the RICO Defendants aggressively sought to increase the sales of Affected Vehicles in an effort to bolster revenue, augment profits and increase Volkswagen’s share of the market. Finding it impossible to do lawfully, the RICO Defendants orchestrated a fraudulent scheme and conspiracy. In particular, the RICO Defendants, along with other entities and individuals, created and/or participated in the affairs of an illegal enterprise (“Emissions Fraud Enterprise”) the direct purpose of which was to deceive the regulators and the public. As explained in greater detail below, the RICO Defendants’ acts in furtherance of the Emissions Fraud Enterprise violate §§ 1962(c) and (d).

**A. The Members of the Emissions Fraud Enterprise.**

281. Upon information and belief, the Emissions Fraud Enterprise consisted of the following entities and individuals:

**1. Volkswagen Defendants.**

282. The Volkswagen Defendants include Volkswagen AG and Volkswagen Group of America.

283. In 2007, the Volkswagen Defendants made it their mission to become the dominant automotive manufacturing conglomerate in the world. At the time, however, the Volkswagen Defendants were struggling to retain their foothold in the American market. Their strategy of wooing customers with premium products was not paying off and VGoA's costly plant in Chattanooga, Tennessee was "woefully underutilized."<sup>131</sup>

284. In response to these obstacles, Defendant Volkswagen AG and its leader, Martin Winterkorn, set in motion an ambitious plan to triple the Volkswagen Defendants' sales in the United States. The linchpin of this strategy was increasing sales of "diesel-powered cars ... [and] promising high mileage and low emissions without sacrificing performance."<sup>132</sup>

285. To achieve their goal, the Volkswagen Defendants moved away from the selective catalytic reduction ("SCR") emission control systems they had previously used. Instead, they sought to replace the SCR systems with the less expensive and easier to maintain lean NO<sub>x</sub> trap ("LNT") systems. The LNT technology the Volkswagen Defendants sought to implement had not been shown to effectively reduce toxic NO<sub>x</sub> emissions to lawful levels under normal operating conditions.

286. Accordingly, working with the other members of the Emissions Fraud Enterprise, the Volkswagen Defendants devised a scheme to circumvent the United States' stringent emissions standards by incorporating a "defeat device" into their LNT emissions control system.

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<sup>131</sup> Anton Watts. VW Drama: Why Piech Wants Winterkorn Out-and What the Future May Hold. Car and Driver (Apr. 16, 2015).

<sup>132</sup> Danny Kim, Aaron Danny Hakim, Aaron Kessler, and Jack Ewing, "As Volkswagen Pushed to Be No. 1, Ambitions Fueled a Scandal," New York Times (Sept. 26, 2015).

287. Making matters worse, in order to profit from the scheme and increase their sales according to plan, the Volkswagen Defendants unabashedly billed the Affected Vehicles as “clean” and “*environmentally friendly*” vehicles.<sup>133</sup>

288. In sum, as part of their effort to become the dominant automotive manufacturing conglomerate in the world, the Volkswagen Defendants controlled and directed an eight-year-long enterprise whose purpose was to deceive regulators and the public through lies and deception.

289. Upon information and belief, the Volkswagen Defendants’ leaders—including Martin Winterkorn, Ulrich Hackenberg, Frank Tuch, and Wolfgang Hatz—played central roles in the Emissions Fraud Enterprise’s unlawful scheme.

290. Winterkorn took the helm of Volkswagen AG in 2007 and was the chief architect of the Volkswagen Defendants’ strategy to triple sales in the American market by relying more heavily on their purportedly revolutionary “clean” diesel offerings.”<sup>134</sup>

291. Winterkorn quickly realized his strategy could not succeed if the Volkswagen Defendants relied on the same SCR technology they had used in their pre-2009 diesel vehicles and that all their competitors used on more expensive diesel offerings. Winterkorn appointed Ulrich Hackenberg and Wolfgang Hatz, two former Audi engineers and members of the Emissions Fraud Enterprise, to lead the research and development facet of the “clean” diesel project.

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<sup>133</sup> See Jad Mouawad & Sydney Ember. VW’s Pitch to Americans Relied on Fun and Fantasy. *New York Times* (Sept. 27, 2015), <http://nytimes.com/2015/09/28/business/media/vws-pitch-to-americans-relied-on-fun-and-fantasy.html?ref=business>.

<sup>134</sup> *Volkswagen AG, TDI: U.S. Market Success, Clean Diesel Delivers* (March, 2015), [http://cleandieseldelivers.com/media/Douglas-Skorupski-VGoA\\_DTF\\_March2015.pdf](http://cleandieseldelivers.com/media/Douglas-Skorupski-VGoA_DTF_March2015.pdf).

292. Despite Hackenberg and Hatz's best efforts, the technological hurdles were too formidable and a viable, lawful LNT-based system could not be found. Although Winterkorn was routinely apprised of these obvious technical setbacks, he continued to pursue the aggressive cost-cutting, profit driven plan he had originally envisioned. In doing so, he directly participated in the scheme to defraud regulators and consumers.

293. On February 1, 2007, Hackenberg was appointed to Volkswagen's Brand Board of Development and was responsible for the technical development of all of the Volkswagen Defendants' brands.<sup>135</sup>

294. On July 1, 2013, Hackenberg was appointed to the Board of Management of Audi AG and made responsible for its Technical Development department. In this capacity, Hackenberg spearheaded the development of Audi's TDI "CleanDiesel" engines. As he explained in a press release, his strategy for Audi's technical development included the following:

[P]ushing forward with development in . . . our TDI engines in the USA — our clean diesel offensive is bearing substantial fruit. In China, too, we are already introducing the first clean diesel models and watching developments there very closely. We also expect a great deal from g-tron technology, the most sustainable type of gas drive.<sup>136]</sup>

295. In 2010, Tuch was appointed head of quality control across several of the Volkswagen Defendants' brands. Winterkorn hoped Tuch would bring the Volkswagen Defendants "forward in the USA."<sup>137</sup> Volkswagen's in-house magazine reported that Tuch and

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<sup>135</sup> <https://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrichhackenberg>.

<sup>136</sup> "Gentlemen Start Your Engines," <http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines> (2014).

<sup>137</sup> <http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-84855452>.

Winterkorn worked closely to honor that pledge, meeting “every Monday to discuss quality issues, often taking test drives in vehicles manufactured by the company.” In his role as head of quality assurance, Tuch was also intimately familiar with Volkswagen, Audi, and Porsche engines and transmissions. Among his duties was “the development and production of components such as engines, transmissions, seats and suspension parts” for small, compact, midsize, and full size product lines, including all the Affected Vehicles.<sup>138</sup>

296. Significantly, Tuch also oversaw “36 laboratory locations throughout the world in terms of training and auditing and also finds staff to fill laboratory manager positions,” including the Volkswagen Defendants’ laboratories in the United States, which were primarily responsible for emissions testing of the Affected Vehicles.<sup>139</sup>

297. On information and belief, Tuch knew Affected Vehicles used defeat devices to evade federal and state vehicle emissions standards.

298. Hatz directed engine development for the Porsche, Audi, and Volkswagen brands. In this role, he supervised the development of the engines and transmissions for Affected Vehicles and had knowledge of their technical details. On information and belief, Hatz knew the Affected Vehicles used defeat devices to evade federal and state vehicle emissions standards.

299. Liang is a VW engineer who pled guilty on September 9, 2016 to one count of conspiracy to commit wire fraud and to violate the Clean Air Act. In connection with pleading guilty, Liang admitted that he helped his co-conspirators continue to lie to the EPA, CARB, and VW customers even after the regulatory agencies started raising questions about the vehicles’ on-road performance following an independent study commissioned by the International Council

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<sup>138</sup> Jack Ewing. “Volkswagen Suspends 5th Executive in Emissions Scandal,” The New York Times (Oct. 20, 2015).

<sup>139</sup> [http://www.volkswagen-larriere.de/en/what\\_we\\_do/corporate\\_divisions/quality\\_assurance.html](http://www.volkswagen-larriere.de/en/what_we_do/corporate_divisions/quality_assurance.html).

on Clean Transportation, which showed that the diesel vehicles' emissions on the road were up to 40 times higher than shown on the dynamometer.

## 2. Bosch Defendants

300. The Bosch Defendants tested, manufactured and sold the electronic control module ("ECM") that managed the LNT emissions control system used by the Volkswagen Defendants in the Affected Vehicles. This particular ECM is more formally referred to as the Electronic Diesel Control Unit 17 ("EDC Unit 17").<sup>140</sup>

301. Denner has been Chairman and CEO of Bosch since July 2012, after decades of working in Bosch's Engine ECU Development division, managing the development and sale of automotive engine computers, such as the EDC units that Volkswagen used as defeat devices. Denner fostered Bosch's relationship with key corporate partners, such as Volkswagen, which brought in billions of dollars in annual revenue for Bosch. Denner communicated directly with Winterkorn about products sold to Volkswagen. For example, when Bosch had a shortage of oxygen sensor parts that Volkswagen had ordered, Denner reached out directly to Winterkorn. Further, Bosch met in 2014 in person with Winterkorn at VWAG headquarters to discuss, among other topics, the "akustikfunktion" in diesel engines.

302. Bosch worked with Volkswagen to develop and implement a specific and unique set of software algorithms to surreptitiously evade emissions regulations. Bosch customized their EDC Unit 17s for installation in the Affected Vehicles with unique software code to detect when it was undergoing emissions testing, as described above.<sup>141</sup>

303. Bosch was well aware that the EDC Unit 17 would be used by Volkswagen to cheat on emissions testing. As described above, on June 2, 2008, Bosch wrote to at Volkswagen,

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<sup>140</sup> [http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk\\_id=108](http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108).

<sup>141</sup> <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

seeking legal indemnification from Volkswagen for the “expanded use” of the EDC Unit 17s which it called a “defeat device.”<sup>142</sup> Bosch explained that “[t]he usage of a defeat device is prohibited pursuant to . . . US Law (CARB/EPA) (see definition footnote 2),”<sup>143</sup> and warned that the agreed-to software modifications would allow “the certified dataset [to be] replaced with another, possibly non-certified data set,” which could cause “the vehicle’s general operating license (registration) [to] become void.”<sup>144</sup> Volkswagen rebuffed Bosch’s request, yet Bosch nonetheless shipped the modified software to Volkswagen for use in the Affected Vehicles for another seven years. Bosch was also critical to the concealment of the defeat device in communications with U.S. regulators and went even further to actively lobby U.S. lawmakers on behalf of Volkswagen and its “Clean Diesel” vehicles.

304. EDC Unit 17 could not effectively lower NO<sub>x</sub> emissions to legal levels during normal operating conditions. In order to pass the emissions test, then, EDC Unit 17 is equipped with a “defeat device,” which is software that allows the vehicle to determine whether it is being operated under normal conditions or testing conditions.<sup>145</sup>

305. Although Bosch knew that the Affected Vehicles *could not be lawfully operated* if the emissions system was disabled, the Bosch Defendants, driven to cement their position as a leading supplier of diesel emissions equipment, went on to sell approximately *eleven million* EDC Unit 17s to the Volkswagen Defendants over an eight year period.<sup>146</sup>

306. The Bosch Defendants knew or should have known that the EDC Unit 17s were being used by Volkswagen for an illegal purpose, in light of the fact that:

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<sup>142</sup> VW-MDL2672-02570091 (English translation).

<sup>143</sup> *Id.* at -92.

<sup>144</sup> *Id.* at -93.

<sup>145</sup> <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

<sup>146</sup> <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

- a. The Bosch Defendants manufactured, tested and sold emissions control systems to various other diesel vehicle manufacturers, *none* of which included the “defeat device” software.<sup>147</sup>
- b. None of the varied emissions control systems the Bosch Defendants tested, manufactured and sold to other diesel vehicle manufacturers relied on the same technology the Volkswagen Defendants were utilizing.<sup>148</sup>
- c. Even for SCR systems in Volkswagen’s Gen2 and Gen3 SCR-equipped engine systems, the amount of exhaust fluid the system used and was able to store was too low for normal driving conditions, suggesting that the quantity was calculated to meet just the testing time and not meant to be engaged during normal usage.

307. Absent an extraordinary engineering breakthrough—for which there was no external evidence—the programming of the EDC Unit 17 presented a practical impossibility. The Bosch Defendants knew, should have known, or were reckless in failing to realize that the Volkswagen Defendants were using the EDC Unit 17 for an unlawful purposes and yet, willingly continued to facilitate the illegal conduct.

### 3. IAV

308. IAV engineers were part of the enterprise that developed the emissions systems that contained a defeat device. In the plea agreement of Volkswagen engineer Robert Liang, IAV is identified as “Company A” that aided and abetted Liang and other co-conspirators.

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<sup>147</sup> <http://www.inautonews.com/vw-diesel-scandal-bosch-software-cleared-of-wrongdoings-by-epa>.

<sup>148</sup> [http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?\\_r=0](http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?_r=0).

**B. A Criminal Plea that Relates to the RICO Claims and Enterprise.**

309. On June 1, 2016, an indictment was filed in the United States District Court for the Eastern District of Michigan in *United States of America v. James Robert Liang*. The indictment arises from Liang's role in VW's violations of the Clean Air Act and wire fraud and alleges that he and others at VW and elsewhere engaged in a conspiracy:

The purpose of the conspiracy was for LIANG and his co-conspirators to unlawfully enrich VW and themselves by, among other things, (a) deceiving U.S. regulators in order to obtain the necessary certificates to sell diesel vehicles in the United States; (b) selling VW diesel vehicles to U.S. customers knowing that those vehicles did not meet U.S. emissions standards; (c) deceiving U.S. customers by marketing VW diesel motor vehicles as "clean diesel" knowing that those vehicles emitted NO<sub>x</sub> at levels well above U.S. standards; and (d) concealing the defeat device from U.S. regulators, VW customers, and the U.S. public.

310. On September 9, 2016, Liang entered into a Plea Agreement for one count of wire fraud. The factual basis of the plea supports the plausibility of the RICO claim set forth below and states in pertinent part:

The following facts are a sufficient and accurate basis for defendant's guilty plea:

From 1983 to May 2008, defendant JAMES ROBERT LIANG was an employee of Volkswagen AG ("VW AG"), working in VW AG's diesel development department in Wolfsburg, Germany.

In about 2006, LIANG and his co-conspirators began to design a new "EA 189" diesel engine. They soon realized, however, that the engine could not meet both customer expectations as well as new, stricter U.S. emissions standards. As a result, LIANG and his co-conspirators pursued and planned the use of a software function to cheat standard U.S. emissions tests (the "defeat device"). LIANG used the defeat device software while working on the EA 189 and assisted in making the defeat device software work. The co-conspirators needed to do so to obtain a certificate of conformity from the United States Environmental Protection Agency ("EPA") in

order to sell vehicles in the United States. LIANG understood that EPA would not certify vehicles for sale in the United States if EPA knew that the vehicles contained a defeat device.

In or around 2008, LIANG worked with his co-conspirators to calibrate and refine the defeat device. This defeat device recognized whether the affected VW diesel vehicles were undergoing standard U.S. emissions testing on a dynamometer or being driven on the road under normal driving conditions. The defeat device accomplished this by recognizing the standard drive cycles used in EPA's emissions tests. If the vehicle's software detected that it was being tested, the vehicle performed in one mode, which satisfied U.S. emissions standards for nitrogen oxide ("NO<sub>x</sub>"). If the defeat device detected that the vehicle was not being tested, it operated in a different mode, in which the vehicle's emissions control systems were reduced substantially, causing the vehicle to emit substantially higher amounts of NO<sub>x</sub>, sometimes forty times higher than U.S. standards.

LIANG moved to the United States in May 2008 to assist in the launch of VW's diesel vehicles with EA 189 engines. From about May 2008 to the present, LIANG was the Leader of Diesel Competence for VW Group of America ("VW GOA"), a VW subsidiary. In that role, LIANG assisted in certification, testing, and warranty issues for VW diesel vehicles in the United States.

For each new model year of VW's diesel vehicles, VW employees met with EPA to seek the certifications required to sell the vehicles to U.S. customers. During one of these meetings, which LIANG attended personally in Ann Arbor, Michigan with EPA on March 19, 2007 and on March 21, 2007 with the California Air Resources Board ("CARB"), LIANG participated as his co-conspirators misrepresented that VW diesel vehicles complied with U.S. NO<sub>x</sub> emissions standards. During this meeting, LIANG's co-conspirators described VW's diesel technology and emissions control systems in detail to the staffs of the EPA and CARB but intentionally omitted LIANG and his co-conspirators' plan to include a defeat device in VW diesel vehicles. LIANG knew that VW was cheating by implementing the defeat device and that he and his co-conspirators were deceiving EPA in this meeting.

As part of the certification process for each new model year, including model years 2009 through 2016, LIANG knew his

co-conspirators continued to falsely and fraudulently certify to EPA and CARB that VW diesel vehicles met U.S. emissions standards and complied with the Clean Air Act. During this time, LIANG and his co-conspirators knew that VW marketed VW diesel vehicles to the U.S. public as “clean diesel” and environmentally-friendly, and promoted the increased fuel economy. LIANG and his co-conspirators knew that these representations made to U.S. customers were false, and that VW’s diesel vehicles were not clean.

As VW’s “clean diesel” vehicles in the United States began to age, they experienced higher rates of warranty claims for parts and components related to emissions control systems. Some of LIANG’s coconspirators believed that the increased claims were a result of the vehicle operating in testing mode too long, rather than switching to “road mode.” Because of these increased claims, LIANG worked with his co-conspirators to enhance the defeat device to allow the vehicle to more easily recognize when the vehicle was no longer in testing mode. LIANG knew that his co-conspirators falsely and fraudulently told U.S. customers and others that a software update in about 2014 was intended to improve the vehicles when, in fact, LIANG and his co-conspirators knew that part of the update was intended to improve the defeat device’s precision in order to reduce the stress on the emissions control systems.

In the spring of 2014, a non-government organization published the results of a study which identified substantial discrepancies in the NO<sub>x</sub> emissions from certain VW vehicles when tested on the road compared to when these vehicles were undergoing EPA standard drive cycle tests on a dynamometer. Following the study, CARB, in coordination with the EPA, attempted to work with VW to determine the cause for the higher NO<sub>x</sub> emissions in VW diesel vehicles on the road as opposed to the dynamometer. LIANG and his co-conspirators discussed how they could answer the regulatory agencies’ questions without revealing the defeat device. LIANG knew that, after these discussions, his co-conspirators intentionally made fraudulent explanations to the EPA and CARB when providing testing results, data, presentations, and statements to the EPA and CARB by failing to disclose the fact that the primary reason for the discrepancy was the defeat device.

LIANG knew that his co-conspirators also falsely and fraudulently told U.S. customers, EPA, and CARB that a voluntary recall in or around early 2015 was intended to “fix” the issues that were causing the discrepancy, when, in fact,

LIANG and his co-conspirators knew that although the update lowered the NO<sub>x</sub> emissions in certain VW diesel vehicles on the road, the update did not remove the defeat device software that was the true reason for the discrepancy.

LIANG and his co-conspirators caused defeat device software to be installed in all of the approximately 500,000 VW diesel 2.0 liter light-duty passenger vehicles sold in the United States from 2009 through 2015.

311. The foregoing facts provide an additional plausible basis supporting the allegations of a conspiracy and the existence of a RICO enterprise.

**C. Emissions Fraud Enterprise Allegations.**

312. The persons and entities described in the preceding section are members of and constitute an “association-in-fact” enterprise.

313. The Emissions Fraud Enterprise began as early as 2005, when an internal feasibility study at VWAG identified Bosch’s EDC Unit 17 as a solution to their engineering dilemma by reducing diesel vehicle emissions of nitrogen oxides (“NO<sub>x</sub>”) through a change in engine electronics. Starting in mid-2005, Volkswagen and Bosch entered into a series of agreements to develop what ultimately became the defeat device for the Affected Vehicles. The Emissions Fraud Enterprise continued without interruption for approximately the next ten years, as the Volkswagen Defendants continued to install Bosch EDC Unit 17s in the Affected Vehicles. The Emissions Fraud Enterprise was first disclosed in approximately September of 2015 when U.S. regulators uncovered the fraudulent scheme and exposed the RICO Defendants to the public. The Emissions Fraud Enterprise ceased shortly after the September 18, 2015, and November 2, 2015 NOVs, when the Volkswagen Defendants ceased selling or leasing the Affected Vehicles.

314. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate and distinct from each Defendant; (b) was separate and distinct from the pattern of

racketeering in which the RICO Defendants engaged; and (c) was an ongoing organization consisting of legal entities, including the Volkswagen Defendants, the Bosch Defendants, IAV and other entities and individuals associated for the common purpose of designing, manufacturing, distributing, testing, and selling the Affected Vehicles through fraudulent COCs and EOs, false emissions tests, deceptive and misleading marketing and materials, and deriving profits and revenues from those activities. Each member of the Emissions Fraud Enterprise shared in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud consumers and franchise dealers alike nationwide.

315. The Emissions Fraud Enterprise functioned by selling vehicles and component parts to the consuming public. Many of these products are legitimate, including vehicles that do not contain defeat devices. However, the RICO Defendants and their co-conspirators, through their illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme to increase revenue for Defendants and the other entities and individuals associated-in-fact with the Enterprise's activities.

316. The Emissions Fraud Enterprise engaged in, and its activities affected interstate and foreign commerce, because it involved commercial activities across state boundaries, such as the marketing, promotion, advertisement and sale or lease of the Affected Vehicles throughout the country, and the receipt of monies from the sale of the same.

317. Within the Emissions Fraud Enterprise, there was a common communication network by which co-conspirators shared information on a regular basis. The Emissions Fraud Enterprise used this common communication network for the purpose of manufacturing, marketing, testing, and selling the Affected Vehicles to the general public nationwide.

318. Each participant in the Emissions Fraud Enterprise had a systematic linkage to each other through corporate ties, contractual relationships, financial ties, and continuing coordination of activities. Through the Emissions Fraud Enterprise, the RICO Defendants functioned as a continuing unit with the purpose of furthering the illegal scheme and their common purposes of increasing their revenues and market share, and minimizing losses.

319. The RICO Defendants participated in the operation and management of the Emissions Fraud Enterprise by directing its affairs, as described herein. While the RICO Defendants participated in, and are members of, the enterprise, they have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

320. The Volkswagen RICO Defendants exerted substantial control and participated in the affairs of the Emissions Fraud Enterprise by:

- a. making the decision to transition the design of their diesel vehicles away from an effective SCR emissions control system and adopt the ineffective LNT emissions system, controlled by the Bosch-supplied EDC Unit 17;
- b. designing the Affected Vehicles with defeat devices;
- c. failing to correct or disable the defeat devices when warned;
- d. manufacturing, distributing, and selling the Affected Vehicles that emitted greater pollution than allowable under the applicable regulations;
- e. misrepresenting and omitting (or causing such misrepresentations and omissions to be made) vehicle specifications on COC and EO applications;
- f. introducing the Affected Vehicles into the stream of U.S. commerce without a valid EPA COC and/or CARB EO;
- g. concealing the existence of the defeat devices and the unlawfully high emissions from regulators and the public;

- h. persisting in the manufacturing, distribution, and sale of the Affected Vehicles even after questions were raised about the emissions testing and discrepancies concerning the same;
- i. misleading government regulators as to the nature of the defeat devices and the defects in the Affected Vehicles;
- j. misleading the driving public as to the nature of the defeat devices and the defects in the Affected Vehicles;
- k. designing and distributing marketing materials that misrepresented and concealed the defect in the vehicles;
- l. otherwise misrepresenting or concealing the defective nature of the Affected Vehicles from the public and regulators; and
- m. illegally selling and/or distributing the Affected Vehicles; collecting revenues and profits from the sale of such products; and ensuring that the other RICO Defendants and unnamed co-conspirators complied with the fraudulent scheme.

321. Bosch also participated in, operated and/or directed the Emissions Fraud Enterprise. Bosch participated in the fraudulent scheme by manufacturing, installing, testing, modifying, and supplying the EDC Unit 17 which operated as a “defeat device” in the Affected Vehicles. Bosch exercised tight control over the coding and other aspects of the defeat device software and closely collaborated with Volkswagen to develop, customize, and calibrate the defeat devices. Additionally, Bosch continuously cooperated with the Volkswagen Defendants to ensure that the EDC Unit 17 was fully integrated into the Affected Vehicles. Bosch also participated in the affairs of the Enterprise by concealing the defeat devices on U.S. documentation and in communications with U.S. regulators. Finally, Bosch actively lobbied lawmakers in the U.S. on Volkswagen’s behalf. Bosch collected tens of millions of dollars in revenues and profits from the hidden defeat devices installed in the Affected Vehicles.

322. IAV participated in the Emissions Fraud Enterprise as outlined in the Indictment:

- 40. On or about November 10, 2006, a [IAV] employee submitted a request, on behalf of Volkswagen, for a software

design change to what was known as the “acoustic function” that would become the defeat device

323. Without the RICO Defendants’ willing participation, including Bosch’s active involvement in developing and supplying the critical defeat devices for the Affected Vehicles, the Emissions Fraud Enterprise’s scheme and common course of conduct would not have been successful.

324. The RICO Defendants directed and controlled the ongoing organization necessary to implement the scheme at meetings and through communications of which Plaintiffs cannot fully know at present, because such information lies in the Defendants’ and others’ hands.

325. The members of the Emissions Fraud Enterprise all served a common purpose; namely, to outsell their law-abiding competitors and increase their revenues through the sale of as many Affected Vehicles (including the emissions components made and sold by Bosch) as possible. Each member of the Emissions Fraud Enterprise shared the bounty generated by the enterprise by sharing the increased sales revenue generated by the scheme to defraud. The Volkswagen Defendants sold more Affected Vehicles. The Bosch Defendants, in turn, sold more EDC Units. The RICO Defendants achieved their common purpose by repeatedly misrepresenting and concealing the salability of the Affected Vehicles and the ability of the emissions control systems (including the Bosch-supplied parts) to effectively reduce toxic emissions during normal operating conditions.

**D. The Predicate Acts.**

326. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

327. Specifically, the RICO Defendants participated in the scheme to defraud by using mail, telephone and the Internet to transmit writings travelling in interstate or foreign commerce.

328. The RICO Defendants' use of the mails and wires include, but are not limited to, the transmission, delivery, or shipment of the following by the RICO Defendants or third parties that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- a. application for certificates submitted to the EPA and CARB and Approved Applications received in the mail on April 9, 2008, June 23, 2008, June 6, 2008 and July 2, 2000;
- b. applications submitted to the EPA and CARB for each model year as follows:
  - Model Year ("MY") 2009-2015 VW Jetta;
  - MY 2009-2014 VW Jetta Sportwagen;
  - MY 2010-2015 VW Golf;
  - MY 2015 VW Golf Sportwagen;
  - MY 2010-2015 Audi A3;
  - MY 2013-2015 VW Beetle and VW Beetle Convertible; and
  - MY 2012-2015 VW Passat
- c. the Affected Vehicles themselves;
- d. component parts for the defeat devices;
- e. essential hardware for the Affected Vehicles;
- f. falsified emission tests;
- g. fraudulently-obtained EPA COCs and CARB EOs;
- h. vehicle registrations and plates as a result of the fraudulently-obtained EPA COCs and CARB EOs;
- i. documents and communications that facilitated the falsified emission tests;
- j. false or misleading communications intended to lull the public and regulators from discovering the defeat devices and/or other auxiliary devices;
- k. sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented and concealed the true nature of the Affected Vehicles;

- l. documents intended to facilitate the manufacture and sale of the Affected Vehicles, including bills of lading, invoices, shipping records, reports and correspondence;
- m. documents to process and receive payment for the Affected Vehicles by unsuspecting franchise dealers, including invoices and receipts;
- n. payments to Bosch;
- o. deposits of proceeds; and
- p. other documents and things, including electronic communications.

329. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or interstate carrier, shipments of the Affected Vehicles and related documents, including the items described above and alleged below:

<b>From</b>	<b>To</b>	<b>Date</b>	<b>Description</b>
Bosch LLC	VW America	December 2009	Documents and communications related to Volkswagen "Clean Diesel" Partnership, 2009 Review and 2010 Opportunities, Bosch Diesel Systems North America Marketing. <sup>149</sup>
Bosch LLC	CARB	September 2009	Documents and communications related to Diesel Tech Day in El Monte, CA. <sup>150</sup>
VW America Manufacturing Plant	South Bay VW	October 2011	Shipment of Volkswagen Jetta TDI Affected Vehicles.
Washington State Department of Licensing	Dan Clements	October 2011	Mailed registration card for 2012 Volkswagen Toareg TDI based on false emission test due to concealed defeat device.
CARB	VW America	July 2014	Mailed EO for 2015 Affected Vehicles based on fraudulent application.

<sup>149</sup> See VW-MDL2672-06900942.

<sup>150</sup> See VW-MDL2672-07672454.

<b>From</b>	<b>To</b>	<b>Date</b>	<b>Description</b>
California Department of Motor Vehicles	Phillip Clark	December 2014	Mailed registration card for 2014 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.
California Department of Motor Vehicles	Caroline Hoag	December 2014	Mailed renewed registration for 2011 Jetta SportWagen TDI based on false emission test due to concealed defeat device.
Washington State Department of Licensing	Dan Clements	February 2015	Mailed registration certificate for 2012 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.

330. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<b>From</b>	<b>To</b>	<b>Date</b>	<b>Description</b>
Pignataro Volkswagen, Washington	American Express, North Carolina	April 2012	Credit card transaction in the amount of \$5,000 for down payment on 2012 VW Touareg by Dan Clements.
CARB, California	VW America, Virginia	May 2014	Email communications concerning WVU study.
VW America, Michigan	EPA, Michigan; CARB, California	May 2012	Misleading application(s) for COC and EO for 2013 VW Passat TDI.
Bosch America, Farmington Hills, Michigan	Volkswagen, Virginia	January 2013	Email communications regarding Bosch's promotion of VW Passat TDI through trip from Atlanta to Washington, D.C. <sup>151</sup>
Audi of Lynnbrook, New York	American Express, North Carolina	December 2014	Credit card transaction in the amount of \$2,586.45 for down payment on lease of 2015 Audi A3 by Kevin and Elizabeth Bedard.

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<sup>151</sup> VW-MDL2672-08348204.

<b>From</b>	<b>To</b>	<b>Date</b>	<b>Description</b>
VW America, Virginia	EPA, District of Columbia	December 2014	Misleading communications about software patch for the Affected Vehicles without revealing fact of the defeat device.
Bosch LLC, Michigan	CARB, California	January 2015	Email communication re: meeting with CARB. <sup>152</sup>
VW America, Michigan	Audi AG, Germany	February 2015	Email communication concerning meeting with Bosch and CARB re: fault codes. <sup>153</sup>

331. The RICO Defendants utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described therein.

332. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, VGoA, under the direction and control of VWAG and its executives, made misrepresentations about the Affected Vehicles on their websites, YouTube, and through online ads, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

333. The RICO Defendants also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

334. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers, and to

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<sup>152</sup> VW-MDL-2672-02461438.

<sup>153</sup> VW-MDL2672-00902633.

lure consumers into purchasing the Affected Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution.

335. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of, and in some instances, occasions on which the predicate acts of mail and/or wire fraud occurred. They include thousands of communications to perpetuate and maintain the scheme, including the things and documents described in the preceding paragraphs.

336. The RICO Defendants have not undertaken the practices described herein in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO Defendants conspired to violate 18 U.S.C. § 1962(c).

337. The RICO Defendants aided and abetted others in the violations of the above laws, thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

338. To achieve their common goals, the RICO Defendants hid from the general public the unlawfulness and emission dangers of the Affected Vehicles and obfuscated the true nature of the defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored warnings from third parties, whistleblowers, and governmental entities about the discrepancies in emissions testing and the defeat devices present in the Affected Vehicles.

339. The RICO Defendants and each member of the conspiracy, with knowledge and intent, have agreed to the overall objectives of the conspiracy and participated in the common course of conduct to commit acts of fraud and indecency in designing, manufacturing,

distributing, marketing, testing, and/or selling the Affected Vehicles (and the defeat devices contained therein).

340. Indeed, for the conspiracy to succeed, each of the RICO Defendants and their co-conspirators had to agree to implement and use the similar devices and fraudulent tactics—specifically complete secrecy about the defeat devices in the Affected Vehicles.

341. The RICO Defendants knew and intended that government regulators, as well as Plaintiffs, would rely on the material misrepresentations and omissions made by them and VGoA about the Affected Vehicles. The RICO Defendants knew and intended that franchise dealers, including Plaintiffs would incur costs and damages as a result.

342. As fully alleged herein, Plaintiffs, along with hundreds of franchise dealers, relied upon Defendants' representations and omissions that were made or caused by them. Plaintiffs' reliance is made obvious by the fact that they invested millions of dollars in building, commencing, and continuing operation of their franchise dealership. In addition, the EPA, CARB, and other regulators relied on the misrepresentations and material omissions made or caused to be made by the RICO Defendants; otherwise Volkswagen could not have obtained valid COCs and EOs to sell the Affected Vehicles.

343. The RICO Defendants' conduct in furtherance of this scheme was intentional. Plaintiffs were harmed as a result of the RICO Defendants' intentional conduct. Plaintiffs, regulators and consumers, among others, relied on the RICO Defendants' material misrepresentations and omissions.

344. As described herein, the RICO Defendants engaged in a pattern of related and continuous predicate acts for many years. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiffs and obtaining

significant monies and revenues from them and through them while providing Affected Vehicles worth significantly less than the invoice price paid. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

345. The predicate acts all had the purpose of generating significant revenue and profits for the RICO Defendants at the expense of Plaintiffs and consumers. The predicate acts were committed or caused to be committed by the RICO Defendants through their participation in the Emissions Fraud Enterprise and in furtherance of its fraudulent scheme, and were interrelated in that they involved inducing Plaintiffs to purchase the Property, construct a new VW franchise, and enter into a franchise agreement notwithstanding millions of dollars in foreseeable losses.

346. During the design, manufacture, testing, marketing and sale of the Affected Vehicles, the RICO Defendants shared technical, marketing and financial information that plainly revealed the emissions control systems in the Affected Vehicles as the ineffective, illegal and fraudulent piece of technology they were and are. Nevertheless, the RICO Defendants shared and disseminated information that deliberately represented Affected Vehicles as “clean,” “environmentally friendly,” and “fuel efficient.”

347. By reason of and as a result of the conduct of the RICO Defendants, and in particular, its pattern of racketeering activity, Elgin VW and SCI have suffered damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, rent/use and occupancy due and owing to SCI for the use of the Property and Facility,

diminution in value of the Property, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$10,000,000.

348. Each of the RICO defendants knew, understood and intended for members of the Dealer Franchise class to purchase the Affected Vehicles, and knew, understood and foresaw that revelation of the truth would injure Plaintiffs.

349. The RICO Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiffs, and Plaintiffs are entitled to bring this action for three times their actual damages, an amount estimated in excess of \$30,000,000, as well as injunctive/equitable relief, costs, and reasonable attorneys' and experts' fees pursuant to 18 U.S.C. § 1964(c).

350. Plaintiffs demand compensation for these actual damages, treble damages, attorneys' fees, experts' fees, costs and expenses.

**COUNT III**  
**VIOLATION OF ILLINOIS MOTOR VEHICLE FRANCHISE ACT**  
**815 ILCS 710/1, *ET SEQ.***  
**(ELGIN VW against VGoA and VWAG)**

351. Plaintiff Elgin VW incorporates by reference all general allegations as though fully set forth herein, except that this is not a class claim.

352. Defendants VGoA and VWAG are each a "manufacturer", "distributor", "factory representative", and "distributor representative" as those terms are defined in 815 ILCS 710/2.

353. Elgin VW is a "Motor Vehicle Dealer" as that term is defined in 815 ILCS 710/2.

354. The Illinois Motor Vehicle Franchise Act ("IMVFA") prohibits "unfair methods of competition and unfair and deceptive acts or practices," including the following: "to engage in any action with respect to a franchise which is arbitrary, in bad faith or unconscionable and which causes damage to any of the parties or to the public." 815 ILCS 710/4(b).

355. As set forth herein, VWAG and VGoA participated in arbitrary, bad faith and unconscionable acts with respect to a franchise, which caused damage to Elgin VW and to the public, in violation of the IMVFA.

356. Among other things, VWAG and VGoA concealed the existence of their fraudulent scheme from Elgin VW in order to induce it to enter into a franchise agreement and to begin operations as a franchise Volkswagen dealer.

357. Once news of the scandal broke, VGoA misrepresented to Elgin VW Volkswagen's ability to repair or remedy the defects, the extent of the scandal, the culpability of Volkswagen, and what Volkswagen was willing to do for its customers and dealers to remedy their losses. These assurances were false, or at best, made with a reckless disregard for the truth about the scandal and what Volkswagen was prepared or able to do to address it. They were made in order to induce Elgin VW to enter into a franchise agreement and to begin operations as a franchise Volkswagen dealer.

358. VWAG and VGoA also concealed the fact that the 3.0-liter vehicles were subject to the emissions scandal until after Elgin VW had entered into the Dealer Agreement and purchased 3.0-liter Touaregs for sale to customers. This additional violation further deepened the emissions scandal and contributed directly to Elgin VW's losses.

359. As a result of the illegal conduct of VGoA and VWAG, Elgin VW has suffered damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, rent/use and occupancy due and owing to SCI for the use of the Property and Facility, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$5,000,000.

360. VWAG and VGoA's actions have been willful and wanton and in bad faith, thus supporting Elgin VW's claims for treble damages under 815 ILCS 710/13, an amount estimated in excess of \$15,000,000, as well as attorneys' fees, expert fees, and costs.

361. Plaintiffs demand compensation for these actual damages, treble damages, attorneys' fees, experts' fees, costs and expenses.

**COUNT IV**  
**COMMON LAW FRAUD**  
**(ALL PLAINTIFFS against VGoA and VWAG)**

362. Plaintiffs reallege and incorporate by reference all general allegations as though fully set forth herein.

363. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied Plaintiffs information that is highly relevant to their business decisions to purchase and/or maintain a Volkswagen dealership.

364. Volkswagen further affirmatively and intentionally misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided to each dealership, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

365. Volkswagen knew these representations were false when made.

366. The Affected Vehicles purchased for inventory by Plaintiffs were, in fact, defective, non-EPA-compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine systems, as alleged herein.

367. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, under United States and Illinois law and regulations regarding emissions standards.

368. The aforementioned concealment was material because if it had been disclosed, Plaintiffs would not have purchased their dealership or constructed their new facility, would not have entered into a Dealer Agreement with Volkswagen, would not have purchased for inventory the Affected Vehicles.

369. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or operating a dealership. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles through Plaintiffs.

370. Plaintiffs relied on Volkswagen’s reputation—along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements—in purchasing and constructing their dealership and commencing operations as a franchised Volkswagen dealer.

371. Further, VGoA misrepresented the extent and scope of the scandal, Volkswagen’s ability to remedy the defects in the Affected Vehicles in a short amount of time, Volkswagen’s intent to make up the losses to Slevin, and Volkswagen’s plan to provide incentives to customers

to improve sales. These representations were made by VGoA employees during at least the following instances:

- a. A phone call from Volkswagen employee Gordon Munroe to William Slevin approximately 10 days after the First NOV was issued;
- b. During lunch meetings between Slevin, Munroe and Miraman King (among others) in Elgin after the First NOV was issued.

372. Slevin and Elgin VW relied on these representations and assurances in signing the Dealer Agreement, ordering inventory from VW, and commencing dealership operations in October and November of 2015. Had these representations and assurances not been made, he would not have done so.

373. By reason of and as a result of the conduct of Volkswagen, Elgin VW and SCI have suffered damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, rent/use and occupancy due and owing to SCI for the use of the Property and Facility, diminution in value of the Property, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$10,000,000.

374. The actions of Volkswagen in the course of setting in motion the emissions scandal, concealing the scandal from Plaintiffs, U.S. Regulators and the public rises above the level of ordinary fraud, and constitutes gross fraud, breach of trust, and clearly shows malice or willfulness on the part of Volkswagen and an intent to injure all victims thereof, including Plaintiffs. Accordingly, Plaintiffs seek punitive damages up to four times their proven actual damages, an amount estimated to exceed \$40,000,000.

375. Plaintiffs demand compensation for these actual damages, punitive damages, costs and expenses.

**COUNT V**  
**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.**  
**(ALL PLAINTIFFS against VGoA and VWAG)**

376. Plaintiffs reallege and incorporate by reference all general allegations as though fully set forth herein.

377. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 (the “Consumer Fraud Act”), outlaws, *inter alia*, “unfair or deceptive acts or practices” by any person who is engaged in a trade or business.

378. Section 1(c) of the Consumer Fraud Act defines a person to include “any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.” Volkswagen is a person under the Consumer Fraud Act and liable for violations thereof.

379. Volkswagen was, at all relevant times, engaged in a trade or business and Elgin VW and SCI were, at all relevant times, consumers of the products offered and provided by Volkswagen.

380. Volkswagen’s emissions scandal, including its actions in concealing or affirmative misrepresenting the salability of its products constitute a deceptive act or practice in violation of Section 2 of the Consumer Fraud Act, including, without limitation, because these actions: (a) constitute deceptive acts and practices under Illinois law; and (b) constitute misrepresentations or omissions of material fact resulting in harm to Plaintiffs and to consumers.

381. Volkswagen’s conduct in perpetrating its emissions fraud and concealing it from

Volkswagen dealers, like Elgin VW, and consumers a business practice that is harmful to the public.

382. There is a consumer nexus between Volkswagen's conduct and the injuries sustained by Elgin VW in this case. Volkswagen's fraudulent and criminal conduct was unquestionably directed toward the market—indeed, dirty TDI vehicles ended up in the hands of hundreds of thousands of consumers, including those in Illinois. The actions of Volkswagen in making vehicles that violate federal and state emissions standards, and concealing that fact from regulators, dealers and the public, clearly gives rise to consumer protection concerns.

383. Volkswagen's fraudulent and deceptive conduct is the proximate cause of Plaintiffs' damages.

384. Under Section 10a(a) of the Consumer Fraud Act, Elgin VW and SCI are entitled to recover damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, rent/use and occupancy due and owing to SCI for the use of the Property and Facility, diminution in value of the Property, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$10,000,000.

385. The actions of Volkswagen in the course of setting in motion the emissions scandal, concealing the scandal from Plaintiffs, U.S. Regulators and the public rises above the level of ordinary fraud, and constitutes gross fraud, breach of trust, and clearly shows malice or willfulness on the part of Volkswagen and an intent to injure all victims thereof, including Plaintiffs. Accordingly, Plaintiffs seek punitive damages up to four times their proven actual damages, an amount estimated to exceed \$40,000,000.

386. Under Section 10a(c) of the Consumer Fraud Act, Elgin VW is entitled to recover

its attorneys' fees and costs expended in this matter.

387. Plaintiffs demand compensation for these actual damages, punitive damages, attorneys' fees, expert fees, costs, and expenses.

**COUNT VI**  
**CIVIL CONSPIRACY**  
**(ALL PLAINTIFFS against ALL DEFENDANTS)**

388. Plaintiffs reallege and incorporate by reference all general allegations as though fully set forth herein.

389. As described in great detail herein, the Volkswagen Defendants and the Bosch Defendants agreed to develop, install, market and conceal the illegal defeat device from the American public, in violation of numerous laws, including the Clean Air Act.

390. The Volkswagen Defendants and the Bosch Defendants worked in concert to achieve their unlawful objective through unlawful means.

391. In the furtherance of the conspiracy, the Volkswagen Defendants concealed and affirmatively misrepresented the emissions scheme to Plaintiffs, inducing them to acquire, construct, and commence business as a Volkswagen dealer, which has now resulted in millions of dollars of losses that they would not have sustained had they not relied upon the representations and omissions of Volkswagen.

392. As a result, the Volkswagen Defendants and the Bosch Defendants are liable for the damages caused by a common civil conspiracy.

393. By reason of and as a result of the conduct of Defendants, and in Elgin VW and SCI have suffered damages including, but not limited to actual losses, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern, rent/use and occupancy due and owing to SCI for the

use of the Property and Facility, diminution in value of the Property, and other costs and expenses to be determined at trial, in an amount estimated to already be in excess of \$10,000,000.

394. The actions of Defendants in the course of setting in motion the emissions scandal, concealing the scandal from Plaintiffs, U.S. Regulators and the public rises above the level of ordinary fraud, and constitutes gross fraud, breach of trust, and clearly shows malice or willfulness on the part of Defendants and an intent to injure all victims thereof, including Plaintiffs. Accordingly, Plaintiffs seek punitive damages up to four times their proven actual damages, an amount estimated to exceed \$40,000,000.

395. Plaintiffs demand compensation for these actual damages, punitive damages, costs and expenses.

**COUNT VII**  
**PROMISSORY ESTOPPEL**  
*In the Alternative*  
**(ELGIN VW against VGoA)**

396. Plaintiff realleges and incorporates by reference all general allegations as though fully set forth herein.

397. After the emissions scandal broke, Elgin VW was concerned about the impact that the scandal would have on its Volkswagen operations.

398. To allay Elgin VW's concerns, induce it to enter into the Dealer Agreement and begin operations as a franchised Volkswagen dealer, VGoA personnel repeatedly promised that it intended to offer Elgin VW compensation to offset its losses.

399. Specifically, VGoA misrepresented the extent and scope of the scandal, Volkswagen's ability to remedy the defects in the Affected Vehicles in a short amount of time, Volkswagen's intent to make up the losses to Slevin, and Volkswagen's plan to provide

incentives to customers to improve sales. These representations were made by VGoA employees during at least the following instances:

- a. A phone call from Volkswagen employee Gordon Munroe to William Slevin approximately 10 days after the First NOV was issued;
- b. During lunch meetings between Slevin, Munroe and Miraman King (among others) in Elgin after the First NOV was issued.

400. In reliance on these promises, Elgin VW entered into the franchise agreement, purchased floorplan inventory from Volkswagen and commenced operations as a Volkswagen dealer.

401. Volkswagen failed to make Elgin VW whole for its losses related to the emissions scandal, which is still on going. Even when Volkswagen was subsidizing the dealership (which ended in 2016), the subsidies were far less than Elgin VW's actual losses. Volkswagen also promised to immediately provide aggressive customer incentives and engaged in extensive advertising, neither of which occurred.

402. These promises were with respect to a different subject matter than the Dealer Agreement.

403. If not for VGoA's promises to make Elgin VW whole for any losses sustained as a result of the emissions scandal, Elgin VW would not have commenced operations as a Volkswagen dealer or have incurred the substantial losses it has to date.

404. As a result, VGoA is estopped from denying its liability for the losses Plaintiffs incurred when it entered into a franchise agreement with Volkswagen in reliance on these promises.

405. Elgin VW is entitled to recover its losses and expenditures from VGoA including, but not limited to actual losses, increased financing and related expenses, increased inventory

carrying costs, loss of sales, rent/use and occupancy due and owing to SCI for the use of the Property and Facility, and other costs and expenses to be determined at trial.

406. Plaintiffs demand compensation for these actual damages, punitive damages, costs and expenses.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

Date: May 18, 2017

Respectfully submitted,

ICONIC MOTORS, INC. d/b/a ELGIN  
VOLKSWAGEN and SLEVIN CAPITAL  
INVESTMENT, INC., Plaintiffs,

By: /s/ Ira M. Levin

One of their attorneys

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