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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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

MDL No. 2672 CRB (JSC)

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS REGARDING
VOLKSWAGEN BONDS**

13
14
15 This Document Relates To:

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

16 *BRS v. Volkswagen AG, et al.*, Case No. 16-cv-
3435 (“Bondholders Securities Action”)

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Lead Plaintiff Puerto Rico Government Employees and Judiciary Retirement Systems Administration (“PRGERS” or “Plaintiff”), by its undersigned counsel (“Lead Counsel”), makes the following allegations in this Class Action Complaint for violations of the Federal Securities Laws upon information and belief based upon all of the facts set forth herein which were obtained through an investigation made by and through Lead Counsel. Lead Counsel’s investigation has included, among other things, a review and analysis of public filings by Defendants (defined herein) with government regulators, press releases and other public statements issued by Defendants, new reports, documents filed in other proceedings, and the other sources, set forth herein. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for further investigation or discovery.

I. NATURE OF THE ACTION

1. This is a federal securities class action brought by Plaintiff on behalf of a Class consisting of all persons and entities (“Bondholders”) who purchased or otherwise acquired private debt (bonds) exempt from registration with the U.S. Securities and Exchange Commission (“SEC”) under Rule 144A of the U.S. Securities Act of 1933, 17 C.F.R. § 230.144A (“Rule 144A”), of Volkswagen Aktiengesellschaft (herein, “VWAG”) between May 23, 2014, and September 22, 2015, inclusive (the “Class Period”), and who were damaged thereby. This action seeks to recover damages caused by Defendants’ violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder by the SEC.

2. Headquartered in Wolfsburg, Germany, Defendant VWAG is one of the world’s leading automobile manufacturers and Europe’s largest carmaker. In 2014, the Company sold over ten million cars, representing approximately 13% of the global passenger car market. The Company encompasses 12 brands: Volkswagen Passenger Cars, Audi, SEAT, ŠKODA, Bentley, Bugatti, Lamborghini, Porsche, Ducati, Volkswagen Commercial Vehicles, Scania and MAN. Volkswagen operates 31 production plants throughout the world, including a large production plant in Chattanooga, Tennessee. Defendant Volkswagen Group of America, Inc. (“VWGoA”)

(d/b/a/ Volkswagen of America, Inc. (“VWoA”), and Audi of America, Inc. (“AoA”)), is a wholly-owned U.S. subsidiary of VWAG. Defendant Volkswagen Group of American Finance, LLC (“VWGoAF”) is a own wholly-owned subsidiary of VWGoA. Defendant VWGoAF was incorporated on February 14, 2014, as a debt-issuing vehicle for its ultimate parent company, VWAG. Herein, references to “Volkswagen,” “VW,” or the “Company” are to VWAG, together with its subsidiaries, including VWGoA and VWGoAF.

3. On three occasions in 2014 and 2015, VWGoAF issued U.S.-dollar denominated debt securities (the “Bonds”) guaranteed by VWAG, raising a total of \$8.3 billion dollars in par value, which traded during the Class Period. Specifically, VWGoAF issued \$3.5 billion in bonds on May 23, 2014, \$2 billion in bonds on November 20, 2014, and \$2.8 billion in bonds on May 22, 2015. All of these issues were private placements and only offered to U.S. investors pursuant to an exemption from registration with the SEC under Rule 144A. This action is brought on behalf of all purchasers of the above private placement Bonds.

4. Prior to and during the Class Period, Defendants made numerous materially false and misleading statements and omissions to Bondholders regarding the Company’s operations, its business and financial condition, and its outlook, and engaged in a scheme to defraud those Bondholders. Specifically, Volkswagen failed to disclose that it installed and utilized a “defeat device” in a substantial amount of vehicles, which allowed those vehicles, and particularly certain of its diesel cars, to temporarily reduce emissions during testing to allow them to be certified for sale. Without the use of the defeat device, and during normal, non-testing operation, those vehicles produced emissions in excess of regulatory requirements, and otherwise would not have been certified for sale. Furthermore, the use of a defeat device assisted Volkswagen’s marketing to environmentally conscious consumers to increase sales of diesel cars, while evading the emissions regulations and standards in the United States and Europe. As part of this scheme, Defendants made material misrepresentations and omissions to the Class in the Bond Offering Memoranda dated May 15, 2014 (for the May 23, 2014 offering), November 12, 2014 (for the November 20, 2014 offering), and May 19, 2015 (for the May 22, 2015 offering), and failed disclose material facts or otherwise correct their omissions throughout the Class Period.

1 5. As a result of Defendants' scheme and false and misleading statements and
2 omissions, Volkswagen's private debt instruments were issued at favorable rates to Volkswagen,
3 and then, after issuance, traded at artificially inflated prices during the Class Period. In fact, all
4 of the Bonds at issue in this Complaint traded at over 100% of par value during the Class Period,
5 but fell below 100% of par value after Defendants' scheme was revealed to the public.

6 6. As described more fully herein, the truth began to be revealed to Bondholders and
7 the markets on Friday, September 18, 2015, when the U.S. Environmental Protection Agency
8 ("EPA") issued a Notice of Violation ("NOV") stating that Volkswagen had installed
9 sophisticated software in Volkswagen and Audi diesel vehicles sold in the United States to
10 favorably alter the results of required emissions tests. Specifically, the software could detect
11 when the vehicle was undergoing official emissions testing and then turn on full emissions
12 controls to alter the results. During normal operation, however, the emissions controls were
13 deactivated, meaning that the car released pollution at levels exceeding those allowed by federal
14 and state clean air regulators. This software produced and used by Volkswagen is a prohibited
15 "defeat device" as defined by the Clean Air Act.

16 7. The next day, on September 19, 2015, the *New York Times* published a front-page
17 article titled "U.S. Orders Major Recall Over Emissions Test Trickery." The article reported that
18 Volkswagen had "illegally installed software in its diesel-power cars to evade standards for
19 reducing smog," and that Volkswagen had "admitted to the use of a so-called defeat device. The
20 recall involves 4-cylinder Volkswagen and Audi vehicles from model years 2009-2015." The
21 article also reported that the Department of Justice ("DOJ") had opened an investigation and that
22 fines of as high as \$18 billion could be imposed as a result of Defendants' misconduct.

23 8. On Sunday, September 20, 2015, Defendant Martin Winterkorn, Volkswagen's
24 then-CEO, admitted on behalf of the Company that it's "manipulations...violate American
25 environmental standards," and stated further that he was "endlessly sorry" and that the Company
26 had broken the "trust" that "millions of people across the world" had in "our brands, our cars,
27 and our technology." Then, on September 22, 2015, Volkswagen issued a press release revealing
28 that as many as 11 million vehicles worldwide contained the defeat devices used to evade

emissions tests and that the Company would take a \$7.3 billion charge to earnings in connection with a portion of the anticipated liabilities associated with the fraud.

9. Following these disclosures, which revealed the relevant truth that had previously been concealed from the market, the price of Volkswagen securities fell sharply, including the value of the Bonds. Between September 18, 2015 and September 22, 2015, the price of the Bonds plummeted, falling as much as 7.82% of par value. Furthermore, after the truth was revealed, the credit ratings of the Bonds were cut, the risk of default on Bonds increased, as indicated by price the credit default swaps; and all of the Bonds began trading below 100% of par value. The declines in Bond value when the truth was revealed have resulted in substantial losses to Bondholders, who relied on the accuracy of Defendants' statements and suffered damages as result of Defendants' wrongful conduct. This action seeks to recover for those losses.

II. JURISDICTION AND VENUE

10. This action arises under and pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. §240.10b-5 ("Rule 10b-5").

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

12. This Complaint is being filed as an original action in this District and has been deemed related to the MDL No. 2672 proceedings, which have been consolidated under 28 U.S.C. §1407 before Judge Charles R. Breyer, presiding in the San Francisco Division of this District.

13. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa and Section 1391(b) of the Judicial Code, 28 U.S.C. 1391(b), (c), and (d). Defendants conduct business in this District, and many of the acts and transactions that constitute the alleged violations of law occurred in or affected persons in this District.

1 14. In connection with the acts alleged herein, Defendants, directly or indirectly, used
2 the means and instrumentalities of interstate commerce, including, but not limited to, the U.S.
3 mails, interstate telephone communications, and the facilities of securities trading markets in the
4 United States.

5 15. All of the transactions in the U.S.-dollar denominated debt securities that are at
6 issue in this action took place either entirely or substantially within the United States, including
7 irrevocable liability and transfer of beneficial ownership. The Issuer of the Bonds was
8 VWGoAF, a Delaware company with its principle place of business in Herndon, Virginia. On
9 the date of the offerings, and in accordance with the Distribution Plan laid out in the Offering
10 Memoranda, VWGoAF distributed the Bonds to the Initial Subscribers/Joint Book-Running
11 Managers, nearly all of which are U.S.-based investment banks, to sell the Bonds to investors.
12 Of the eleven Initial Subscribers/Joint Book Running Managers, only one, Société Générale
13 (who conducts substantial business in the U.S. and in this District), is based outside of the United
14 States. Specifically, the Initial Subscribers/Joint Book-Running Managers for the May 23, 2014
15 offering are the U.S.-based offices of BNP Paribas Securities Corp. (New York), Citigroup
16 Global Markets Inc. (New York), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill
17 Lynch”) (New York), and RBS Securities Inc. (Connecticut). The Initial Subscribers/Joint
18 Book-Running Managers for the November 20, 2014 offering are the U.S.-based offices of
19 Barclays Capital Inc. (New York), HSBC Securities (USA) Inc. (New York), J.P. Morgan
20 Securities LLC (New York), and Mizuho Securities USA Inc. (New York). The Initial
21 Subscribers/Joint Book-Running Managers for the May 22, 2015 offering are the U.S.-based
22 offices of Citigroup Global Markets Inc. (New York), Goldman Sachs & Co. (New York),
23 Morgan Stanley & Co. LLC (New York), along with the London, England office of Société
24 Générale.

25 16. Plaintiff PRGERS purchased 1,870 Bonds (CUSIP: 928668AA0) issued as part of
26 the May 23, 2014, offering through Initial Subscriber/Joint Book-Running Manager, Merrill
27 Lynch’s Charlotte office, and 2,340 Bonds (CUSIP: 928668AA0) issued as part of the May 23,
28 2014, offering through J.P. Morgan Securities’ New York office.

1 17. Deposit and beneficial interests in the 144A Bonds took place in the United States
2 with Book-entry ownership recorded and held by The Depository Trust Corporation (“DTC”), 55
3 Water Street, New York, New York. As disclosed in the Offering Memoranda, DTC is “a
4 limited-purpose trust company organized under the laws of the State of New York, a ‘banking
5 organization’ under the laws of the State of New York, a member of the U.S. Federal Reserve
6 System, a ‘clearing corporation’ within the meaning of the New York Uniform Commercial
7 Code and a ‘clearing agency’ registered pursuant to the provisions of Section 17A of the
8 Exchange Act. DTC was created to hold securities for its participating organizations
9 (collectively, the ‘DTC Direct Participants’) and to facilitate the clearance and settlement of
10 securities transactions between DTC Direct Participants through electronic computerized book-
11 entry changes in accounts of the DTC Direct Participants, thereby eliminating the need for
12 physical movement of certificates.”

13 18. Further, as specified in the Bond Offering Memoranda, the Bond Payments,
14 including payments of principal and interest, are made in U.S. dollars in a designated bank in
15 New York City.

16 **III. PARTIES**

17 **A. Lead Plaintiff**

18 19. Lead Plaintiff Puerto Rico Government Employees and Judiciary Retirement
19 Systems Administration (“PRGERS”) is a public pension fund established for the management
20 and payment of retirement benefits to employees of the Puerto Rico Government and the
21 Judiciary. PRGERS purchased Volkswagen Bonds at artificially inflated prices during the Class
22 Period, and suffered an economic loss when the relevant truth was disclosed and the Bond values
23 declined. PRGERS’s purchases are set forth in the Certification previously filed with the Court
24 and is incorporated herein by reference. On October 11, 2016, this Court entered an Order
25 appointing PRGERS as Lead Plaintiff.

26 **B. Defendants**

27 20. Defendant Volkswagen Aktiengesellschaft (previously defined as “VWAG”)
28 through itself and its divisions, is a multinational automotive manufacturing company

1 headquartered in Wolfsburg, Lower Saxony, Germany. VWAG is the ultimate parent and
2 controlling company of defendants VWGoA and VWGoAF, and is the Guarantor of the Bond
3 Offerings as defined in the Bond Offering Memoranda. Defendant VWAG was involved in the
4 day-to-day operations of, and exercised power and control over, VWGoA and VWGoAF,
5 including by, among other things, appointing their boards of directors and executive officers and
6 directing their public statements and regulatory actions. VWAG engineered, designed,
7 developed, manufactured, and installed the defeat-device software on its diesel cars with the
8 knowledge and understanding that they would be sold throughout the U.S. and the world.
9 VWAG also developed, reviewed, and approved the marketing and advertising campaigns
10 designed to sell the illegal cars. The Bond Offering Memoranda state that “references to the
11 ‘Company’, the ‘Guarantor’ or ‘Volkswagen AG’ are to [VWAG], and references to
12 ‘Volkswagen’, the ‘Volkswagen Group’, ‘we’, ‘us’ and ‘our’ are to [VWAG] together with its
13 consolidated subsidiaries, including the Issuer [VWGoAF].”

14 21. Defendant Volkswagen Group of America (previously defined as “VWGoA”) (d/b/a/
15 Volkswagen of America, Inc. (“VWoA”), and Audi of America, Inc. (“AoA”)), is a
16 wholly-owned subsidiary of VWAG doing business in the United States and organized under the
17 laws of the State of New Jersey with its principle place of business in Herndon, Virginia.
18 VWGoA houses the U.S. operations of many of VWAG’s brands, including Volkswagen, Audi,
19 Bentley, Bugatti, and Lamborghini. VWGoA has approximately 6,000 employees in the United
20 States and sells its vehicles through a 1,000 dealer network in all 50 states. VWGoA also
21 operates a manufacturing plant in Chattanooga, Tennessee. In 2014 alone, VWGoA sold
22 552,729 vehicles in the United States from its U.S. dealer network in all 50 states, including
23 95,240 “turbocharged direct injection” (“TDI”) “clean diesel” vehicles.

24 22. Defendant Volkswagen Group of America Finance, LLC (previously defined as
25 “VWGoAF”), is a wholly-owned subsidiary of VWGoA doing business in the United States,
26 organized under the laws of Delaware with its principle place of business in Herndon, Virginia.
27 It was incorporated on February 14, 2014, as a debt issuing vehicle for VWAG (with VWAG as
28

1 the ultimate obligor of the debt), and specifically, is the Issuer of the Bonds that are the basis for
2 this action.

3 23. Defendant Martin Winterkorn (“Winterkorn”) was appointed Chief Executive
4 Officer (“CEO”) of VWAG in 2007 and served as CEO and Chairman of the Board of
5 Management of VWAG until his resignation on September 23, 2015. Winterkorn also served as
6 Chairman of the Board of Management of Porsche Automobil Holding SE until his resignation
7 on October 17, 2015, and Chairman of the Supervisory Board of Audi AG until his resignation
8 on November 11, 2015. Defendant Winterkorn was involved in the day-to-day operations of,
9 and exercised power and control over VWAG and its subsidiaries, including by, among other
10 things, directing their public statements, and regulatory actions. In his capacity as a member of
11 VWAG’s Board of Management, Winterkorn signed certifications in the Offering Memoranda to
12 the Bonds at issue in this action, attesting to the truth and accuracy of the Company’s financial
13 position, the development and performance of its business, and descriptions of the material
14 opportunities and risks associated with the company’s expected development. Winterkorn
15 signed at least three such certifications, dated February 12, 2013, February 11, 2014, and
16 February 17, 2015.

17 24. Defendant Winterkorn is subject to the personal jurisdiction of the Court because
18 he has availed himself of the laws of the United States through his management and control over
19 VWGoA and its subsidiary VWGoAF, as well as the manufacture, distribution, testing, and sale
20 of hundreds of thousands of diesel vehicles imported and sold across the United States. Further,
21 Winterkorn has frequently travelled to the United States to attend and make presentations at
22 various car shows across the country in order to promote the sales of Volkswagen cars with the
23 purported clean diesel technology.

24 25. Defendant Michael Horn (“Horn”) was President and CEO of VWGoA from
25 January 1, 2014 until his resignation on March 9, 2016. Immediately prior to assuming the role
26 of VWGoA CEO, Horn served as the Global Head of After Sales at VWAG and VWGoA from
27 March 2009 to December 2013. Defendant Horn was involved in the day-to-day operations of,
28

1 and exercised power and control over VWGoA and its subsidiary VWGoAF, including by,
2 among other things, directing their public statements and regulatory actions.

3 26. Defendant Horn is subject to the personal jurisdiction of the Court because he has
4 availed himself of the laws of the United States through his management and control over
5 VWGoA and VWGoAF, as well as the manufacture, distribution, testing, and sale of hundreds of
6 thousands of diesel vehicles imported and sold across the United States. Further, Horn was a
7 resident of the United States during the Class Period and while heading VWGoA and promoting
8 the sales of Volkswagen cars with the purported clean diesel technology.

9 27. As set forth herein, by virtue of their positions with the Company, as well as the
10 Company's centralized and detail-oriented style of management, Defendants Winterkorn and
11 Horn (the "Individual Defendants") had access to adverse undisclosed information about the
12 development of performance of the Company's business, its operations, financial condition,
13 growth, markets, management, earnings and present and future business prospects. The
14 Individual Defendants were able to and did control the content of the various offering
15 memoranda, filings, and other statements pertaining to the Company during the Class Period.
16 Each Individual Defendant was provided with copies of documents alleged herein to be
17 misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to
18 prevent their issuance or cause them to be corrected. Additionally, VWAG is a control person of
19 both VWGoA and VWGoAF by virtue of its direct authority and management over these entities
20 as wholly-owned subsidiaries, and VWGoA is a control person of VWGoAF by virtue of its
21 direct authority and management over its wholly-owned subsidiary.

22 **IV. BACKGROUND**

23 **A. Volkswagen's History And Ownership Structure**

24 28. VWAG was established in Germany in 1937 to produce an affordable "people's
25 car" for ordinary German workers. The Company was largely destroyed during World War II,
26 but resumed operations in the British Occupation Zone under the ownership of the West German
27 government and the State of Lower Saxony.
28

1 29. In 1960, West Germany partially privatized VWAG and enacted the “Volkswagen
2 Law” to regulate the privatization. The Volkswagen Law originally provided that major
3 shareholder resolutions would require an 80% vote. The State of Lower Saxony held a voting
4 share of 20.2%, giving it the ability to veto any major decision and help prevent a takeover by
5 other shareholders.

6 30. In 2008, the Volkswagen Law was amended to remove restrictions on share
7 ownership, but an 80% vote was still required for major decisions. The Volkswagen Law was
8 further amended in 2013 to abolish the 80% vote requirement. Nonetheless, VWAG’s highly
9 concentrated ownership remains insulated from the possibility of a takeover.

10 31. VWAG was co-founded by Ferdinand Porsche, who also founded German
11 automaker Porsche Automobil Holdings SE (“Porsche”). Porsche acquired 30.9% of VWAG in
12 2007, and then moved for a majority stake in 2009 in an attempt to acquire VWAG. However,
13 Porsche experienced financial difficulties and was unable to complete the acquisition. Under an
14 agreement between VWAG and Porsche in 2009, VWAG agreed to Porsche’s 50.7% ownership
15 of VWAG in exchange for VWAG’s management taking control of Porsche. In effect, instead of
16 Porsche taking control of VWAG, VWAG took control of Porsche. However, the Porsche
17 family and the related Piëch family own and control Porsche and thus obtained majority control
18 of VWAG.

19 32. As a result of the 2009 agreement, Volkswagen is now owned 50.7% by Porsche,
20 20.0% by the State of Lower Saxony, and 17.0% by Qatar Holding LLC, with only 12.3% of the
21 Company owned by outside, public shareholders. Furthermore, VWAG’s largest shareholder,
22 Porsche, is owned and controlled by the Porsche and Piëch families. This concentration of
23 majority share ownership in the hands of three shareholders – one of which, owned and
24 controlled by the Porsche and Piëch families, itself accounts for a majority – contributes to a
25 Volkswagen corporate culture of secrecy and lack of accountability.

26 33. VWAG’s culture of secrecy is reinforced by its insular corporate-governance
27 structure. Under German law, VWAG has two boards: a Board of Management, which consists
28 of VWAG’s Chairman and other senior executive officers and is responsible for managing

VWAG's business; and a 20-member Supervisory board, which is responsible for monitoring the Company's management, approving important corporate decisions, and appointing members of the Board of Management. Under the Germany Co-Determination Act, half of the members of the Supervisory Board are representatives of the Germany labor unions on behalf of the Company's German workers. Remaining members of the Supervisory Board include the Company's chairman, four members of the Porsche and Piëch families, two representatives of the State of Lower Saxony, two representatives of Qatar Holding LLC, and the chief executive officer of Swedish bank SEB (which is an advisor to Scania, one of VWAG's twelve brands).

B. Volkswagen Had An Ambitious Growth Plan Driven By "Clean Diesel" Marketing

34. VWAG is the largest automobile manufacturer in Europe, accounting for approximately 25% of all cars sold there. In 2008, VWAG became the third-largest automobile manufacturer in the world. Though Volkswagen has significant market share globally and abroad, its share of the U.S. car market lagged at less than 2% in the mid-2000s, leaving significant room for growth.

35. In 2008, Defendant Winterkorn outlined an ambitious growth plan, called "Strategy 2018," to make VWAG the largest and most profitable car maker in the world by 2018. According to *Automotive News Europe*, a central part of "Strategy 2018" was dependent on boosting core-brand sales in the United States, aiming to at least double its sales from 324,402 units sold in 2007, to 800,000 units sold by 2018. One strategy for VWAG to achieve its goal would be to increase sales of diesel cars in the United States.

36. Though popular in Europe, diesel vehicles make up only about 3% of the passenger car market in the United States. Therefore, an important part of Volkswagen's sales and marketing efforts in the United States involved promoting its diesel vehicles as low-emission, fuel-efficient cars that offer performance comparable to that of gasoline vehicles.

37. In August 2008, VWAG introduced a new lineup of Model Year 2009 "clean diesel" engines in the U.S. that were purportedly compliant with U.S. emissions standards. In 2010, Volkswagen announced its goals of doubling its U.S. market share from 2% to 4% by

1 2014, and of becoming the world's largest automaker by 2018. In fact, VWAG would become
2 the world's largest automaker in 2015, three years ahead of its plan.

3 38. Sales of "clean diesel" cars in the United States were a central part of
4 Volkswagen's growth strategy. Volkswagen sold 43,869 "clean diesel" vehicles in the U.S. in
5 2009, 58,784 in 2010, 76,564 in 2011, 99,121 in 2012, 111,285 in 2013, and 98,500 in 2014. By
6 2015, Volkswagen had a 70% market share of U.S. diesel vehicle sales, and almost one-quarter
7 of its U.S. sales were diesels. Volkswagen's success in becoming the largest seller of diesel
8 passenger vehicles in the United States was a result of its clean diesel marketing plan.

9 **C. The United States And Europe**
10 **Required Emissions Standards**

11 39. Prior to and during the Class Period, various regulatory standards were in place in
12 the United States and the European Union to limit the amount of pollutants that vehicles
13 discharged into the atmosphere, and to further the public health. In the United States, EPA
14 regulations established Tier 2 and later Tier 3 emissions standards.

15 40. Under Tier 2, phased in between 2004 and 2009, emissions standards are
16 structured into 8 certification levels of different stringency, called "certification bins," which
17 include an average fleet standard for nitrogen oxide ("NOx") emissions. For example, the
18 average fleet standard for NOx emissions for Bin 5 certification is less than 0.05 grams of NOx
19 per mile during their intermediate life, and 0.07 grams of NOx per mile during their full useful
20 life.

21 41. Under Tier 3, emissions standards are similarly structured into certification levels
22 that set a fleet-average emission standard, but are more stringent overall, with the highest
23 acceptable emission bin, Bin 160, equivalent to Tier 2's Bin 5 limits. Tier 3 standards were
24 enacted in March 2014, and are to be phased in from 2017 to 2025.

25 42. In addition to the federal regulations, Volkswagen must also comply with the
26 emission regulations of all U.S. States, which may enact stricter requirements than the EPA
27 Standards. For example, California has enacted stricter requirements, which have also been
28

1 adopted by other states. Compliance with California's emission standards is critically important
2 because it is by far the largest market of any other state.

3 43. In November 1998, the California Air Resources Board ("CARB"), California's
4 regulatory agency that oversees automotive emissions, adopted the Low Emission Vehicle II
5 emissions standards, to be phased in from 2004 to 2010. Under the Low Emission Vehicle II
6 standards, carmakers were required to comply with at least one of several emissions categories,
7 including: (1) Low Emission Vehicles ("LEV II"); (2) Ultra Low Emission Vehicles ("ULEV
8 II"); (3) Super Ultra Low Emission Vehicles ("SULEV II"); and (4) Partial Zero Emission
9 Vehicles ("PZEV"). Manufacturers, such as Volkswagen, were permitted to certify vehicles to
10 these standards until Model Year 2019.

11 44. In January 2012, CARB adopted the more stringent Low Emission Vehicle III
12 emissions standards, which are to be phased in over the 2015 – 2025 Model Years. Carmakers
13 are permitted to certify vehicles to these standards before Model Year 2015, and by Model Year
14 2020, all vehicles must comply with Low Emission Vehicle III emissions standards. The Low
15 Emission Vehicle II standards expanded upon and tightened the Low Emission Vehicle II
16 standards in several respects, but maintained the rubric of emissions categories under LEV III,
17 ULEV III, SULEV III, and zero emission cars.

18 45. Meanwhile, the relevant standards in the European Union during the Class Period
19 were the Euro-5 and Euro-6 emissions standards. The Euro-5 Standard was implemented in
20 September 2009, and the Euro-6 standard was implemented in September 2014.

21 46. There are two main types of internal combustion engines – diesel and gasoline. A
22 diesel engine is an internal combustion engine in which the ignition of an injected liquid fuel and
23 air mixture is achieved by greatly compressing air until the mixture spontaneously combusts.
24 This causes the gas to expand forcefully, producing significantly more torque than a gasoline
25 engine – leading to more power. In contrast, gasoline engines utilize spark plugs to ignite
26 gasoline vapors and propel the vehicle. Diesel engines make up more than half of all vehicles
27 sold in Europe, because they typically provide better fuel economy and efficiency than gasoline
28 engines.

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

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

49. To limit emissions of NO_x, particulate matter, and other pollutants, U.S. federal and state laws require vehicles to be certified as compliant with emissions standards before they can be sold. Vehicles that are equipped with “defeat devices” cannot be certified or sold. As defined in 40 CFR §86.004-2, a “defeat device” is an “auxiliary emission control device” that reduces the effectiveness of the emission-control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, unless limited exceptions apply. An “auxiliary emission control device” is a design element that senses temperature, vehicle speed, engine revolutions per minute, or other parameters for the purpose of activating, modulating, delaying, or deactivating the vehicle’s emission control system.

V. DEFENDANTS’ FRAUDULENT SCHEME

50. For years leading up to and throughout the Class Period, Defendants fraudulently misrepresented and concealed from investors material facts concerning VWAG’s regulatory compliance, financial results, and commitment to producing “environmentally friendly” vehicles.

51. VWAG repeatedly misrepresented to investors that its vehicles complied with emissions standards in all 50 U.S. States and the Euro-5 standards in Europe. The Company’s

1 reported financial results were also materially false and misleading, given that the results failed
2 to properly treat amounts that, based on the likelihood of warranty claims, fines, and other
3 penalties flowing from the Company's emissions cheating, should have been accounted for as
4 provisions under International Accounting Standard ("IAS") 37, and should have
5 correspondingly reduced VWAG's earnings in each reporting period throughout the Class
6 Period. The failure to accrue such provisions had the effect of inflating VWAG's reported profit
7 and distorting other important financial metrics during the Class Period.

8 52. As Defendants have now repeatedly admitted, Volkswagen engaged in massive,
9 widespread misconduct through the installation and use of defeat-device software in
10 approximately 11 million vehicles with purported "clean diesel" engines—including
11 approximately 580,000 in the United States and 8.5 million in Europe. As set forth herein, these
12 defeat devices were designed to (and did) mask the engines' failure to meet emissions standards.

13 **A. Volkswagen Installs A Defeat Device**

14 53. In 2006, engineers in VWAG's diesel development department in Wolfsburg,
15 Germany began to design a new "EA 189" diesel engine. It quickly became apparent that the
16 engine could not meet both management's performance and cost expectations as well as the new,
17 stricter U.S. emissions standards necessary in order to obtain a certificate of conformity from the
18 EPA to sell vehicles in the United States. Senior management at VWAG headquarters, which
19 was comprised of engineers and others with extensive technical expertise, were well aware of the
20 impossibility of the task.

21 54. Starting in 2008 and throughout the Class Period, VWAG secretly installed a
22 software defeat device in vehicles equipped with its EA 189 2.0 liter engine and other diesel
23 vehicles that sensed when the vehicles were being tested for compliance with applicable
24 emissions standards, based on various parameters including the position of the steering wheel,
25 the vehicle's speed, the duration of the engine's operation, and barometric pressure. During
26 operation in testing conditions, the defeat device caused the vehicles' electronic control module
27 to switch the engine to a "dyno calibration" (referring to the dynamometer equipment used for
28 emissions testing). The "dyno calibration" permitted the emissions-control system to function at

1 full capacity, reducing NOx emissions to a level that complied with federal and state standards,
2 but also reducing the vehicle's power and torque. During normal vehicle operation, the
3 electronic control module instead caused the engine to operate under a different "road
4 calibration" that produced full power and torque, but reduced the effectiveness of the emissions
5 control system. As a result, during normal operation, the Volkswagen 2.0 liter vehicles emitted
6 NOx at levels up to 40 times the EPA limits, depending on the type of vehicle and the driving
7 conditions, and violated prevailing EPA, CARB, and Euro-5 emissions standards.

8 55. James Robert Liang is an engineer that had worked in VWAG's diesel
9 development department and along with co-conspirators, planned the use of, calibrated, and
10 refined the EA 189 engine's defeat device with full understanding that the EPA would not certify
11 vehicles for sale in the U.S. if the EPA knew the vehicles contained defeat devices. In May of
12 2008, Liang moved to the United States to assist in the launch of Volkswagen's diesel vehicles
13 with EA 189 engines, serving as the Leader of Diesel Competence for Defendant VWGoA.

14 56. For each new Model Year of VW's diesel engines, Volkswagen employees met
15 with U.S. regulators to seek the certifications required to sell the vehicles to U.S. customers.
16 Liang personally attended at least two such meetings, on March 19, 2007 with the EPA and
17 March 21, 2007 with CARB, during which he knowingly misrepresented that Volkswagen diesel
18 vehicles complied with U.S. NOx emissions standards. During these meetings, Volkswagen
19 representatives gave detailed descriptions of Volkswagen's diesel technology and emissions
20 control systems, but intentionally omitted any mention of the defeat device. Liang admits in his
21 guilty plea with the DOJ that he knew Volkswagen was cheating by implementing the defeat
22 device, that he and his co-conspirators were deceiving the EPA in this meeting, and that during
23 the certification process for each new Model Year through 2016, Volkswagen continued to
24 falsely and fraudulently certify to the EPA and CARB that Volkswagen 2.0 liter diesel vehicles
25 utilizing the EA 189 engines met U.S. emissions standards and complied with the Clean Air Act.

26 57. The heightened NOx emissions levels from Volkswagen's vehicles had tangible
27 public health consequences that would impact Volkswagen's business operations. According to
28 Cynthia Giles, the EPA's Assistant Administrator for the Office of Enforcement and Compliance

1 Assurance, the EPA's position is that "[u]sing a defeat device in cars to evade clean air standards
2 is illegal and a threat to public health."

3 58. As reported by the Associated Press ("AP") on October 5, 2015 "Volkswagen's
4 pollution-control chicanery has not just been victimless tinkering, killing between five and 20
5 people in the United States annually in recent years." The AP's statistical and computer analysis
6 estimated that over seven years, Volkswagen's illegal emissions caused between 16 and 94
7 deaths in the United States, with more expected. Likewise, according to a report published on
8 October 29, 2015 by research scientists at Harvard University and the Massachusetts Institute of
9 Technology, illegally high NOx emissions produced by Volkswagen's diesel vehicles equipped
10 with defeat devices are projected to cause approximately 60 deaths in the United States by the
11 end of 2016. That report also estimated "mortality costs from 2008 until the end of 2015 due to
12 excess VW NOx emissions ... at \$450 [million], ... while future costs if there is no recall (but no
13 further sales from September 2015) are forecast to be \$910 [million]."

14 59. Contrary to Defendants' representations, VWAG failed to comply with emissions
15 regulations, its cars did not comply with emissions standards for any U.S. state or Europe, and
16 the Company significantly overstated its financial results by failing to properly record provisions
17 arising out of the liabilities owing to its use of illegal defeat devices.

18 60. Had VWAG accurately reported the cars' levels of NOx emissions, it could not
19 have legally marketed or sold the cars in the United States, a fact that was known to Defendants.
20 Similarly, the installation of the defeat devices in Europe was also illegal and contributed to the
21 cars' purported ability to meet European emissions standards.

22 61. Significantly, Volkswagen's top executives knew that the Company's "clean
23 diesel" vehicles passed emissions tests only because they were outfitted with defeat-device
24 software; and, when actually driven, produced NOx and other emissions far in excess of
25 permissible levels. This scheme was intentionally engineered by Volkswagen's senior
26 management including Defendants Winterkorn and Horn, to increase market share in the United
27 States and to become the world's largest car maker by 2018. Defendants' fraud was further
28

1 facilitated by a demanding corporate culture to sell cars and keep management happy at all costs,
2 with reported results far more important than legal and regulatory compliance.

3 **B. Volkswagen Executives Knew Or Were Reckless**
4 **In Not Knowing That Volkswagen Cars Used**
5 **Defeat Devices To Cheat Emissions Testing**

6 62. Volkswagen's top executives, including Defendants Winterkorn and Horn, knew
7 or were reckless in not knowing that Volkswagen's TDI® Clean Diesel cars used defeat-device
8 software to allow vehicles that would otherwise not pass EPA emissions tests to become certified
9 under EPA and CARB regulations.

10 63. In 2006, a top VWAG technology executive set forth how the Company could
11 cheat on emissions tests in the United States in a PowerPoint presentation. VWAG sought to
12 cheat on emissions tests because they knew that the Company could not produce diesel cars that
13 could comply with emission standards and remain affordable and maintain an acceptable level of
14 performance. Indeed, VWAG executives consistently rejected proposals to improve the
15 emissions equipment so that it would comply with emission rules. The entire Management
16 Board, led by Defendant Winterkorn, repeatedly rebuffed lower-ranking employees who
17 submitted technical proposals for upgrading the emissions controls because the upgrades were
18 too costly, and would provide no noticeable performance benefit to customers.

19 64. Defendants have admitted that Winterkorn received multiple memoranda in 2014,
20 including a memorandum in May 2014 from Bernd Gottweis, a quality-control expert known as
21 VWAG's "fireman," regarding the Company's unlawful use of defeat-device software.

22 65. Bosch, the supplier of the defeat devices, warned VWAG's "top circles," as early
23 as 2007 that Volkswagen's intended use of the devices would be illegal.

24 66. An internal Volkswagen whistleblower warned the Company in 2011 that the
25 Company was illegally manipulating reported emissions data. The whistleblower specifically
26 alerted VWAG Management Board member Heinz-Jakob Neußer, a close confidant of
27 Winterkorn, who was then-VWAG's Head of Development and subsequently the Company's
28 Brand Manager.

67. In May 2014, the International Council on Clean Transport (“ICCT”) and West Virginia University (“WVU”) published a study showing that, during normal driving conditions, two of the Company’s “clean diesel” vehicles were emitting NOx at levels that exceeded allowable limits. That study was referred to Volkswagen, the EPA and CARB. On May 15, 2014, Defendant Horn received an email stating that Volkswagen vehicles did not meet governing emissions standards, and warning of the potential consequences for the Company. Significantly, once ICCT, WVU, and government regulators such as EPA and CARB discovered abnormalities in Volkswagen’s cars’ emissions tests, Defendants continued to mislead the regulators by blaming faulty testing procedures in an attempt to keep their misconduct hidden. In effect, Volkswagen doubled down on its fraud, and continued to hide its purposeful use of defeat-device software.

68. Only after U.S. regulators refused to certify Volkswagen’s Model Year 2016 lineup of diesel vehicles did Defendants admit that Volkswagen installed defeat devices in its “clean diesel” cars. At that point, after privately telling regulators that “these vehicles were designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles’ emissions control system,” Defendants finally admitted the truth publicly. Defendant Winterkorn, then VWAG’s CEO, apologized that Volkswagen had “broken the trust of our customers and the public.” Winterkorn further announced that “Volkswagen has ordered an external investigation of this matter,” and that the Company would “do everything necessary in order to reverse the damage this has caused.” Winterkorn stated that he was “endlessly sorry that we have disappointed this trust” that “millions of people across the world” had in “our brands, our cars, and our technology.” At the same time, a Volkswagen spokesperson stated that the Company had admitted the truth to regulators. On September 25, 2015, Berthold Huber, Deputy Chairman of VWAG’s Supervisory Board also stated, “[t]he test manipulations are a moral and political disaster for Volkswagen.”

69. Likewise, VWGoA President and CEO Michael Horn admitted that “our company was dishonest. With the EPA, and the California Air Resources Board, with all of you. And in my German words, we have totally screwed up.”

C. Volkswagen’s Emissions Scandal Grew from A Corporate Culture That Was Demanding, Tightly Controlled, And Tolerant of Rule Breaking

70. Volkswagen’s emissions cheating and the current diesel scandal grew out of the Company’s culture, in which failures were not tolerated, and pressure came from Volkswagen’s top leadership to produce bottom-line results despite technical obstacles.

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

72. Bob Lutz, a longtime high-ranking executive at numerous car companies including BMW, Ford, Chrysler, and General Motors, wrote a November 4, 2015 article in *Road & Track* about how the “immensely powerful” Piëch “ran everything” at Volkswagen through “a reign of terror and a culture where performance was driven by fear and intimidation. He just says, ‘You will sell diesels in the U.S., and you will not fail. . . .’ The guy was absolutely brutal.” As Lutz describes, the corporate culture at Volkswagen that Piëch fostered “gets short-term results, but it’s a culture that’s extremely dangerous. . . . It’s fast and it’s efficient, but at huge risk.” Similarly, the *Kolner Stadt-Anzeiger* reported on January 24, 2016 that “there was no room for even well founded objections,” and “[t]he culture of fear cultivated by the self-important company leaders is enormously detrimental to the entire company.”

73. Winterkorn was Piëch’s protégé and, much like Piëch, Winterkorn was a demanding, detail-oriented micromanager who ran VWAG by instilling fear in employees and demanding bottom-line results regardless of any obstacles. Winterkorn touted his imperious management style and attention to technical detail. In VWAG’s 2010 annual report, the Company included a conversation between Winterkorn and German astronaut Hans Wilhelm Schlegel, in which the two compared their “share[d] passion for scientific analysis combined

1 with hands-on expertise.” The annual report described Winterkorn as “someone who is au fait
2 with every last technical detail,” and quoted Winterkorn as stating that

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

11 74. Winterkorn further stated that he could “identify with” managers who “keep
12 [their] finger[s] on the pulse of events.”

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

20 76. As a micromanager with a deep engineering background, Winterkorn focused
21 particularly closely on even small details of engineering issues that arose at Volkswagen. Stories
22 of Winterkorn’s attention to detail and micromanaging are numerous. As *Fortune* reported in its
23 March 15, 2016 issue:

24 Winterkorn might have been a notch less imperious than [Piëch], but he still
25 displayed an almost theatrical officiousness: . . . He was known for carrying a
26 micrometer to check the minutest measurements of cars. VW [Volkswagen]
27 routinely transported twice as many vehicles to auto shows as it planned to
28 display because Winterkorn was known for vetoing a particular selection if he
detected the slightest imperfection.

Like his mentor [Piëch], Winterkorn had outsize ambitions. One of his first acts
as CEO was to unveil a plan to overtake both General Motors and Toyota by 2018
to become the world’s No. 1 automaker, “not just in units, but in profitability,
innovation, customer satisfaction, everything,” as he put it. Winterkorn wanted
everything.

1 77. Another key contributor to the emissions-cheating scandal was the Company's
2 unusual corporate structure. Consistent with the German "codetermination" law, labor
3 representatives hold half of the 20 seats on VWAG's Supervisory Board. Because of the labor
4 representatives' strong power at the Company, VWAG's management has at times been unable
5 to implement reforms, such as job cuts, that would enable the Company to increase its profit
6 margins.

7 78. As a securities analyst from Natixis wrote in a November 24, 2015 report titled
8 "No salvation without a reform of the governance," "[t]he story of the fraud is punctuated by
9 examples of poor strategic decisions and management methods that independent, balanced
10 governance would have prevented or at least curbed. . . . The denial of this fraud for more than a
11 year moreover reflects an authoritarian, centralised climate in the group, which discouraged
12 adversarial debate." Nataxis continued, "we believe that the method of management (visibly an
13 authoritarian climate existed with Mr. Winterkorn, CEO, and Mr. Piëch, chairman) and the lack
14 of independent governance are to blame." Similarly, an analyst from Evercore ISI reported on
15 November 13, 2015 that "[f]or the last two decades, VW has proven multiple times that
16 shareholder value is at the bottom of its preference list. The interests from the Union and Lower
17 Saxony weighed more, especially during times when CEOs needed support to build their
18 empire."

19 79. According to an interview with Ferdinand Dudenhoeffer ("Dudenhoeffer")
20 published in *Der Westen* on October 20, 2015, "VW is missing the internal control ... This is not
21 a case of negligence or a sloppy job," rather, as Dudenhoeffer told *Die Presse* on October 3,
22 2015, Winterkorn "concentrated all power in his person, and when you pool all power then you
23 feel like god and act like god. In addition he was a know-it-all and had his hands in everything."

24 80. The climate at Volkswagen, where results were demanded at any cost, fostered
25 and rewarded cutting corners. On December 10, 2015, Hans Dieter Pötsch, the Chairman of
26 VWAG's Supervisory Board since October 2015, admitted that the emissions scandal occurred
27 in light of the Company's ambition for global dominance and "a tolerance for breaking the
28 rules."

1 81. As German newspaper *Bild am Sonntag* (“*Bild*”) reported on February 14, 2016,
2 Winterkorn was a “car man who normally took care of every detail” at Volkswagen. To help
3 take care of those details, Winterkorn installed as his top lieutenants engineers with whom he had
4 long, close relationships. Specifically, Winterkorn named as VWAG’s heads of research and
5 development Ulrich Hackenberg, formerly Audi’s chief engineer, and Wolfgang Hatz, formerly a
6 top engine developer at Porsche and Head of Engines and Transmissions Development at Audi,
7 and put Hackenberg and Hatz in charge of the Volkswagen Research and Development Group
8 and Engine Development.

9 82. Until his suspension on September 24, 2015 and resignation on December 3,
10 2015, Hackenberg was a member of the Volkswagen brand’s Board for Development from 2007,
11 and was a member of the Audi AG Management Board since 2013, overseeing Audi’s technical
12 development. Also suspended from the Company on September 24, 2015, Hatz was a member
13 of the Porsche AG Management Board in charge of Research and Development since 2011, and
14 also the Head of Engine and Transmission Development for the entire Volkswagen Automotive
15 Group. Hatz resigned on May 3, 2016. Both men worked closely with Winterkorn before and
16 after their move to VWAG headquarters, and were known as his ‘top aides.’

17 83. It was reportedly during Winterkorn’s reign at Audi, as early as 1999, that the
18 idea took root to use defeat devices to evade increasingly strict emissions standards.
19 *Handelsblatt* reported on April 19, 2016, that an investigation by law firm Jones Day into the
20 emissions cheating scandal has shown that in 1999, when Winterkorn served as Audi’s CEO,
21 engine developers doubted that they could meet stricter emissions limits legally, and were
22 already contemplating installing illegal software to ostensibly comply with those rules. Audi
23 experts thereafter devised software that could alter certain emissions features during testing.
24 Internally, the device was called “acoustic mode” and “acoustic function.” This illegal plan was
25 not implemented until years later, when Winterkorn was CEO of VWAG.

26 84. According to press reports, Hackenberg and Hatz were Winterkorn’s “top aides
27 during his tenure at Audi,” and once at Volkswagen, had daily responsibility for developing
28 Volkswagen’s “clean diesel” strategy. As the *Wall Street Journal* reported on October 5, 2015,

Hatz and Hackenberg, along with VWAG Development Head Hanz-Jakob Neußer, “are at the center of [Volkswagen’s] probe into the installation of engine software designed to fool regulators.” Indeed, Hatz and Hackenberg were two of the first Volkswagen executives suspended once the Company’s emissions cheating became public, and Hackenberg subsequently resigned. *WirtschaftsWoche* reported on December 4, 2015 that just after the scandal broke, on September 21, 2015, “Winterkorn—who until then had a close male bond with Hackenberg—is said to have prompted his longtime companion to take responsibility for the woes . . . so his friend Winterkorn could declare an end to the disaster . . . and continue to rule.”

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

86. VWAG has admitted in a December 10, 2015 press release that the centralized control under Winterkorn was a key factor in the emissions scandal:

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

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

87. In a March 1, 2016 presentation by VWAG Management Board member Frank Witter, Volkswagen itself identified the need for a “New structure—Launching a more

entrepreneurial & decentralized Group structure” and “New mindset—Profoundly changing the way we do things” as two of the Company’s five top priorities, both of which are presently “in progress,” along with “New destination—Re-evaluating what we do & re-defining our targets,” which is targeted for mid-2016. The presentation also identified as key focus areas for VWAG moving forward, among other things, overhauling corporate culture to “create [a] modern corporate culture” with “[m]ore responsibility,” “strengthen[ing] trust of customers authorities and media,” strengthening corporate responsibility, “[r]evamp[ing] management style,” and a “[n]ew clearer mission statement focused on transparency, authenticity and openness.”

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

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

89. Commenting on the Company’s culture since Winterkorn was replaced by new CEO Matthias Müller (“Müller”), VWAG Management Board member Andreas Renschler told *Dow Jones Business News* in a February 23, 2016 interview that “[t]he difference is like night and day. . . . We all realize that the crisis gives us a huge opportunity to change the company.”

**D. Volkswagen’s Scheme To Cheat Emissions Tests
Was Necessary To Achieve Its Goal Strategy**

90. By 2005, it was clear to automakers that consumers’ interest in reducing environmental impact could significantly affect car companies’ future growth and market share. Many automakers had begun, or were planning to develop and market, fuel-efficient hybrid vehicles, such as Toyota’s Prius, which produced low levels of environmentally harmful emissions in comparison with other cars that were popular with consumers. Those increasingly popular hybrids, however, were perceived as boring and did not offer the exciting driving experience that many consumers wanted and had grown accustomed to.

91. At that time, Volkswagen sought to increase its 2% U.S. market share and capture a larger portion of the market for environmentally friendly cars; and, to do so by offering diesel

1 cars and avoiding the lagging performance that plagued hybrids. The Company made “a
2 strategic decision to launch a large-scale promotion of diesel vehicles in the United States in
3 2005.” Indeed, Volkswagen was poised to market diesel vehicles as they were and are
4 historically much more widespread in Germany and throughout Europe than in the United States,
5 with around 50% of all new vehicles licensed in the European Union in 2014 being diesels.
6 Volkswagen was looking to develop cars that it could sell widely in the United States and
7 Europe.

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

16 93. When Volkswagen first set out to reduce NOx emissions in diesel vehicles in
17 2005, the Company was divided over two different methods: selective catalytic reduction
18 (“SCR”) and NOx traps.

19 94. Volkswagen brand CEO Wolfgang Bernhard, a Germany auto industry veteran
20 hired from Daimler by VWAG’s then-CEO Bend Pischetsrieder, advocated using a SCR system
21 to treat exhaust gases and reduce harmful NOx emissions. SCR works by injecting “diesel
22 exhaust fluid” (“DEF”), containing urea, into the exhaust stream and converting NOx into
23 nitrogen gas, water, and carbon dioxide. In particular, Bernhard promoted Volkswagen’s
24 licensing and use of an SCR system developed primarily by Daimler, and marketed by Daimler
25 brand Mercedes under the name “BlueTec.” Along with other Volkswagen brand managers,
26 Bernhard believed SCR technology would allow Volkswagen to keep pace with NOx emissions
27 as they became stricter.
28

1 95. Defendant Winterkorn, who headed the Audi brand, advocated for NOx traps.
2 NOx traps function as molecular sponges, trapping and absorbing NOx molecules as they are
3 emitted. A burst of diesel fuel is then pumped into the NOx trap, which leads to the release of
4 NOx. The NOx then moves into a catalytic converter that converts the molecules into water and
5 nitrogen. NOx traps are cheaper and easier to implement than the SCR system, may reduce fuel
6 economy, and are far less effective at reducing emissions.

7 96. By late 2006, Bernhard and the engineers he supervised had developed a
8 prototype diesel engine incorporating licensed BlueTec technology, and Volkswagen announced
9 that the Company would introduce a new model of the Jetta that featured a 2.0-liter BlueTec
10 diesel four-cylinder engine. According to Volkswagen, the new Jetta, which would be available
11 to consumers in the spring of 2008, would meet emissions standards in all 50 U.S. states. Much
12 of Volkswagen's leadership was put off by the cost of the BlueTec system and the fact that it was
13 developed by a competitor. As Automotive News Europe reported on September 27, 2015, the
14 SCR system was effective but expensive, and posed pragmatic obstacles. The BlueTec system
15 would cost \$350 per vehicle and require cost prohibitive maintenance because it also required the
16 installation of a DEF tank and regular DEF refills. An additional drawback was that SCR adds
17 weight to vehicles and would take up significant space, making it difficult to use in compact cars
18 like Volkswagen's Golf and Jetta, which were among Volkswagen's best-selling models in the
19 United States at the time.

20 **E. Winterkorn Becomes CEO And Changes**
21 **Volkswagen's Emission Control Strategy**

22 97. As a result of the problems with BlueTec and divided management, Pischetsrieder
23 and Bernhard were pushed out by VWAG Chairman Piëch in December 2006, and replaced by
24 Winterkorn. Winterkorn's stated goals were to triple Volkswagen's annual U.S. sales figures
25 over a 10-year period, and despite the shift away from BlueTec, he was focused on expanding
26 diesel-car ownership in the United States beyond the 3% of the U.S. market that diesel vehicles
27 then represented.
28

1 98. Winterkorn brought with him from Audi his two longtime, trusted colleagues,
2 Hatz and Hackenberg, whom he installed as Volkswagen's top engineers. Winterkorn also
3 brought Frank Tuch, the former head of quality control at Porsche, to serve as VWAG's Chief
4 Quality Officer and Head of the Company's Group Quality Assurance. Since being installed in
5 2010, Tuch worked closely with Winterkorn, and the two met every Monday to discuss quality
6 issues and often test drove Volkswagen vehicles together, according to a *New York Times* article
7 dated October 21, 2015.

8 99. Volkswagen's new top engineers had long opposed emissions-reducing measures
9 that would detract from driving performance. As Hatz stated during a 2007 Volkswagen
10 presentation on automotive technology, "[w]e will do what is possible, but we should keep the
11 pleasure" so that cars are "fun to drive." Hatz added, "[i]t's not just about transport; our
12 business, it's also about pleasure."

13 100. In August 2007, with Hatz and Hackenberg overseeing Volkswagen's engineering
14 decisions and at Hatz's insistence, the Company canceled its BlueTec licensing contract.
15 *Businessweek* described the cancellation as "a classic case of not-invented-here syndrome,"
16 implying that Volkswagen wanted to develop its own technology. In place of the BlueTec SCR
17 system, Hatz was tasked with designing and implementing a strategy focused on the use of NOx
18 traps to reduce NOx emissions to permissible levels.

19 101. As *Businessweek* reported, the decision of Winterkorn and his top engineers to
20 pursue a NOx trap strategy "boxed Volkswagen engineers in as they tried to meet emissions
21 targets and protect the driving experience and fuel efficiency." Although, NOx traps are cheaper
22 and easier to implement than the SCR system, they reduce fuel economy and are far less
23 effective at reducing emissions.

24 **F. Volkswagen Failed To Develop A High-**
25 **Performance Clean Diesel Engine And Was**
26 **Forced To Delay The Introduction Of The Jetta**

27 102. It quickly became apparent to Defendants that the Company would be unable to
28 produce a high-performance diesel engine that would meet emissions standards. On April 26,
2016, the *New York Times* published an article revealing that people inside Volkswagen knew

1 that its diesel engines were polluting significantly more than allowed, yet “company executives
2 repeatedly rejected proposals to improve the emissions equipment.” In fact, the entire
3 Management Board led by Defendant Winterkorn “repeatedly rebuffed lower-ranking employees
4 who submitted technical proposals for upgrading the emissions controls . . . because of cost.” By
5 2006, the Company was already considering cheating on emissions tests in order to sell vehicles
6 that produced emissions at unacceptably high levels. The *New York Times* reported that
7 investigators into Volkswagen’s emissions scandal uncovered a PowerPoint presentation
8 prepared by a top Volkswagen technology executive in 2006 laying out in detail how
9 Volkswagen could cheat on emissions tests in the United States.

10 103. The *New York Times*’s April 26 article further reported that VWAG engineers
11 realized that the emissions equipment in their newest diesel engine would wear out too quickly if
12 it were calibrated to meet U.S. pollution standards. A technology expert at VWAG offered a
13 solution in the PowerPoint presentation, which included a graph that explained the process for
14 testing the amount of pollution spewing from a car. The pattern of those tests, the presentation
15 said, was entirely predictable and a piece of code embedded in the software that controlled the
16 engine could recognize that pattern and activate equipment to reduce emissions just for testing
17 purposes. The software discussed in 2006 evolved over the years and was later upgraded to
18 detect other tell-tale signs of regulatory tests.

19 **G. Volkswagen Was Under Pressure To Produce**
20 **A High-Performance Engine That Could Meet**
21 **Emissions Standards**

22 104. Volkswagen previously announced that it would introduce a new Jetta TDI by
23 Spring 2008. With this deadline approaching, pressure was mounting on the Company and its
24 engineers to manufacture an engine to satisfy market demand and the Company’s strategy.
25 Volkswagen could not meet this deadline, and on November 8, 2007, VWGoA sent a letter to its
26 dealers announcing that the launch of the new Jetta TDI would be pushed back to the summer of
27 2008 due to a “technical issue that was found during the later stages of durability testing.”

28 105. Industry publications recognized at the time that the announced delay was due to
Volkswagen’s inability to develop a satisfactory diesel engine that met emissions standards. For

1 example, on November 9, 2007, *Cars.com* reported that “[p]art of Volkswagen’s trouble lies in
2 the 50-state test. The U.S. has some of the strictest emissions standards for diesel vehicles, and
3 in order for automakers to sell their cars in all 50 states, it must meet emissions standards set
4 forth in every state, including California and its stringent Air Resources Board.” Similar
5 concerns were expressed on Autoblog.com, which noted, “[t]he complexity that must be
6 involved to achieve this feat is likely considerable, especially without the use of a urea injection
7 system.”

8 106. Market observers, including analysts, have long understood that Volkswagen’s
9 ability to grow its U.S. business through diesel sales was a tremendous opportunity for
10 Volkswagen. *Cars.com* reported that “all eyes are on Volkswagen and its new Jetta,” and that
11 “[c]onsumer interest certainly seems piqued.” Reports also stated that Volkswagen dealers were
12 disappointed due to the high consumer anticipation for the new Jetta TDI, and that one dealer
13 said that three out of every five calls he received at the time were about the Jetta TDI.

14 107. RBS reported on April 28, 2011, as part of a “SWOT”
15 (strengths/weaknesses/opportunities/threats) analysis, that a key opportunity for Volkswagen was
16 to “convert the US to diesel,” while a threat was the “reversal of trend towards diesel.” Deutsche
17 Bank reported on January 16, 2013 that “Rising Diesel sales in the US have become a driver for
18 VW as overall Diesel sales grew 30% last year,” and the “VW group has almost 75% of the US
19 Diesel market share.”

20 108. Throughout Volkswagen’s plan to expand and achieve “success” in promoting its
21 diesel motor, tightening emissions standards in the United States were an obstacle to
22 Volkswagen’s ability to grow its U.S. operations. In a September 20, 2011 report, an analyst at
23 Morgan Stanley asked, “What About US Fuel Standards?” Morgan Stanley recognized that “one
24 of the biggest challenges VW faces in the U.S. is that of tightening emissions legislation (where
25 VW was one of the few notable exceptions to OEMs [Original Equipment Manufacturers])
26 recently supporting proposals for tighter standards),” and that “emissions remain a serious
27 headwind to the recovery potential of VW’s US business.” On October 9, 2012, a Credit Suisse
28

analyst reported that “[e]fficient and low emissions vehicles will be increasingly important going forward.”

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

H. Unable To Develop Functional Clean Diesel, Volkswagen Installs Cheat Devices

110. Unable to develop a functional clean diesel vehicle, Volkswagen started installing device software in its purportedly “clean diesel” vehicles to pass emissions testing and sell its diesel vehicles in the United States.

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

112. Bosch supplied Volkswagen with EDC17 systems, which Volkswagen installed in its diesel vehicles. Although many automakers purchased the EDC17 from Bosch, the actual software system ran on the EDC17 varied from maker to maker and engine to engine. As Bosch’s promotional materials explained, “[b]ecause the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly

1 in any vehicle segment on all the world's markets. In addition to controlling the precise timing
2 and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also
3 offers a large number of options such as the control of particulate filters or systems for reducing
4 nitrogen oxides."

5 113. Bosch accordingly worked with manufacturers, including Volkswagen, to tailor
6 the EDC17 for specific engines. Volkswagen worked with Bosch to design the software so that
7 its cars would pass emissions testing despite not meeting applicable emissions standards.
8 Without a doubt, this is "defeat device" software. The defeat-device software that Volkswagen
9 installed was used primarily in conjunction with its EA189 model engine, which was installed in
10 approximately 11 million vehicles worldwide, including 5 million Volkswagen brand vehicles,
11 2.1 million Audis, 1.2 million Škodas, and 1.8 million light commercial vehicles. Specific
12 models that used the EA189 engine were the Volkswagen Jetta, Jetta SportWagen, Golf, and
13 Beetle, as well as the Audi A3.

14 114. Ultimately, Volkswagen used the illegal software with at least four different
15 engine types, including the EA189. This means that Volkswagen made several changes to its
16 defeat-device software, which Volkswagen intentionally and actively updated numerous times to
17 adjust to different engine types. As explained by a U.S. official investigating Volkswagen, in a
18 *Reuters* report dated October 17, 2015, "VW would have had to reconfigure the software for
19 each generation of engines." *Reuters* further reported on October 7, 2015, that "[s]ome industry
20 experts and analysts said several versions of the defeat device raised the possibility that a range
21 of employees were involved. Software technicians would have needed regular funding and
22 knowledge of engine programs, they said."

23 115. On October 3, 2015, *Bild* reported that VWAG's present internal investigation has
24 shown that the Company first decided to install illegal defeat-device software in its vehicles in
25 2008, shortly before it commenced mass production of the EA189 engine. VWAG made that
26 decision "because there was no way at the time to reconcile meeting emission standards within
27 the targeted cost of the engine. . . . Otherwise, the company would have to abandon the
28 introduction of the engine, development of which was begun in 2005."

116. The *Wall Street Journal* likewise reported on October 5, 2015 that, as early as 2006, senior VWAG engineers recognized and publicly stated that the Company could not produce high-performance diesel vehicles that met applicable emissions standards. Further, regulators suspected and were concerned about Defendants' possible use of defeat devices as early as 2008. On October 4, 2015, *Süddeutsche Zeitung* reported that it was in possession of documents showing that U.S. authorities have been questioning Volkswagen cars' emissions since at least 2008. Specifically, according to *Süddeutsche Zeitung*, CARB issued an "Executive Order" in June 2008 demanding a statement from VWAG that no defeat device was installed in the engines of Volkswagen's cars. Otherwise, the letter states, CARB would withdraw its certification of the vehicles and assess a penalty of \$5,000 per car.

117. The conduct in these reports would be confirmed in the plea agreement of former VWAG engineer James Robert Liang, filed on September 9, 2016 (the "Liang Plea Agreement"), in which Liang admits that soon after beginning the design of the new EA 189 engine began in 2006, he and his co-conspirators realized that the engine could not meet both customer expectations and new, stricter U.S. emissions standards; and, as a result, pursued and planned the use of a software function to cheat standard U.S. emissions tests (i.e., the "defeat device"). Liang further admits to using the defeat-device software while working on the EA 189, assisting in making the defeat-device software work, and in or around 2008 working with co-conspirators to calibrate and refine the defeat device.

I. How Volkswagen Cheated The Emissions Regulation Certification Process

118. The EPA, CARB, and other U.S. and European regulatory agencies do not conduct emissions testing themselves. Instead, automakers conduct their own emissions testing, and then send those results to the regulators, who then review the makers' results and certify the vehicles. Historically, there is little risk that the regulators will conduct their own testing, providing automakers with an opportunity to manipulate results. Moreover, emissions testing is conducted in laboratory conditions, rather than in real-world driving conditions, and automakers

1 have been known to employ a bevy of tricks to manipulate testing results, such as low-resistance
2 tires and covering cracks between panels to reduce wind resistance.

3 119. To test a vehicle's emissions, automakers put the car on rollers and attach it to a
4 dynamometer, which is a device used to provide a simulated experience mimicking certain
5 specified driving conditions (e.g., stop-and-go urban traffic, high-speed driving). The maker
6 measures and reports emissions levels under those conditions. Regulators provide automakers
7 with the testing specifications in advance, and the makers report results after running the tests.

8 120. This emissions-testing regime enabled VWAG's emissions-cheating scandal by
9 creating ideal circumstances for the Company to produce manipulated results, which it could
10 then self-report to regulators. VWAG's engineers tailored the EDC17 software in the
11 Company's TDI engines to recognize when a car with that software was undergoing testing,
12 based on factors including wheel movement (including that only the front two wheels were
13 moving, not the rear wheels), engine runtime, and steering wheel positioning. Specifically, when
14 the car was undergoing emissions testing, lines of code written into the control software
15 produced by Bosch would cause the car's engine to switch into a "dyno calibration" mode or
16 "dyno mode." In dyno mode, the car would produce lower emissions levels (that met EPA and
17 CARB standards) by, among other things, adjusting air-fuel ratios and exhaust flows. However,
18 Volkswagen's cars could operate at that level only with significantly reduced power and
19 performance. Independent testing has shown that the cars in dyno mode had approximately
20 10.5% less power than otherwise. When testing ended the software switched the cars back to
21 "road calibration" mode, and the cars produced heightened levels of NOx emissions, up to 40
22 times the allowable limit under federal law.

23 121. In May 2008, Liang moved to the United States to serve as Leader of Diesel
24 Competence for VWGoA. In that role, Liang assisted in certification, testing, and warranty
25 issues for Volkswagen diesel vehicles in the US.

26 122. For each new Model Year of Volkswagen's diesel vehicles, Volkswagen
27 employees met with the EPA to seek certifications required to sell the vehicles to U.S.
28 customers. Liang personally attended meetings in Ann Arbor, Michigan with the EPA on March

1 19, 2007, and on March 21, 2007, with CARB, during which Liang and his co-conspirators
2 misrepresented that Volkswagen diesel vehicles complied with U.S. NOx emissions standards.
3 During the meeting, Volkswagen representatives described their diesel technology and emissions
4 control systems in detail to the staff of the EPA and CARB, but intentionally omitted any
5 mention of the defeat devices. Liang admits in his plea agreement that he knew that Volkswagen
6 was cheating by implementing the defeat device and that he and his co-conspirators were
7 deceiving the EPA in this meeting.

8 123. Volkswagen representatives continued to falsely and fraudulently certify to EPA
9 and CARB that Volkswagen diesel vehicles met U.S. emissions standards and complied with the
10 Clean Air Act as part of the certification process for each new Model Year, including Model
11 Years 2009-2016. Liang admits in his plea agreement to knowing of these continued
12 misrepresentations and omissions to regulators and consumers while they were ongoing.

13 124. Volkswagen concealed from the EPA, CARB, and all other regulators that its
14 EDC17 systems included lines of code that could detect when the vehicles were being tested and
15 change the cars' performance and emissions levels at those times. As discussed above, the
16 software thus constitutes an illegal defeat device under U.S. law. At the same time, the
17 Company defrauded investors by misrepresenting Volkswagen's compliance with the law and its
18 cars' ability to meet emissions standards, and by overstating the Company's profits by failing to
19 properly reserve for provisions arising out of the diesel scandal, among other things.

20 125. The environmental and financial impact of Volkswagen's emissions cheating has
21 been felt both in the United States and throughout the world. Volkswagen's sales of 580,000
22 TDI vehicles with defeat devices in the United States are of particular importance to analysts and
23 investors. Expanding diesel sales in the United States was a central focus for Volkswagen as it
24 pursued aggressive growth plans. Moreover, due to the legal and regulatory regime in the United
25 States, including stringent NOx emissions standards as well as laws providing significant redress
26 to wronged consumers and others, Volkswagen has incurred billions of dollars of liability based
27 on its U.S. TDI sales alone.
28

1 126. The full impact of Volkswagen’s emissions cheating scheme, however, can be
2 understood only in the context of Volkswagen’s sales of millions of cars with illegal defeat
3 devices in Europe and around the world. Volkswagen was able to obtain approvals for, and sell
4 over 8 million cars with defeat devices throughout Europe by taking advantage of European
5 emissions testing procedures that largely rely on manufacturers to provide honest information
6 regarding compliance with each member country’s testing regime and standards. As in the
7 United States, European emissions testing relies on manufacturers to self-report results and
8 testing is conducted only under controlled conditions. Further, European manufacturers like
9 Volkswagen can decide in which country to have their vehicles tested, with resulting approvals
10 valid throughout the European Union.

11 127. In that environment, VWAG was able to tailor its engine software to conceal true
12 emissions levels without detection. Indeed, Bosch was concerned that VWAG was going to use
13 the EDC17 system Bosch supplied in an illegal manner, to produce artificially low emissions
14 levels in testing. According to a September 27, 2015 report in *Bild*, in 2007 Bosch sent a letter to
15 VWAG’s “top circles” informing the Company that using the software for the planned
16 application of reducing emissions during testing would be illegal. According to Bosch, the
17 software it provided was intended only for internal testing purposes, not for regular, on-road
18 driving. Nevertheless, VWAG affirmatively modified the module to detect when a vehicle was
19 undergoing laboratory emissions testing and then shut down when the vehicle was on the road.

20 **J. Volkswagen Improperly Markets**
21 **And Sells Its “Clean Diesel” Cars**

22 128. Having implemented defeat devices in its cars to improperly gain emissions
23 certifications, Volkswagen then reaped the rewards of making low-emission vehicles. Beginning
24 in 2008 with the Model Year 2009 Volkswagen Jetta and Touareg models and the 2009 Audi Q7,
25 Volkswagen began marketing and selling non-compliant diesel vehicles (branded as “clean
26 diesel” or “TDI”) while conducting a massive, years-long advertising and public relations
27 campaign championing its purportedly successful “clean diesel” design. Volkswagen’s
28 advertisements touted its “clean diesel” vehicles, powered by 2.0 liter TDI four-cylinder engines,

1 as environmentally responsible and fun to drive, “confirming Volkswagen’s role as a pioneer in
2 diesel technology.”

3 129. In language on its website that it has since taken down, Volkswagen prominently
4 stated: “This ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel realities
5 no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and
6 extreme efficiency. We’ve ushered in a new era of diesel.”

7 130. VWAG and its subsidiaries specifically represented that their cars’ NOx traps
8 were “[t]he most effective measure to reduce nitrogen oxides (NOx) with an internal combustion
9 engine.” Such boasting was part of a broad marketing scheme designed to grow the Volkswagen
10 Group’s U.S. market share by expressly focusing on the low environmental impact of its TDI
11 cars.

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

17 132. VWAG boasted that it had successfully produced a high-performance, low-
18 emissions, fuel-efficient diesel engine. In 2008, a group of VWAG engineers gave a
19 presentation titled “Volkswagen’s New 2.0L TDI Engine Fulfills the Most Stringent Emission
20 Standards” at an industry conference in Vienna, and published papers touting their purported
21 achievement in a technical journal focused on engine technologies.

22 133. Similarly, in an October 9, 2009 interview with *Business Insider*, VWGoA’s then-
23 Vice President of Sales and Aftersales, Mark Barnes, said that VWAG and VWGoA’s 2.0 liter
24 TDI engine was better for the environment than hybrid cars, because it had a “fantastic power
25 train” that “gives very good fuel economy” and “it’s also good for the environment because it
26 puts out 25% less greenhouse gas emissions than what a gasoline engine would[,] . . . cuts out the
27 particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%[,] . . . [and is
28 c]lean enough to be certified in all 50 states.”

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

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

8 135. Volkswagen’s representations regarding its TDI cars’ purported low emissions
9 and high performance dominated Volkswagen’s marketing materials for years. For example, in a
10 2008 press release, VWGoA publicized that the “Internal Revenue Service has issued a
11 certification letter” affirming that the Jetta TDI sedan and SportWagen “qualify for the
12 Advanced Lean Burn Technology Motor Vehicle income tax credit.” The press release further
13 stated:

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

17 136. AoA similarly ran ads representing that Audi TDI vehicles would “protect the
18 environment” because diesel is “no longer a dirty word.”

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

25 138. Defendants’ advertising continued to emphasize that their TDI vehicles did not
26 pose any tradeoff of performance for the sake of reduced emissions. In a sales brochure for the
27 2015 Golf, the Company stated that “[w]ith the 2.0L TDI engine, you’ll appreciate every fuel-
28

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."

139. In addition, every "Clean Diesel" vehicle sold by Defendants in the United States during the Class Period had a sticker falsely representing that the vehicle "conforms to regulations" with the US EPA and CARD emission standards.

K. Volkswagen Is Successful In Marketing "Clean Diesel," Leading To Increase In Market Share And Profits

140. As discussed herein, VWAG sought to develop and implement a plan to grow its business dramatically, especially in the United States, with a strong focus on environmentally friendly, low-emissions diesel vehicles. By illegally falsifying emissions test results, Volkswagen achieved its goals.

141. In 2007, Volkswagen sold approximately 230,000 cars in the United States, very few of which were diesel vehicles. By 2013, Volkswagen brands sold over 400,000 vehicles in the United States, including more than 111,000 diesel vehicles. With a 70% share of the North American diesel automobile market in 2014, Volkswagen sold more diesel cars in the United States than every other brand combined. Overall, diesel sales represented 26% of VWAG's U.S. sales, versus a U.S. industry-wide diesel penetration of less than 3%.

142. Indeed, Volkswagen frequently touted its success and growth in connection with its low-emissions diesel vehicles, while omitting to tell consumers and investors of its use of prohibited defeat devices to achieve its emissions results. For example, on May 31, 2011, Volkswagen issued a press release entitled "US Department of Transportation Secretary Ray LaHood views Clean Diesel engines as a key component of future technology for highway transportation in the USA." In the press release, Defendants stated:

High-tech *Clean Diesel engines from Volkswagen are a cornerstone in the environmentally-friendly renewal of individual mobility in the United States.* US Secretary of Transportation Ray LaHood focused on this Tuesday last week in his welcoming speech at the opening ceremony for Volkswagen's new plant in Chattanooga, Tennessee.

US Secretary of Transportation Ray LaHood emphasized that the USA finds itself in an era of transition towards a new form of mobility – and thanks to the innovative technologies of Volkswagen, clean diesel engines will play an important role in implementing a new powertrain strategy for the United States.

1 “And that is not only because it is the right engine for environmental and climate
2 protection in the USA. Clean diesel engines also make sense economically, for
3 both individuals and American companies. The Clean Diesel technology that is
4 found in the new US Passat, for example, makes a genuine difference.”

* * *

4 ***In April 2011, the diesel share of vehicles sold by Volkswagen of America was***
5 ***24 percent. This means that nearly one in every four Volkswagen brand cars***
6 ***delivered in the USA has a fuel-efficient and clean TDI engine.*** The
7 Volkswagen Group is the global market leader in diesel engine technology, and
8 back in 2008 ***it was the first carmaker to offer diesel vehicles on the US market***
9 ***that conformed to the BIN-5 standard, the most stringent emissions legislation***
10 ***in the world.*** In America, the Volkswagen brand already offers four TDI clean
11 diesel models, and the Audi brand offers two. This year, the new Passat TDI and
12 the Beetle TDI will be added. Audi has announced that it will bring the TDI to
13 the luxury class in the USA and offer TDI clean diesel engines in both the Audi
14 A6 and Audi A8 in 2013.

10 Many experts consider these diesel engines to be the most advanced
11 combustion engines of our times. They combine minimum fuel consumption and
12 the ***lowest emissions with maximum power.*** Depending on the specific model,
13 Clean Diesel technologies may include an SCR catalytic converter – which
14 reduces nitrogen oxide emissions (NOx) by up to 90 percent – or a NOx storage
15 catalytic converter and oxidation catalytic converter, particulate filter, exhaust gas
16 recirculation (EGR) and intelligent interventions by the electronic engine
17 management system.

15 143. On December 20, 2013, VWGoA issued a press release entitled “It’s Official:
16 Volkswagen Group of America Has Sold More Than 100,000 TDI® Clean Diesel Vehicles in
17 2013.” In the press release, Defendants announced that Volkswagen “has ***sold 100,000 TDI®***
18 ***Clean Diesel vehicles from the Volkswagen and Audi brands this year.*** This is the first time it
19 has reached this milestone in a calendar year.” The press release further stated that “Audi and
20 Volkswagen pioneered TDI® Clean Diesel engines and, as a result, the ***Volkswagen Group of***
21 ***America is the current market leader in Clean Diesel.*** Today’s Clean Diesel engines deliver
22 more torque, better highway fuel consumption and ***reduced CO2 emissions*** compared with
23 equivalent gasoline engines.” VWGoA’s Chief Operating Officer Mark McNabb was quoted in
24 the press release, stating that “[s]elling more than 100,000 TDI Clean Diesel vehicles is a
25 significant milestone for Volkswagen Group of America ... We’re excited to see the increasing
26 numbers of customers able to enjoy the reliability, durability, fuel-efficiency and power of the
27 clean diesel engine.” Scott Keogh, President of Audi of America, was also quoted in the press
28 release, stating that “[t]he past year has shown that American consumers clearly recognize the

benefits of clean diesel TDI vehicles ... They understand now more than ever that this is a technology *delivering real answers to society's concerns about fuel consumption and greenhouse gas emissions without compromises.*”

144. On January 3, 2014, VWGoA issued a press release entitled “Volkswagen Reports December 2013 and Year End Results.” In the press release, Defendants stated:

...Volkswagen of America, Inc. (VWoA) today reported 407,704 units delivered in 2013. December deliveries totaled 34,015.

Volkswagen's high-mileage, TDI® Clean Diesel models totaled 95,823 units for the year accounting for 23.5 percent of sales in 2013 and 17.8 percent in December. Since 2000, Volkswagen of America has delivered over 500,000 TDI® Clean Diesel vehicles.

“Volkswagen is now operating at a new plateau, delivering over 400,000 units for the second consecutive year in over 40 years,” said Mark McNabb, chief operating officer, Volkswagen of America, Inc. “We look forward to 2014, with the introduction of the new Golf family, continued increased awareness and enthusiasm for the brand's core models and the strength of our TDI offerings, we are well positioned for our next phase of growth to come over the next few years.”

The Chattanooga-built Volkswagen Passat continues to demonstrate its strong appeal in the market with 9,254 units sold in December and 109,652 for the year. ***Clean Diesel TDI Passat sales were the best year on the record with 34,963 vehicles delivered, accounting for 32 percent of sales of the year.***

145. On March 6, 2014, VWGoA issued a press release entitled “Volkswagen Group of America Releases 2013 Corporate Social Responsibility Report.” In the press release, Defendant Horn stated that “Volkswagen Group of America is united not only by our devotion to building quality vehicles, but also by our *commitment to doing what's right for the environment*, our communities and our employees.” The press release also stated that “[c]utting-edge technologies have enabled Volkswagen to *progress towards carbon-neutral vehicles, including ... TDI® clean diesel vehicles.*” In 2013, Volkswagen and Audi accounted for 75 percent of the U.S. market for clean diesel vehicle sales, enabling owners nationwide to achieve up to 30 percent improved fuel-economy compared to gasoline vehicles.”

146. On May 16, 2014, VWoA's U.S. media site issued a press release titled “Volkswagen Honored with Environmental Award,” announcing their acceptance of a Model Medal for International Corporate Achievement in Sustainable Development by the World Environment Center at a reception in Washington D.C. Christian Klingler, a member of

VWAG's Board of Management, accepted the award on behalf of the Company, and commented, "Our aim is to create lasting value: for the Company, its employees and its shareholders, but also for the countries and regions in which we operate." He added, "This all-embracing view of sustainability is shared by all twelve brands, our companies and all our employees across the Group. Together we work to find solutions for the challenges of the future – and make no mistake, those challenges are substantial: markets are shifting, resources are becoming scarcer, emissions regulations are tightening up all over the world, and booming cities call for new and intelligent traffic and mobility concepts. We consider it part of our responsibility to find the right answers to these trends."

147. On January 5, 2015, VWoA/VWGoA issued a press release entitled "Volkswagen Reports December 2014 Sales and 2014 Year-End Results." In the press release, Defendants stated:

. . . Volkswagen of America, Inc. (VWoA) today reported 34,058 units delivered in December, with 366,970 units delivered in 2014.

"In 2014 Volkswagen of America enhanced the lineup of German-engineered vehicles with an all-new, award-winning Golf family, a refreshed Jetta and most recently a refined Touareg," said Mark McNabb, chief operating officer, Volkswagen of America. "As we kick off 2015, we are encouraged that the vehicles have been well received by both the automotive press and our dealers."

* * *

Volkswagen's high-mileage, TDI® Clean Diesel models totaled 79,422 units for the year, accounting for 21.6 percent of sales in 2014. In December, 5,348 units were sold, 15.7 percent of sales.

148. VWAG has admitted that it sold 8.5 million diesel vehicles in Europe that did not comply with European emissions standards and that approximately 11 million vehicles were affected by its emission scheme worldwide. Diesel sales in Europe were highly important to Volkswagen because diesels accounted for more than half of all European car registrations in 2012–2014. In Europe in 2014, diesels accounted for 56% of Volkswagen brand sales, 72% of Audi brand sales, and 43% of Porsche brand sales.

149. In all, Volkswagen sold approximately 580,000 TDI vehicles in the United States, including from the Audi and Porsche brands, that did not meet EPA and CARB emissions

standards, as well as 11 million diesel vehicles globally that were equipped with defeat devices, and a currently unknown number of Audi diesel and gasoline vehicles equipped with separate defeat devices for CO2 emissions. The affected diesel vehicle models equipped with NOx defeat devices are:

MAKE	MODEL	YEAR(S)
Audi	A3	2010-2015
Audi	A6 Quattro	2014-2016
Audi	A7 Quattro	2014-2016
Audi	A8/A8L	2014-2016
Audi	Q5	2014-2016
Audi	Q7	2009-2016
Porsche	Cayenne	2014-2016
Volkswagen	Beetle, Beetle Convertible	2013-2015
Volkswagen	Golf	2010-2015
Volkswagen	Gold SportWagen	2015
Volkswagen	Jetta, Jetta SportWagen	2009-2014
Volkswagen	Passat	2012-2015
Volkswagen	Touareg	2009-2016

150. Volkswagen further profited by charging consumers a significant premium for TDI model cars, compared to the standard gasoline-powered models of those same vehicles. For example, between 2012 and 2015, the TDI model Passat had a manufacturer suggested retail price (“MSRP”) ranging from \$5,380 to \$5,755 more than the MSRP for the standard model in the U.S. Between 2009 and 2015, the TDI model Jetta Sportswagen had an MSRP ranging from \$4,795 to \$5,570 more than the standard model in the U.S. Between 2009 and 2015, the TDI model Beetle had a premium MSRP ranging from \$3,500 to \$4,600 more than the standard model in the U.S. Between 2009 and 2015, the TDI model Jetta had an MSRP ranging from \$4,755 to \$7,445 more than the standard model in the U.S. To further entice consumers to pay a premium for TDI vehicles, Defendants successfully lobbied the U.S. government to provide tax credits for purchasers of many of their TDI cars, resulting in an earmark of at least \$78 million for TDI Jetta purchasers in 2009 and 2010 alone. Defendants also claimed that their TDI models “typically have a higher resale value versus comparable gasoline vehicles.”

L. Volkswagen Tries To Hide Its Defeat Device And Limit Exposure

151. In May 2014, West Virginia University (“WVU”) published the results of a study that it had conducted that indicated, among other things, that Volkswagen’s purportedly “clean diesel” vehicles produced NOx emissions far in excess of allowable limits. The International Council on Clean Transportation (“ICCT”) had commissioned WVU to study how manufacturers had been able to produce diesel vehicles that met strict U.S. emissions standards. ICCT and WVU began the study believing that Volkswagen’s vehicles’ reported emissions testing levels were consistent with real-world, on-road emissions levels. What WVU’s study showed, however, was that under real-world driving conditions, Volkswagen’s diesel vehicles produced emissions up to nearly 40 times higher than allowed by EPA and CARB.

152. ICCT and WVU notified the EPA and CARB of the results of their study; the regulators then notified VWAG of the emissions discrepancies the study had observed between real-world driving and testing. As the regulators launched investigations, VWAG sought to limit its culpability and exposure.

153. In his testimony to Congress on October 8, 2015, Defendant Horn admitted that he was informed in May 2014 of “a possible emissions non-compliance.” An email dated May 15, 2014 from Oliver Schmidt, then-head of Volkswagen’s U.S. Regulatory Compliance Office, informed Horn that Volkswagen vehicles did not meet governing emissions standards, and warned of the significant risks arising out of the emissions scandal, including monetary penalties, recall of vehicles, removal of the cars from the United States, and the possibility of having to buy back the cars.

154. Following the publication of WVU and ICCT’s study results, Liang and his co-conspirators discussed how they could answer the regulatory agencies’ questioning of the discrepancy between reported and recorded emissions levels, without revealing use of the defeat device to manipulate emissions testing. The Liang Plea Agreement admits that Liang knew that, after these discussions, his co-conspirators had intentionally made fraudulent explanations to the EPA and CARB when providing testing results, data, presentations, and statements to the EPA

1 and CARB by failing to disclose the fact that the primary reason for the discrepancy was the
2 defeat device.

3 155. With the EPA's and CARB's permission, and without disclosing the defeat
4 device, VWoA agreed on December 2, 2014 to recall approximately 500,000 model-year 2009 to
5 2014 vehicles whose actual emissions deviated significantly from test results, so that VWoA
6 could implement a proposed "recalibration fix" to its engine software. VWoA claimed that the
7 voluntary recall would allow it to fix the problem of real-world elevated NOx emissions levels as
8 compared to test levels, and "CARB cautioned VW that if our confirmatory testing showed that
9 the fix did not address the on-road NOx issues, they would have to conduct another recall."

10 156. When VWoA notified car owners of the recall, it did not disclose that the subject
11 vehicles contained defeat-device software, or that they produced unacceptably high emissions
12 levels. Rather, VWoA sent a letter telling owners that "[t]he vehicle's engine management
13 software has been improved," and that dealers would install a software upgrade "to assure your
14 vehicle's tailpipe emissions are optimized and operating efficiently." That letter falsely claimed
15 that the issue was related to a problem with the cars' malfunction indicator light.

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

22 158. On July 8, 2015, CARB shared its test results with VWoA and the EPA. On
23 September 3, 2015, Defendants admitted to regulators that the recalled vehicles "had a second
24 calibration intended to run only during certification testing"—i.e., a defeat device.

25 159. On September 18, 2015, the EPA issued a Notice of Violation ("NOV") to
26 VWAG, Audi AG, and VWGoA, and CARB sent those same entities an in-use compliance letter.

1 **M. Volkswagen’s Scheme Was A Deliberate Strategy**
2 **By The Company’s Top Management**

3 160. As several U.S. and German news sources have reported, the emissions scandal-
4 related misconduct at VWAG went far beyond any rogue group of engineers. On October 14,
5 2015, *Der Spiegel* reported that based on information about VWAG’s internal investigation
6 being conducted by the law firm Jones Day’s, “the longstanding emissions fraud with illegal
7 software was by no means the offense of a ‘small group’ of managers as the company has
8 claimed so far. Dozens of Volkswagen managers were involved.” After VWAG’s emissions
9 cheating emerged and the Company offered amnesty to whistleblowers, as many as 50
10 employees elected to participate, further belying any notion that VWAG’s cheating was limited
11 to a small number of low-level, rogue employees.

12 161. Defendant Winterkorn and other senior executives and managers, knew, or were
13 severely reckless in not knowing, that the Company was using defeat-device software to hide the
14 fact that the TDI vehicles could not meet emissions standards.

15 162. As reported in the September 26, 2015 *Frankfurter Allgemeine*, VWAG’s
16 investigation into the emissions-cheating scandal (conducted by the Jones Day law firm) has
17 revealed that a whistleblower at VWAG warned management in 2011 that the Company was
18 illegally manipulating reported emissions data. Recipients of the warning included Heinz-Jakob
19 Neußer, who was then the head of powertrain development for the Volkswagen brand and
20 subsequently became Volkswagen’s brand manager and a member of the VWAG Management
21 Board. Another engineer at the Company, notified management of the misconduct, but neither
22 Neußer nor anyone else in management took any action to investigate whether the allegations
23 were true or to otherwise to remedy the problem. Neußer has been a member of the Board of
24 Management for the Development Division of the Volkswagen brand since 2013, and served as
25 the head of powertrain development since 2012.

26 163. Credible reports also indicate that Winterkorn’s top lieutenants were centrally
27 involved in the decision to use defeat-device software to manipulate emissions data. An October
28 3, 2015 *Bild* article reported that several engineers have incriminated former VWAG head of

development Hackenberg as having known about VWAG's emissions cheating and as having been one of the Company's executives to order the installation of the defeat devices.

164. Despite significant and substantial consequences that could result from VWAG's use of defeat-device software, management and employees continued to be secretive and focused on the public relations impact of being caught. On February 14, 2016, *Bild* reported that internal communications among VWAG's engineers and management "coolly calculated" "the 'risks' and 'benefits' of the emission fraud," discussing "scenarios on how to handle the allegations of US agencies." Among other options, the engineers discussed "[a]cknowledgement without comment or ignoring of the results," "further tests/inspection," and a "worst case scenario" of having to "[b]uy back" vehicles. The engineers even discussed the "offer of a software upgrade" "to placate the US agencies," even though all involved understood that the Company could not achieve "compliance with the required limits." These comments have been confirmed in the Liang Plea Agreement.

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

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

166. Further, Defendant Winterkorn was aware of the Company's emissions cheating by spring of 2014 at the latest. During that time, Winterkorn and others reportedly discussed communications from both the EPA and CARB regarding documented inconsistencies between

1 VWAG's reported emissions results for its TDI vehicles and actual emissions levels. Still, in a
2 *Bild* report on October 22, 2015, Winterkorn denied knowing about the Company's emissions
3 cheating until September 2015.

4 167. The EPA's September 18, 2015 NOV evidences that Volkswagen top
5 management knew in May 2014 that its TDI vehicles produced NOx emissions at levels far
6 higher than permitted by applicable regulations. The EPA wrote that

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

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

26 "[P]rompted CARB to start an investigation and discussions with the Volkswagen
27 Group of America (VW) on the reasons behind these high NOx emissions
28 observed on their 2.0 liter diesel vehicles over real world driving conditions. As
you know, these discussions over several months culminated in VW's admission
in early September 2015 that it has, since model year 2009, employed a defeat
device to circumvent CARB and the EPA emission test procedures."

169. As part of its response, according to the CARB letter, Volkswagen "initiated
testing to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road
emissions."

170. As *Bild* reported on February 14, 2016, Winterkorn received a memorandum on
May 23, 2014—16 months before the emissions-cheating scandal became public—from Bernd
Gottweis, a veteran Volkswagen executive whom employees referred to as the "fireman" for his

1 ability to “smell trouble” and “sound the alarm” and address emergent crises at the Company.
2 Gottweis was Volkswagen’s top quality-assurance executive and led the Company’s “Product
3 Safety Taskforce” and, according to a February 15, 2016 *Wall Street Journal* article, “ran a team
4 of product sleuths that Volkswagen management dispatched around the world to put out quality
5 flare-ups before they grew into a full-fledged blaze.” According to a February 14, 2016 report in
6 *Süddeutsche Zeitung*, Gottweis always communicated openly with Winterkorn regarding quality
7 issues, and Winterkorn usually followed up with Gottweis.

8 171. In Gottweis’ memorandum, which Winterkorn took home to read as part of his
9 “weekend suitcase,” Gottweis discussed tests by U.S. agencies in which the NOx output of TDI
10 vehicles exceeded acceptable levels by over 30 times. Specifically, and as *Süddeutsche Zeitung*
11 reported, Gottweis wrote that Volkswagen’s U.S. engineers could not provide an honest
12 explanation for the heightened NOx emissions levels, and that “[n]o plausible explanation for the
13 dramatically increased NOx emissions can be given to authorities.” Gottweis warned that “[i]t is
14 to be assumed that the authorities will subsequently examine VW systems to determine if
15 Volkswagen has installed test recognition into the engine control unit software (a so-called
16 defeat device).”

17 172. *Bild* also reported on February 14, 2016 that Winterkorn admitted, during a
18 deposition as part of Jones Day’s investigation into the Volkswagen emissions scandal, that by
19 May 2014, he was aware of the problems regarding impermissibly high emissions levels in the
20 TDI vehicles.

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

25 174. After first being placed on notice of Volkswagen’s emissions cheating in late May
26 2014, Winterkorn and other top managers did nothing to address or acknowledge the issue. The
27 March 2, 2016 VWAG press release stated “[o]n 14 November 2014, Mr. Winterkorn received
28 another memo that ... referred to a cost framework of approx. EUR 20 million for the diesel

1 issue in North America.” The lack of action following the assessment of a cost framework for the
2 issue indicates that cost may have been a reason for the Company’s continued inaction, ignoring
3 compelling evidence of illegal conduct to focus on its bottom line, without regard to compliance
4 or environmental impact.

5 175. Winterkorn and his executives were aware that U.S. regulators were investigating
6 long before they disclosed it to the public, or to their potential investors.

7 176. Executives demonstrated awareness of the issue by discussing it in meetings. As
8 *Bild* reported on February 14, 2016, “[a]s late as July 2015 a VW technician noted in a matrix
9 under ‘prospects’ the possibility that the emissions fraud could slip through the cracks at the
10 agencies . . . or ‘monetary fines could be lower,’” and VWAG has admitted that on July 27,
11 2015, “Volkswagen employees discussed the diesel issue on the periphery of a regular meeting
12 about damage and product issues, in the presence of Martin Winterkorn” and Chairman of the
13 Volkswagen Passenger Cars brand since July 2015, Herbert Diess. These concerns were not
14 mentioned in the Bond Offering Memoranda issued as potential risks.

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

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

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

7 **N. Financial Impact Of The Scheme**

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

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

27 182. In the wake of the scandal, however, resale values have plummeted. As Barclays
28 wrote in a November 13, 2015 analyst report:

1 Kelley Blue Book, a research group that tracks car values, said resale values of
2 VW models affected by the scandals have fallen 16% on average since their pre-
3 crisis levels. According to Autolist, models affected by the scandal are taking 123
4 days to sell, about 44% longer than a control group of similar non-Volkswagen
5 cars. List prices are about 5% below what the company's algorithms suggest they
6 should be, and this drop has yet to cease. It is not just the affected models that are
7 likely to be impacted by this general tail off in sentiment. Consumers are either
8 not clued-up enough to know which models have been implicated or, more likely,
9 have little faith in VW's ability to draw a line under the situation.

10 183. VWAG also faces significantly increased financial exposure because far fewer
11 leasing customers will purchase their vehicles at lease-end at the agreed upon resale values,
12 which were set before the emissions scandal was revealed and do not reflect the loss in value
13 caused by the scandal. As a result of the drop in purchases, Volkswagen will then be left with
14 increased inventory of used vehicles. Even assuming a fix is available to render the cars
15 compliant with emissions standards that will allow the Company to resell the cars, they would
16 have to do so in a depressed market.

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

26 185. On June 27, 2016, the *New York Times* published an article, "Volkswagen to Pay
27 \$14.7 Billion to Settle Diesel Claims in the U.S." reporting the record settlement between
28 VWAG and state authorities and about 475,000 owners of 2.0 liter diesel vehicles affected in the
US, including \$10.033 billion set aside for buybacks and owner compensation, and \$4.7 billion
on programs to offset excess emissions and boost clean-vehicle projects. *Reuters* reported that
the settlement was approved by the Court on October 25, 2016, making it the largest civil
settlement worldwide ever reached with an automaker accused of misconduct.

1 186. On September 30, 2016, *Fortune* reported that Volkswagen had confirmed a
2 settlement with dealers, agreeing to make \$1.21 billion in payments to 652 U.S. brand dealers.
3 Together with the \$14.7 billion consumer settlement and payments to states and attorneys for
4 owners, *Reuters* reports that Volkswagen has so far agreed to spend up to \$16.5 billion on the
5 scandal.

6 **VI. AS A RESULT OF VOLKSWAGEN'S EMISSION SCHEME,**
7 **VWAG FRADULENTLY UNDERSTATED CONTINGENT**
8 **LIABILITIES AND OVERSTATED PROFITS**

9 187. As a German corporation, VWAG is required to prepare its financial statements in
10 accordance with International Financial Reporting Standards and International Accounting
11 Standards ("IAS"). IAS 37 governs when a company is required to recognize a "provision" for
12 contingencies. Provisions are recognized as liabilities in financial statements because they are
13 present obligations and it is probable that an outflow of resources will be required to settle the
14 obligations.

15 188. Under IAS 37, a provision must be recognized when a company has a present
16 obligation (legal or constructive) as a result of a past event; it is probable that an outflow of
17 resources embodying economic benefits will be required to settle the obligation; and a reliable
18 estimate can be made of the amount of the obligation, including when there is a range of possible
19 outcomes, in which case the amount accrued should be either the best estimate of the obligation
20 or, if there is no best estimate, the midpoint of the range. IAS 37 further provides that "[e]xcept
21 in extremely rare cases, an entity will be able to determine a range of possible outcomes and can
22 therefore make an estimate of the obligation that is sufficiently reliable to use in recognising a
23 provision." A past event is deemed to give rise to a present obligation if, taking into account all
24 available evidence, it is more likely than not that a present obligation exists at the end of each
25 reporting period.

26 189. In contrast to U.S. Generally Accepted Accounting Principles (or, "GAAP"),
27 which does not define "probably" with reference any specific percentage likelihood, a loss is
28 considered "probable" and therefore must be recognized under IAS 37 when the loss is more
likely than not, i.e., a probability of greater than 50%.

190. As a result of Volkswagen's emission scheme, Volkswagen had billions of dollars in probable and reliably estimated liabilities that would result from damages and repairs to consumers, and fines and penalties to government regulating agencies, which should have been recorded as a provision in its financial statements during the Class Period. IAS 37 specifically cites "penalties or clean-up costs for unlawful environmental damage" as an example of a present obligation arising from past events that should be recorded as a provision. As a liability, the provision would have reduced VWAG's operating profit during each period for which it should have been recognized and would have reduced VWAG's net assets and shareholders' equity as of the balance-sheet date at the end of the period.

191. VWAG stated in each of its annual reports during the Class Period that "[i]n accordance with IAS 37, provisions are recognized where a present obligation exists to third parties as a result of a past event, where a future outflow of resources is probable and where a reliable estimate of that outflow can be made." Contrary to this statement and in violation of IAS 37, VWAG recognized no provision for its present obligations relating to its emissions-cheating scheme during the Class Period.

192. Specifically, VWAG faced the financial costs of fixing the affected diesel vehicles in light of warranty claims or otherwise (including potential EPA fines of \$37,500 and CARB fines of \$5,000 for each affected car in the United States), legal and regulatory fines and penalties in the United States and abroad, and civil liability in the United States, Europe, and elsewhere to consumers, dealers, and investors.¹ Despite Defendants' awareness of VWAG's financial exposure, Defendants failed to take meaningful corrective action not only with regard to the affected vehicles, but also with regard to VWAG's accounting for that exposure.

193. Under IAS 37, VWAG was obligated to recognize provisions to account for estimable liabilities that arose out of past events. VWAG should have recognized provisions in an amount representing the Company's best estimate of the expenditures required to settle its

¹ EPA's \$37,500 penalty applies to violations occurring after January 13, 2009. At all relevant times before January 13, 2009, the penalty was \$32,500 per car. CARB's relevant fine for violations was \$5,000 per car at all relevant times.

obligations. On information and belief, none of VWAG's financial statements issued during the Class Period included any provision relating to its use of illegal defeat devices to circumvent emissions standards, except for its Third Quarter 2015 Interim Report issued on October 28, 2015, which included an inadequate provision for the Company's liabilities arising from the diesel scandal.

194. VWAG should have recognized provisions relating to its use of the illegal defeat devices in each of its quarterly and annual financial statements issued during the Class Period. The losses relating to the use of defeat devices were "probable" under IAS 37 because it was more likely than not that the defeat devices would be discovered and that VWAG would incur enormous liabilities to address this self-inflicted problem. The losses were "reliably estimable" because VWAG knew the likely amounts of penalties that governmental authorities would impose on it when they discovered the defeat devices, as well as the likely amounts of its liabilities to purchasers of the cars. VWAG could reliably estimate the cost of fixing or buying back the unlawful vehicles it sold to consumers. VWAG should have recognized a provision for these likely penalties and costs for every car sold with illegal defeat devices during every quarter during the Class Period.

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

196. VWAG's failure to recognize contingency reserves relating to its use of illegal defeat devices to circumvent emissions standards caused its operating profit, net assets, and

shareholders' equity to be materially overstated and its liabilities to be materially understated in all of its financial statements issued during the Class Period.

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

VII. FALSE AND MISLEADING STATEMENTS AND OMISSIONS

198. Throughout the Class Period, Defendants made numerous materially false and misleading statements and omissions, including to Bondholders, regarding the Company's operations and financial results, NOx emissions, emissions-control technology, its business and financial results, outlook, and compliance with U.S. and European regulatory standards.

A. Defendants Made False And Misleading Statements And Omissions In The Bond Offering Memoranda

199. The Bonds issued on May 23, 2014, were marketed through an Offering Memorandum dated May 15, 2014 (the "May 2014 Offering Memorandum"); the Bonds issued on November 20, 2014, were marketed through an Offering Memorandum dated November 12, 2014 (the "November 2014 Offering Memorandum"); and the Bonds issued on May 22, 2015, were marketed through an Offering Memorandum dated May 19, 2015 (the "May 2015 Offering Memorandum") (collectively, the "Offering Memoranda").

1 200. As alleged herein, Defendants made materially false or misleading statements and
2 omissions in the Offering Memoranda by failing to disclose material information regarding
3 Volkswagen's use of a "defeat device" in certain of its diesel-power cars to circumvent
4 regulatory emissions standards. Defendants were obligated to disclose material facts to make
5 their statements about reduced emissions and regulatory emissions standards and requirements
6 not misleading. Defendants also had a duty to disclose material information to the purchasers of
7 the Bonds concerning Defendants' secret and illegal scheme, which exposed Volkswagen to the
8 risk of suffering billions of dollars in damages in fines, penalties, judgments and reputational
9 damage. Such undisclosed risk materially impacted the creditworthiness of the Company, as
10 well as its ability to pay its debts, including the Bonds at issue in this action, which materially
11 impacted the value and pricing of the Bonds.

12 201. All three of the Offering Memoranda contained substantively identical false and
13 misleading statements, including, but not limited to, the following:

14 (a) "Volkswagen's top priority for research and development in [2011, 2012
15 and 2013/2012, 2013 and 2014] was to develop engines and drivetrain concepts to reduce
16 emissions, and to develop and expand the modular longitudinal toolkit platforms and the modular
17 transverse toolkit platforms."

18 (b) "A focal point of Volkswagen's current and future development activities
19 is and will be innovative mobility concepts and the reduction of fuel consumption and emissions
20 of the fleet. Currently, Volkswagen offers in Europe [438/532] models or model variants with
21 CO2 emissions below 130g CO2/km; [324/416] models emit less than 120g CO2/km and [54/85]
22 models are currently already below 100g CO2/km. All of these models are sold on the European
23 Market. With a broad range of development activities in the drivetrain sector, Volkswagen will
24 continue to reduce the emissions of our vehicles in the coming years. To this end, Volkswagen
25 is aiming to electrify the drivetrain such as with hybrid and electric vehicles, but at the same time
26 to optimize conventional combustion engines, which, in the Company's opinion will continue to
27 dominate for decades, in particular in the large growth regions."

1 (c) “Volkswagen is subject to laws and regulations that require it to control
2 automotive emissions, including exhaust emission standards, vehicle evaporation standards and
3 onboard diagnostic system requirements.”

4 (d) “Volkswagen’s vehicles must comply with increasingly stringent
5 requirements concerning emissions. With respect to exhaust emissions, in the case of passenger
6 cars and light commercial vehicles, EC type approval must comply with the Euro 5 exhaust
7 emission standards. Furthermore, in the case of passenger cars and some light commercial
8 vehicles, EC type approval or national approval for new types of vehicles must comply with the
9 stricter Euro 6 standards from September 1, 2014, and new vehicles must comply with the Euro 6
10 standards from September 1, 2015. These requirements will be applied to all light duty vehicles
11 one year later. Heavy passenger and commercial vehicles must currently meet the Euro 6
12 standard. The competent government authorities in the Member States of the European Union
13 monitor compliance with the limits and may require non-compliant manufacturers to take certain
14 measures, including a recall of the affected vehicles. Automobile manufacturers must reduce the
15 CO2 emissions of their new passenger car fleet in the European Union according the EU average
16 of 130g CO2/km from 2012 onward with a phase-in until 2015. The target to be achieved from
17 2020 onward is 95g CO2/km. In 2011, Regulation 510/2011 setting performance standards to
18 reduce CO2 emissions for new light commercial vehicles has become effective supplementing
19 the regulation on CO2 emissions of passenger car classes. Under the new Regulation,
20 manufacturers in the European Union must, for the average of their new fleet of cars, reduce the
21 CO2 emissions of light commercial vehicles in category N1 gradually to 175g CO2/km from
22 2014 to 2017. 147 CO2/km is set as the limit to be achieved by 2020 (depending on its
23 feasibility). A failure to meet the annual emission targets results in an excess emission premium
24 on the automobile manufacturer based on the level by which the emission limits were exceeded.”

25 (e) “U.S. federal and state governments and agencies (i.e. the U.S.
26 Environmental Protection Agency, or (“EPA”)) have created a suite of vehicle emission
27 regulations aimed at improving local air quality and minimizing the potential effects of global
28 climate change. Automobile manufacturers must ensure that their individual vehicles, and in

1 some cases, fleets of vehicles, must comply with various pollutant, carbon dioxide, fuel
2 economy, and zero-emission technology requirements. Federal and state agencies also impose
3 standards for onboard diagnostic systems to monitor the emission control system, including the
4 onboard refueling vapor recovery systems that control refueling and evaporative emissions.
5 Volkswagen is responsible under these regulations for the performance of vehicle emission
6 control systems, as well as the emission performance of its sold cars and light duty trucks over
7 certain time and mileage periods.”

8 (f) “In order to be placed on the European Union market, vehicles must
9 comply with EC type-approval legislation, which sets out the standardized requirements for
10 vehicles, vehicle systems, components and separate technical units. Within the context of the
11 Framework Directive 2007/46/EC, Volkswagen must comply with extensive legislation
12 regulating specific safety, emissions and technical features of vehicles and their components.
13 The Directive provides for an EC type-approval system. With the EC type-approval, the
14 competent government agency of the Member State certifies that a type of motor vehicle or
15 system (such as braking systems), component (such as tires) or independent technical unit (such
16 as lateral safety devices) conforms to the applicable regulations and technical requirements. A
17 valid EC type-approval is a prerequisite to registering, selling and operating motor vehicles,
18 systems, components or separate technical units in the Member States of the European Union.”

19 (g) “Assembly, manufacturing and other operations in the United States must
20 meet substantial regulatory requirements under various federal and state laws. These laws
21 severely restrict airborne and waterborne emissions, discharges of pollutants and the disposal of
22 waste from Volkswagen’s facilities, as well as the handling of hazardous materials. These
23 requirements may require Volkswagen to install additional monitoring and other pollution
24 control equipment, which would be costly.”

25 (h) “Our future business success depends on our ability to develop new,
26 attractive and energy-efficient products that are tailored to our customers’ needs and to offer
27 these products on competitive terms and conditions. In their purchasing decisions, customers are
28 increasingly emphasizing lower fuel consumption and exhaust emissions. Alternative drive

1 technologies (for example, electric powertrains or hybrid engines) are increasingly important to
2 customers. A significant factor in our future success is our ability to recognize trends in
3 customer requirements in sufficient time to react to these changes and thus strengthen our
4 position in our existing product range and the market segments we already serve, as well as to
5 expand into new market segments. We are under continual pressure to develop new products
6 and improve existing products in increasingly shorter time periods.”

7 202. The statements in the Offering Memoranda quoted in ¶201 were materially false
8 and misleading, and omitted material facts that were necessary to render those statements not
9 misleading, because:

10 (a) Volkswagen utilized an unlawful “defeat device” in many of its diesel
11 vehicles sold in the United States and around the globe in order to meet regulatory requirements
12 that allowed Volkswagen to sell non-compliant vehicles that would otherwise be prohibited.
13 Specifically, the defeat device used by Volkswagen was designed and intended to detect when
14 the vehicle was undergoing official emissions testing and then enable full emissions controls
15 during the test. At all other times, however, the emissions controls were deactivated, meaning
16 that pollution was released into the environment at levels that far exceeded those allowed by
17 federal and state clean air regulators, as well as the emissions level proclaimed by Volkswagen.

18 (b) Defendants’ statements failed to state material facts about Volkswagen’s
19 exposure to the risk of suffering billions of dollars in damages from fines, penalties, judgments
20 and reputational damage, among other things, if and when its unlawful misconduct were
21 discovered. These facts, if known, would have had a material impact on the creditworthiness of
22 the Company, its ability to pay the Bonds and other debts, and the value of the Bonds.

23 (c) More specifically, Defendants’ statements in ¶201(a) & (b), referencing
24 Volkswagen’s “top priority” and “focal point” to reduce emissions in its vehicles were materially
25 false because Defendants did not intend to, or effectively, reduce emissions. Rather, Defendants
26 intended to use, and prioritized using, an illegal defeat device to create the impression of reduced
27 emissions. Furthermore, those statements were misleading because they implied that
28 Volkswagen had already reduced vehicle emissions when in truth Volkswagen’s diesel engines

1 emitted more pollutants than Defendants represented. Moreover, those statements were
2 misleading because they failed to disclose the material facts that Volkswagen equipped a
3 substantial number of its vehicles with an illegal defeat device that allowed those vehicles to
4 reduce emissions only during certification testing, and that the vehicles otherwise and
5 predominately produced increased emissions, and emissions at greater levels than were touted by
6 Volkswagen.

7 (d) Defendants' statements in ¶201(c)-(f) regarding emissions regulations and
8 requirements applicable to Volkswagen and its vehicles were misleading because they implied
9 that Volkswagen's vehicles were compliant with all such emissions regulations and
10 requirements, but failed to disclose that a substantial number of Volkswagen's vehicles were
11 only able to meet regulatory requirements by utilizing an illegal defeat device during emissions
12 certification testing. But for the use of the defeat device, Volkswagen would have been
13 prohibited from selling those vehicles.

14 (e) Defendants' statements in ¶201(g) regarding the potential cost impact of
15 increasingly stricter regulatory requirements were misleading because they implied that
16 increased costs were uncertain, when Defendants knew that Volkswagen was exposed to
17 considerable fines, penalties, and compliance costs, once its unlawful conduct was discovered.

18 (f) Defendants' statements in ¶201(h) regarding Volkswagen's past and future
19 sales, future business success, income and profitability were materially false and misleading
20 because Defendants failed to disclose that a substantial portion of its past sales, income and
21 profitability were *only* achieved by misleading its customers, government regulators and
22 investors regarding the operation, performance and environmental impact of its diesel engines;
23 and, that its future sales, income and profitability were dependent upon Volkswagen continuing
24 its unlawful scheme, or would be negatively impacted if and when the unlawful scheme was
25 inevitably discovered.

**B. Defendants Made False And Misleading Statements
And Omissions In Interim and Annual Reports
Referenced In The Offering Memoranda And Issued
During The Class Period**

203. VWAG released interim and annual reports referenced in the Offering Memoranda and issued during the Class Period containing false and misleading statements and omissions.

204. The May 2014 Offering Memorandum contained financial statements and information referencing VWAG's interim financial statement for the period January-March 2014, also known as the "First Quarter 2014 Interim Report." The First Quarter 2014 Interim Report was signed by the VWAG Management Board, including Defendant Winterkorn, on April 29, 2014.

205. The November 2014 Offering Memorandum states that all information presented is qualified in its entirety by "Developments since January 1, 2014 and Outlook," reflecting information disclosed in VWAG's interim financial statement for the period January-September 2014, also known as the "Third Quarter 2014 Interim Report." The Third Quarter 2014 Interim Report was signed by the VWAG Management Board, including Defendant Winterkorn, on October 30, 2014.

206. The May 2015 Offering Memorandum states that all information presented is qualified in its entirety by "Developments since January 1, 2015 and Outlook," reflecting information disclosed in VWAG's interim financial statement for the period January-March 2015, also known as the "First Quarter 2015 Interim Report." The First Quarter 2015 Interim Report was signed by the VWAG's Management Board, including Defendant Winterkorn, on April 29, 2015.

207. The First Quarter 2014 Interim Report, Third Quarter 2014 Interim Report, and First Quarter 2015 Interim Report all included the following false and misleading statement: "We offer an extensive range of environmentally friendly, cutting-edge, high-quality vehicles for all markets and customer groups that is unparalleled in the industry."

1 208. The May 2014 Offering Memorandum and the November 2014 Offering
2 Memorandum also included VWAG's financial statements and referenced VWAG's 2013
3 Annual Report, dated February 21, 2014. VWAG's 2013 Annual Report quoted Defendant
4 Winterkorn as saying that "Our pursuit of innovation and perfection and our responsible
5 approach will help to make us the world's leading automaker by 2018—both economically and
6 ecologically"; that "our goal is to become better and better, more efficient, more environmentally
7 friendly and even more customer-centric—from development through production down to sales";
8 and that "our goal is to ensure the Volkswagen Group reaches the top of the automotive industry
9 by 2018—in both economic and ecological terms. We are focusing all our efforts and energy on
10 achieving this goal."

11 209. The 2013 Annual Report also stated:

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

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

24 211. In addition, the May 2015 Offering Memorandum cites VWAG's 2014 Annual
25 Report as an additional source of information for investors. The 2014 Annual Report, signed by
26 VWAG's Management Board, including Defendant Winterkorn, on February 17, 2015, and
27 released to the public on February 27, 2015, contains the following false or misleading
28 statements:

(a) Featured prominently before the table of contents is a quote from
Defendant Winterkorn, "Our pursuit of innovation and perfection and our responsible approach

1 will help to make us the world's leading automaker by 2018 – both economically and
2 ecologically.”

3 (b) “We are focusing in particular on the environmentally friendly orientation
4 and profitability of our vehicle projects so that the Volkswagen group has the right products for
5 success even in more challenging economic conditions.” ... “Our attractive and environmentally
6 friendly range of vehicles, which we are selectively expanding, and the strong position enjoyed
7 by our individual brands in the markets worldwide, are key factors allowing us to leverage the
8 Group's strengths and to systematically increase our competitive advantages.”

9 (c) “Our activities are primarily oriented on setting new ecological standards
10 in the areas of vehicles, drive trains, and lightweight construction.”

11 (d) “The Volkswagen Group closely coordinates technology and product
12 planning with its brands so as to avoid breaches of emission limits, which would entail severe
13 sanctions.”

14 (e) “Our attractive and environmentally friendly model portfolio impresses
15 customers around the globe. The trust placed in us by customers, as well as our high quality and
16 efficiency standards, allow us to meet and even exceed our financial targets.”

17 (f) “We offer an extensive array of attractive, environmentally friendly,
18 cutting edge, high-quality vehicles for all markets and customer groups.”

19 (g) “To the best of our knowledge, and in accordance with the applicable
20 reporting principles, the consolidated financial statements give a true and fair view of the assets,
21 liabilities, financial position and profit or loss of the Group, and the Group management report
22 includes a fair review of the development and performance of the business and the position of the
23 Group, together with a description of the material opportunities and risks associated with the
24 expected development of the Group.”

25 212. The statements in VWAG's periodic reports quoted in ¶¶207-211 were materially
26 false and misleading because rather than actually being “environmentally friendly,” VWAG's
27 diesel vehicles were equipped with secret defeat devices that allowed them to be sold under the
28

1 pretense that their NOx emissions were within the legal limits when they actually exceeded such
2 limits by as much as 40 times.

3 213. The statements in VWAG's periodic reports referenced in ¶¶207-211 concerning
4 the Company's efforts to avoid breaches of emission limits, the trust of customers, and its
5 environmentally friendly vehicles, were misleading because they failed to disclose that its basis
6 for avoiding breaches of emissions limits, building trust of customers and offering
7 environmentally friendly emissions standards was an unlawful scheme to meet regulatory
8 emissions standards; and, that but for the illegal scheme, Volkswagen would not have been able
9 to sell a substantial portion of its vehicles.

10 214. The statements in VWAG's periodic reports referenced in ¶¶207-211 concerning,
11 among other things, the Company's vehicles' compliance with emissions standards, Defendants'
12 commitment to being environmentally friendly, and their use of technology and engineering
13 expertise to produce "clean diesel" vehicles triggered an obligation for Defendants to disclose in
14 each of VWAG's annual and interim reports the omitted facts concerning, among other things,
15 that the subject "clean diesel" vehicles could not have been legally sold in the United States or
16 Europe as they did not meet the applicable emissions standards and utilized illegal defeat
17 devices.

18 **C. Defendants Made False And Misleading Statements**
19 **And Omissions About VWAG's Financial Results**
20 **And Condition**

21 215. VWAG's failure to recognize the probable liabilities stemming from their use of
22 illegal defeat devices into their periodic financial statements issued during the Class Period and
23 referenced in the Bond Offering Memoranda constituted material misrepresentations and
24 omissions. In each of VWAG's financial statements issued during the Class Period, VWAG
25 failed to account for reliably estimable, present obligations under IAS 37, as a result of its likely
26 liabilities to purchasers and lessees of its "clean diesel" cars for damages and repairs, to US and
27 foreign governmental agencies for fines and penalties resulting from its emissions-cheating
28 scheme, and its obligation to repurchase leased cars at contractual resale values vastly exceeding
their actual, impaired values. As a liability, the provision would have reduced VWAG's

operating profit during the period for which it should have been recognized and would have increased the Company's total liabilities. Furthermore, any such liability would have reduced the Company's net assets and shareholders' equity, thereby impacting the creditworthiness of the Company and its ability to pay its debts, including the Bonds, and materially decreasing the value of its Bonds.

216. To date, VWAG's accrued liabilities as a result of its scheme to utilize the unlawful defeat device amount to at least \$18 billion, before even giving effect to liabilities arising from all fines, damage awards, criminal penalties, and other costs that the Company has not yet accrued.

217. As a result of VWAG's failure to properly recognize provisions relating to its use of unlawful defeat devices in its "clean diesel" vehicles, its total liabilities were materially understated and its operating profit, total assets, and shareholders' equity were materially overstated in each of VWAG's following periodic reports during the Class Period. VWAG's Board of Management, including Defendant Winterkorn, signed each of the Annual and Interim Reports during the Class Period. All amounts in the table below are in Euros in millions:

VWAG Report	Reported Total Liabilities	Reported Total Assets	Reported Shareholder Equity	Reported Operating Profit
2013 Annual Report, issued on February 21, 2014	234,296	324,333	87,733	11,671
First Quarter 2014 Interim Report, issued on April 29, 2014	246,568	333,909	80,031	2,855
Second Quarter 2014 Interim Report, issued on July 31, 2014	246,410	336,124	89,524	3,330
Third Quarter 2014 Interim Report, issued on October 30, 2014	256,305	347,308	85,806	3,230
2014 Annual Report, issued on February 17, 2015	261,020	351,209	89,991	12,697
First Quarter 2015 Interim Report, issued on April 29, 2015	286,560	375,827	81,610	3,328
Second Quarter 2015 Interim Report, issued on July 29, 2015	277,857	374,910	88,442	3,492

**D. Defendants Made False and Misleading
Statements And Omissions In Press Releases**

218. During the Class Period, Defendants made materially false and misleading statements and omissions in their press releases.

219. On August 27, 2014, VWoA/VWGoA issued a press release entitled “2015 Volkswagen Jetta: Volkswagen’s Best-Selling Sedan, Refined” stating: “Volkswagen’s all-new diesel engine platform, the EA288, powers the 2015 Jetta TDI Clean Diesel model. It is one of the most fuel-efficient engines in its class, and already conforms to the upcoming LEV3 emissions standard in the U.S.” That press release further states, “The compact EA288 engine has the intercooler for its turbocharger system integrated directly into the intake manifold, which serves a two-fold purpose of increasing throttle response and performance as well as helping lower emissions.”

220. On August 27, 2014, VWoA/VWGoA issued a press release entitled “2015 Volkswagen Passat: Built in America, for America” stating: “[T]he EA288 Clean Diesel TDI engine places strong emphasis on thermal management, which is evident in the cylinder head’s two-section coolant jacket, as well as a three-part cooling circuit and switchable coolant pump. Compared to the previous engine, emissions are reduced by up to 40 percent, helped by siting the exhaust after-treatment module close to the engine and by the use of a low-pressure exhaust gas recirculation system.”

221. On August 27, 2014, VWoA/VWGoA issued a press release entitled “2015 Volkswagen Beetle: Iconic Looks, Modern Interpretation” stating:

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

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

* * *

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

* * *

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

3 222. On August 27, 2014, VWoA/VWGoA issued a press release entitled “2015
4 Volkswagen Beetle Convertible: Everyday Drop-Top Fun For Four” stating: “The compact
5 EA288 engine has the intercooler for its turbocharger system integrated directly into the intake
6 manifold, which serves a two-fold purpose of increasing throttle response and performance as
7 well as helping lower emissions.” Additionally, “Compared to the previous engine, emissions
8 are reduced by up to 40 percent, helped by siting the exhaust after-treatment module close to the
9 engine and by the use of a low-pressure exhaust gas recirculation system.”

10 223. On July 10, 2015, VWoA/VWGoA issued a press release entitled “New Guinness
11 world record: Golf TDI Clean Diesel attains lowest fuel consumption on 48-state tour of the
12 USA,” which was also published by VWAG on a VWAG website, stated: “The Golf TDI Clean
13 Diesel is sold in the USA and Canada. The 2.0-litre TDI engine has a power output of 110 kW /
14 150 PS, and its rated fuel economy is 45 miles per gallon (5.2 litres/100 km). The Golf TDI
15 Clean Diesel also fulfils the most stringent emissions standards in the world: the LEV3 / TIER 3
16 standards in the USA.”

17 224. The statements quoted in the press releases, as set forth in ¶¶219-223 were
18 materially misleading because they failed to disclose that emissions standards and results touted
19 by Volkswagen could only be achieved during emissions testing, and with the aid of an illegal
20 defeat device that altered the regular emissions of Volkswagen’s vehicles. At all other times, the
21 emissions of those Volkswagen cars were much higher, and thus could not meet the comparisons
22 stated in the press releases.

23 225. The statements quoted in ¶¶219-223 were materially false and misleading because
24 the referenced vehicles, by virtue of their use of an illegal defeat device, did not comply with the
25 cited regulatory standards for emissions. Rather, the vehicles actually emitted NOx at levels far
26 higher than permitted by the regulatory standards; the emissions-control technologies described
27 in the statements did not reduce NOx emissions as much as Defendants said they did; and the
28 vehicles only purported to achieve the low emissions misrepresented by Defendants and to

1 comply with the regulatory standards during testing, when the vehicles were aided by illegal
2 defeat devices.

3 226. The press releases referenced in ¶¶219-223 also included material omissions
4 because they failed to disclose that but for the illegal defeat devices used by Volkswagen, the
5 Company could not have legally sold the referenced vehicles in the United States or Europe.

6 **E. Defendants Made False Statements And**
7 **Omissions In Corporate Social Responsibility And**
8 **Sustainability Reports Issued During The Class Period**

9 227. On April 27, 2015, VWGoA issued a press release announcing an update to its
10 Corporate Social Responsibility Report, “At Home in America.” According the release, the
11 report “highlights the progress VWGoA has made since the release of the comprehensive 2013
12 report in three areas: environmental sustainability, philanthropic activities, and creating a diverse
13 and inclusive workplace.” In the release, Defendant Horn, speaking as President and CEO of
14 VWGoA, stated that “Volkswagen is proud of the progress we have made in sustainable
15 innovation[.]” Environmental sustainability and the benefits of “TDI clean diesel” are
16 championed throughout the report, and include, but are not limited to, the following:

17 (a) The report opens with an introduction by Defendant Horn: “The growth
18 and momentum Volkswagen Group of America has achieved makes it clear that we’re more At
19 Home in America now than ever before. Today, we continue to deepen our American roots
20 through investments in our people, new products, additional production capacity and innovative,
21 green technologies” “We are connected by a shared mission and commitment to putting our
22 engineering expertise, innovation and vision to work for the greater good, to help improve our
23 communities and solve the sustainability challenges of the future” ... “Within the pages of this
24 report, you’ll find stories of how we’ve been deepening our roots in America through our
25 commitment to being a good partner on the road and in the communities we serve – making us
26 At Home in America for years to come.”

27 (c) “At home in America and around the world, Volkswagen Group of
28 America places environmental sustainability at the core of our operating philosophy. We don’t
just talk about it, we take action, finding inventive ways to be responsible in everything we do –

1 and everyone, including our employees, suppliers and sales partners, is equally committed to
2 ongoing improvements and innovations. As a result, we are on our way toward our goal of
3 becoming the world's most environmentally sustainable automaker by 2018.”

4 (d) “As an automotive manufacturer, Volkswagen Group of America is
5 committed to low-consumption, low-emission powertrains for our vehicles and our energy-
6 efficient production facilities.”

7 (e) “Our manufacturing facility in Chattanooga, Tenn., serves as a model for
8 increasing energy efficiency and reducing emissions, water and materials usage, and waste for
9 Volkswagen plants the world over... The Chattanooga facility is the manufacturing home for the
10 Passat TDI® (Turbo Direct Injection), the only clean diesel option in its market segment. The
11 Passat TDI delivers an EPA-estimated 43 miles per gallon (mpg) on the highway with the
12 manual transmission, giving a range of nearly 800 miles. The Passat TDI set the world record
13 for the lowest fuel consumption in the lower 48 U.S. states for a non-hybrid car, according to the
14 2013 GUINNESS WORLD RECORDS®. The Passat TDI beat the hybrid vehicle record of 64.6
15 mpg by more than 13 mpg.”

16 (f) “At Volkswagen Group of America, we are committed to driving progress
17 through better-engineered, efficient vehicles that don't sacrifice performance. But it all starts
18 with our vision for making cars greener than ever. We take steps to ensure that every vehicle we
19 manufacture is the best it can be in terms of its environmental properties.”

20 (g) “We're committed to promoting sustainable mobility and environmentally
21 conscious lifestyles in everything we do, and we're particularly proud of our green cars and our
22 vision for cars of the future.”

23 (h) “TDI: Clean Diesel for Everyone. Audi and Volkswagen pioneered TDI®
24 clean diesel – and today, the Volkswagen Group of America is the market leader in clean diesel.
25 In 2014, the Volkswagen Group brands, including Audi, Volkswagen and Porsche sold nearly
26 100,000 clean diesel cars in the United States. Clean diesel delivers more torque, lowers fuel
27 consumption and reduces CO2 emissions compared with equivalent gasoline engines.
28

1 Volkswagen's newest and most fuel-efficient TDI clean diesel engine will power the 2015 Golf,
2 Beetle, Passat and Jetta."

3 (i) "Audi has been at the forefront of clean diesel since the introduction of
4 Audi TDI technology in 2009. Since then, more than 55,000 Audi TDI vehicles have been sold
5 in the United States, delivering an average of 30 percent better fuel economy and range than
6 gasoline. Continuing our commitment to clean diesel technology and innovative solutions that
7 improve efficiency and driving dynamics, Audi has made a dramatic expansion of TDI
8 technology in the United States in 2014. Available TDI models include the A6, A7, A8 L, Q5
9 and Q7, as well as the introduction of the A3 TDI sedan."

10 (j) "We strongly believe that we must develop alternatives to petroleum-
11 based fuels that still work with the internal combustion engine. In 2012, Volkswagen announced
12 partnerships with Solazyme and Amyris, two of the world's leaders in renewable fuels, to
13 evaluate emissions reductions and demonstrate the performance of TDI Clean Diesel technology
14 when powered by advanced renewable diesel fuel. That research is ongoing with both the Audi
15 and Volkswagen brands. Amyris converts plant-sourced sugars into renewable hydrocarbons for
16 fuel and chemical applications; Solazyme has developed a technology that harnesses the oil-
17 producing ability of microalgae to develop renewable oil products. Working together, our goal is
18 to advance research on renewable diesel solutions for current and future generations of TDI
19 Clean Diesel applications."

20 (k) "Volkswagen's TCC is located in Oxnard, Calif., and serves as the
21 Group's only emission test laboratory in North America. As the largest technical center of its
22 kind for the Volkswagen Group outside of Germany, the TCC plays a pivotal role in the product
23 development food chain, acting as the final stop for many products before they are approved for
24 production. Work at the TCC is focused on powertrain product development, governmental
25 compliance and field quality testing. The TCC has more than 50 engineers and technology
26 experts working in a 65,500-square-foot LEED-certified facility."

27 228. On April 28, 2015, VWAG published its 2014 Sustainability Report. The report
28 includes a responsibility statement, reading "The company's Board of Managing Directors is

1 responsible for the accurate preparation of the Sustainability Report,” and that “[t]his
2 responsibility includes the selection and application of appropriate methods to prepare the
3 Sustainability Report and the use of assumptions and estimate for individual sustainability
4 disclosures which are reasonable in the circumstances.” The 2014 Sustainability Report contains
5 the following false or misleading statements:

6 (a) “With its brands, the Volkswagen Group has a presence in all relevant
7 automotive markets around the world. Western Europe, China, Brazil, the USA, Russia and
8 Mexico are currently the key sales markets for the Group. The Group maintained its strong
9 competitive position in the reporting period thanks to its wide range of attractive and
10 environmentally friendly models. We recorded an encouraging increase in demand in many of
11 our key markets.”

12 (b) Defendant Winterkorn states in his introduction to the Sustainability
13 Report, “In this way we have learned that our business is no longer just about technical aspects
14 like horsepower and torque. We have learned that sustainability, environmental protection and
15 social responsibility can be powerful value drivers.”

16 (c) “We know that growth can only take place hand in hand with
17 responsibility and environmental protection – more than that, in fact: in recent years these factors
18 have become genuine value drivers. That is why everything we do in the interests of
19 sustainability also serves to achieve our corporate objectives – in an accompanying, promoting
20 and supporting capacity.”

21 (d) “The Volkswagen Group has made a commitment to sustainability-
22 oriented, transparent and responsible management. The greatest challenge to putting this into
23 practice at all levels and in all stages of the value chain is our complexity, with twelve brands,
24 nearly 600,000 employees and 118 production locations. In line with the recommendations of
25 the German Corporate Governance Code, we practice Group-wide sustainability coordination
26 and forward-looking risk management and ensure a clear framework for the future-oriented
27 handling of environmental issues, responsibility towards our employees and social engagement
28 by our brands and in the various regions.”

1 (e) “Coordination of Environmental, Personnel and Social Engagement
2 Issues. In 2011 the Volkswagen Group took an important decision for the ecological
3 restructuring of the Group by appointing a Group Chief Officer for the Environment, Energy and
4 New Business Areas. The Environmental Strategy was approved by the Group Board of
5 Management at the end of 2013.”

6 (f) “At the same time we are aiming to step up the efficiency of our cross-
7 brand innovation management as well as networking the development processes at our brands.
8 By creating overarching technology networks we avoid parallel developments, generate efficient
9 technology transfer and can simultaneously reduce our development costs. In order to offer each
10 customer a product that is not only tailored to their needs but also environmentally compatible,
11 we are driving forward the development of solutions that range from highly efficient, ecofriendly
12 diesel, gasoline and natural gas engines to innovative hybrid drive systems and all-electric
13 vehicles.”

14 (g) “Anchored throughout the Company: We want every individual in our
15 well-informed, qualified workforce to be actively involved. Our strength lies in combining the
16 expertise and competence of our brands and regions. Environmental considerations are factored
17 into every decision we make. We will motivate and qualify our employees even more
18 intensively to meet our environmental targets.”

19 (h) “Building on the Group Environmental Policy and Environmental
20 Principles, all brands organize their own environmental management systems autonomously in
21 line with international standards, be it the European Union’s Eco-Management and Audit
22 Scheme (EMAS) or the International Standards for Environmental Management (ISO 14001)
23 and Energy Management (ISO 50001). As per the end of 2014, out of a total of 106 Group
24 production sites, 90 held a valid ISO 14001 certificate.”

25 (i) “Climate protection is at the heart of the Group’s environmental
26 management philosophy, spanning every stage of the value creation process. We report
27 regularly on our climate protection strategy to the CDP (formerly known as the Carbon
28 Disclosure Project), a consortium of institutional investors.”

(j) In the “Environmental Indicators” section of the sustainability report, VWAG states without elaboration, “There was a clear decline in NOx emissions in the 2010 to 2014 period.”

229. The statements quoted in the press releases, as set forth in ¶¶227-228 were materially misleading because they failed to disclose that emissions standards and results touted by Volkswagen could only be achieved during emissions testing, and with the aid of an illegal defeat device that altered the regular emissions of Volkswagen’s vehicles. At all other times, the emissions of those Volkswagen cars were much higher, and thus could not meet the levels stated in the reports. Furthermore, but for the use of an illegal defeat device, Volkswagen would not have been able to sell those vehicles in the United States and Europe, as touted in the reports.

230. The statements quoted in ¶¶227-228 were materially false and misleading because the referenced vehicles, by virtue of their use of an illegal defeat device did not comply with the cited regulatory standards for emissions. Rather, the vehicles actually emitted NOx at levels far higher than permitted by the regulatory standards; the emissions-control technologies described in the statements did not reduce NOx emissions as much as Defendants said they did; and the vehicles only purported to achieve the low emissions during testing, when the illegal defeat device was in use, and otherwise failed to comply with the regulatory standards.

VIII. THE TRUTH IS REVEALED

231. The conduct alleged herein, and the materially false and misleading statements and omissions made during the Class Period, operated as a fraud or deceit on Plaintiff and members of the Class that allowed Defendants to improperly benefit from the sale of Volkswagen Bonds, and caused Volkswagen Bonds to trade at inflated prices during the Class Period. When the relevant truth began to be disclosed regarding Defendants’ conduct, and their misleading statements and omissions concerning the use of emissions defeat devices, the prices of Volkswagen Bonds suffered significant declines, as the artificial inflation began to come out of the prices and the Bonds were downgraded by credit ratings agencies, including S&P and Moody’s. As a result of their purchases of Bonds during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.* damages, under the federal securities laws.

232. On Friday, September 18, 2015, the EPA and CARB announced that Volkswagen admitted to systematically defrauding investors and the public for years by deliberately cheating on emissions tests and making its diesel vehicles appear cleaner and more powerful than they actually are. That day, the EPA issued an NOV of the Clean Air Act to VWAG, Audi AG, and VWGoA, stating that Volkswagen and Audi cars equipped with four-cylinder 2.0 liter diesel engines from Model Years 2009–2015 included illegal software known as a “defeat device” that was designed to circumvent EPA emissions standards. Also, CARB sent a letter to VWAG, Audi AG and VWGoA advising that it had initiated an enforcement investigation of Volkswagen pertaining to the vehicles at issue.

233. As described in the NOV, Volkswagen’s fraud was brazen and broad. Volkswagen’s misconduct affected approximately 580,000 diesel cars sold in the United States from 2008 through 2015, and spanned several different Volkswagen car brands and numerous different Volkswagen models. The affected diesel vehicles include the: (1) Jetta (Model Year 2009–2015); (2) Jetta SportWagen (Model Year 2009–2014); (3) Beetle (Model Year 2012–2015); (4) Beetle Convertible (Model Year 2012–2015); (5) Audi A3 (Model Year 2010–2015); (6) Golf (Model Year 2010–2015); (7) Golf SportWagen (Model Year 2015); and (8) Passat (Model Year 2012–2015).

234. According to the September 18, 2015 NOV, the EPA determined that Volkswagen had “manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control system that exist to comply with CAA [Clean Air Act] emission standards.” Volkswagen manufactured and installed software that “sensed when the vehicle was being tested for compliance with EPA emission standards” detecting “whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure.” This illegal software detects when the car is undergoing official emissions testing, and utilizes full emissions controls only during the test. In normal driving conditions, the software shuts down, which greatly reduces the effectiveness of the

1 vehicles' pollution emissions controls. As a result of this software, Volkswagen's diesel vehicles
2 met emissions standards in the laboratory or testing station, but not during normal operation,
3 when they emitted NOx at up to 40 times the legal limit.

4 235. The EPA determined that the effect of the software rendered it to be an illicit
5 "defeat device" as defined by the Clean Air Act, and found that Volkswagen violated Section
6 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(3), 7522(a)(1), 7522(a)(3)(B), as well
7 as 40 C.F.R. §§ 86.1854-12(a)(3)(ii) and 86.1854-12(a). The EPA also found that Volkswagen's
8 2.0 liter diesel cars violated the U.S. Tier 2, Bin 5 standard, and were not able to comply with the
9 Tier 3 standard as Volkswagen represented because, but-for the installation and use of the defeat
10 devices, the vehicles' emissions of NOx were 10 to 40 times above compliant levels.

11 236. That same day, the *New York Times* published an article on its website (and on the
12 front page of its next print issue on Saturday, September 19, 2015) under the title "U.S. Orders
13 Major VW Recall Over Emissions Test Trickery." The article reported that the Company had
14 "illegally installed software in its diesel-power cars to evade standards for reducing smog," and
15 that Volkswagen had "admitted to the use a so-called defeat device. The recall involves 4
16 cylinder Volkswagen and Audi vehicles from model years 2009-2015." The article also reported
17 that the DOJ had opened an investigation and that fines of as much as \$18 billion could be
18 imposed as a result of Defendants' misconduct. The article reported that Tyson Slocum, Director
19 of the Energy Program at Public Citizen, stated that VWAG's misconduct is "several steps
20 beyond the violations that we've [Public Citizen has] seen from other auto companies. They
21 appear to have designed a system with the intention to mislead consumers and the government."

22 237. On Sunday, September 20, 2015, Defendant Winterkorn admitted on behalf of the
23 Company that Volkswagen broke the public's trust by defrauding federal and state regulators,
24 adding that he was "personally . . . deeply sorry for the breach of trust." According to
25 Winterkorn, the Company's "manipulations . . . violate American environmental standards . . .
26 [and] [w]e do not and will not tolerate violations of any kind of our internal rules or of the law."
27 In addition to issuing a sweeping apology for lying to the public, Volkswagen halted U.S. sales
28 of its diesel-powered cars on September 20, 2015, and launched an internal investigation into its

1 misconduct to be conducted by the major U.S. law firm Jones Day. Despite these “conciliatory”
2 statements, Volkswagen continued to sell its 3.0-liter diesel models, even though Defendants
3 knew that they contained similar, but not-yet-disclosed defeat devices.

4 238. On Monday, September 21, 2015, the DOJ Environmental and Natural Resources
5 Division opened a criminal probe into Volkswagen’s admission that it rigged its diesel cars to
6 beat emissions tests. Also, on September 21, 2015, the German government stated that it would
7 investigate whether VWAG manipulated emissions testing in Europe, and, the U.S. House of
8 Representatives Energy Committee’s Oversight Subcommittee announced plans to hold a
9 hearing on the Volkswagen case.

10 239. Numerous authorities, regulators, professors, and analysts quickly denounced
11 Volkswagen’s actions:

- 12 • Stephan Weil, the prime minister of Lower Saxony (which owns 20% of the
13 Company) issued a statement on September 21, 2015, that “[m]anipulation of an
14 emissions test is completely unacceptable and without any justification.”
- 15 • Deutsche Bank issued an analyst report on September 20, 2015, stating that “this
16 appears to be intentional cheating” by Volkswagen.
- 17 • Karl Brauer, an analyst at Kelley Blue Book, explained to the *New York Times* on
18 September 21, 2015, that the Company “must have had a mix of performance,
19 durability and economy that they liked, but realized they couldn’t achieve it and
20 still get the emissions” without using the defeat devices.
- 21 • A Commerzbank analyst report issued on September 21, 2015, “[i]n a nutshell,
22 VW is violating the Clean Air Act [and] acknowledged that there might be
23 wrongdoing by VW USA.”

24 240. On September 22, 2015, Volkswagen issued a press release disclosing that as
25 many as 11 million vehicles worldwide contained the defeat devices used to evade emissions
26 tests, and, as a result, the Company would take a \$7.3 billion charge to earnings and cut its full-
27 year outlook to account for expected liabilities. The Company reported that “further internal
28 investigations conducted to date have established that the relevant engine management software

1 is also installed in other Volkswagen Group vehicles with diesel engines. . . . Discrepancies
2 relate to vehicles with Type EA 189 engines, involving some eleven million vehicles
3 worldwide.” Volkswagen recognized a \$7.3 billion provision in the “cost of sales” category of
4 the Company’s income statement for the third fiscal quarter of 2015, resulting in a dollar-for-
5 dollar reduction in operating profit. Significantly, this \$7.3 billion charge included only the cost
6 of the software and hardware to update the defective vehicles, residual value risks for the
7 Company’s leasing portfolio, and a support fund for Volkswagen dealers. The costs of any legal
8 measures, penalties, or fines flowing from the scandal were not included in the \$7.3 billion
9 provision. This news was quickly reported by news outlets across the world, including an article
10 in the *New York Times* entitled “Volkswagen Says 11 Million Cars Worldwide Are Affected in
11 Diesel Deception.”

12 241. On September 22, 2015, Winterkorn again acknowledged “misconduct,” and
13 stating that “[m]illions of people in the world trust our brand, our cars, and our technology. I am
14 endlessly sorry that we have betrayed that trust.” Also on September 22, 2015, Defendant Horn,
15 then-CEO of VWGoA, admitted that “[o]ur company was dishonest with the EPA, and the
16 [CARB] and with all of you . . . [W]e’ve totally screwed up.”

17 242. On September 22, 2015, Kevin Tynan, a Bloomberg Intelligence auto industry
18 analyst, reported, “[w]hat is so damning is that this was something actively pursued. This isn’t
19 an oversight. Someone at VW had to decide that cheating the system was going to be a better
20 use of time, money and resources than meeting regulatory requirements.” That same day, auto
21 expert Dudenhoeffer stated his belief, in *Deutsche Welle*, that Volkswagen consciously and
22 purposefully violated U.S. law, and the executives in charge knew what defeat devices are.
23 Dudenhoeffer opined that Volkswagen consciously violated U.S. law and its misconduct could
24 not have occurred by accident.

25 243. By the evening of September 22, 2015, (and further updated the following
26 morning) Bloomberg published an article on its website, “Volkswagen Emissions Scandal Takes
27 Toll on Corporate Bond Market.” According to the article, by September 22, 2015, investors in
28 the United States were demanding yields of as much as 4.6 percent, numbers that are “more in

1 line with companies with ratings closest to junk than the A grade that Volkswagen has from
2 Standard & Poor's. Credit default swaps traders drove up the cost to protect against losses on
3 debt across the auto industry as they braced for the potential of a widening probe."

4 244. On September 24, 2015, Moody's changed VWAG's outlook to "negative," citing
5 the concern that "Volkswagen's alleged breach of US environment rules and, especially, the
6 process by which that breach occurred, will have an adverse effect on its reputation and
7 credibility within the global passenger car markets." On November 4, 2015, Moody's
8 downgraded Volkswagen's ratings to A3/P-2, with a negative outlook, citing a second NOV
9 from the EPA regarding the 80,000 3.0 liter diesel vehicles equipped with defeat devices.

10 245. In response to the above events revealing Defendant's fraudulent scheme to the
11 public, the value of the Bonds declined over this time period through the close of trading on
12 September 22, 2015, dropping from between 0.38% to 7.82% of par value (prices are quoted as a
13 percentage of face value), with the longer-term bonds generally falling more than the shorter-
14 term bonds. For example, the 1.250% Bond issued on May 23, 2014 (CUSIP: 928668AA0)
15 purchased by Plaintiff PRGERS dropped 3.02% of par value. Over the same time period, the
16 price of Volkswagen's common stock and preferred stock similarly plummeted by over 33% and
17 36%, respectively.

18 246. The timing and magnitude of the declines in the prices of Volkswagen's Bonds
19 negates any inference that the losses suffered by Plaintiff and other Class members were caused
20 by changed market conditions, macroeconomic factors or Company-specific facts unrelated to
21 Defendants' fraudulent conduct.

22 **IX. POST CLASS PERIOD DEVELOPMENTS**

23 247. Following the September 18-22, 2015 disclosures, Volkswagen pledged to
24 prosecute those involved in the scheme to cheat emissions tests. Amidst Volkswagen's
25 escalating scandal, Defendant Winterkorn resigned from his position on September 23, 2015. In
26 a statement following his resignation, Winterkorn stated that he would "accept responsibility" for
27 the "irregularities that have been found in diesel engines."
28

1 248. One September 23, 2015, Klaus Breitenbach, an analyst at Baader Helvea Equity
2 research, issued a report stating, “[i]t is difficult to understand why Mr. Winterkorn, who is well
3 known for his attention to detail, had no knowledge of the irregularities which have been found
4 in diesel cars.” Thomas Donaldson, a professor of legal studies and business at the Wharton
5 School at the University of Pennsylvania, said of Winterkorn that “[f]rom a man renowned for
6 attention to detail, and a company itself known for highly centralized decision making, it’s hard
7 to think he didn’t know.” In a September 23, 2015 interview with *Berliner Morgenpost*,
8 Dudenhoeffer opined that Winterkorn was responsible for the scandal and it was simply not
9 conceivable that Winterkorn was not aware of the issues.

10 249. On September 24, 2015, Attorneys General from 27 U.S. states announced that
11 investigations into Volkswagen after the Company admitted that it rigged diesel emissions
12 technology to pass U.S. smog tests. Eventually, Attorneys General from each of the 50 states
13 and the District of Columbia joined the investigation.

14 250. On September 25, 2015, the acting Chairperson of the VWAG Supervisory Board,
15 Berthold Huber, announced that VWAG suspended a group of eight senior engineers pending
16 proof of their innocence. The executives include Audi development chief Hackenberg,
17 Volkswagen research and development head Neußer, and Porsche development leader Hatz.
18 Hackenberg resigned on December 3, 2015, and Hatz resigned on May 3, 2016.

19 251. Also on September 25, 2015, VWAG’s Supervisory Board named Matthias
20 Müller, the head of Volkswagen’s Porsche sports-car division, as CEO to replace Winterkorn.
21 The Company’s major shareholders also announced the most sweeping corporate restructuring
22 that Volkswagen has undertaken in decades. When accepting the CEO position, Müller
23 acknowledged Volkswagen’s failings and stated in a VWAG press release that his “most urgent
24 task is to win back trust for the Volkswagen group.” Müller also announced that the Company
25 hired renowned U.S. law firm Jones Day to conduct an investigation on behalf of the Company.

26 252. The German Minister of Transportation, Alexander Dobrindt, also disclosed on
27 September 25, 2015 that of the 11 million cars rigged with a defeat device, nearly 3 million of
28 them were sold in Germany. According to a September 25, 2015 *Wall Street Journal* report,

1 when making the announcement, Dobrindt stated that “[t]he manipulations are inadmissible and
2 illegal.”

3 253. Further, on September 25, 2015, the EPA initiated testing of all Volkswagen MY
4 2015 and 2016 light-duty diesel models available in the United States using updated testing
5 procedures specifically designed to detect potential defeat devices.

6 254. The fact that the Company’s senior management knew of the emissions scandal
7 long before it was disclosed to the public was further confirmed on September 26, 2015. On that
8 day, the German newspaper *Frankfurter Allgemeine Zeitung*, based on information it learned
9 stemming from VWAG’s internal investigation, reported that VWAG’s own technicians warned
10 the Company at least as early as 2011 about the Company’s illegal emissions practices.

11 255. Corroborating *Frankfurter Allgemeine Zeitung*’s report, on Sunday, September
12 27, 2015, *Bild* reported that Bosch warned Volkswagen’s “top circles” as early as 2007 not to use
13 the devices for illegal purposes. In particular, while Bosch provided EDC17 to VWAG, Bosch
14 was under the impression that EDC17 would be used only in internal vehicle testing. But
15 VWAG affirmatively modified the module to detect when a vehicle was undergoing laboratory
16 emissions testing and then shut down when the vehicle was on the road. *Bild* also reported that
17 Bosch told Volkswagen that the Company’s plans for the use of the software were, in fact,
18 “illegal.” Further, according to *Bild*, Volkswagen knew even before 2007 that its diesel engines
19 developed for the U.S. market would not meet emissions standards unless they used a different
20 engine technology.

21 256. On Monday, September 28, 2015, prosecutors in Germany announced a criminal
22 investigation into the conduct of Defendant Winterkorn and other unnamed Volkswagen
23 executives to determine whether they committed fraud through the sale of vehicles with
24 manipulated emissions data.

25 257. On September 29, 2015, Olaf Lies, a VWAG Board member and Economy
26 Minister of Lower Saxony admitted to the BBC that VWAG staff “acted criminally” based on
27 their role in cheating emissions tests, and that they “must take personal responsibility.” Also on
28 September 29, *Süddeutsche Zeitung* reported that a VWAG technician warned Neußer, the

1 former head of the VWAG engine development department, about the illegality of the emission
2 practices as early as 2011, but that these warnings were disregarded.

3 258. On October 2, 2015, VWAG's scandal widened as France and Italy launched
4 probes into the Company to investigate suspicions of "aggravated deception," among other
5 things. Further, the *New York Times* reported on October 2 that Attorneys General from at least
6 30 states and the District of Columbia were quickly progressing with their bipartisan
7 investigation into allegations of consumer fraud and violation of environmental regulations by
8 Defendants, and that they had served subpoenas on the Company and its divisions.

9 259. On October 8, 2015, Defendant Horn testified under oath before the House
10 Congressional Committee on Energy and Commerce Subcommittee on Oversight and
11 Investigations, during which he admitted that Volkswagen used "a software program that served
12 to defeat the regular emissions testing regime," and that Volkswagen takes "full responsibility
13 for our actions." According to Horn, the emissions cheating software was installed "for the
14 express purpose of beating tests" in light of tightened emissions standards.

15 260. On October 8, 2015, Defendant Horn admitted that he knew of the emissions non-
16 compliance "in the spring of 2014 when the West Virginia University [WVU] study was
17 published." The Volkswagen Group's actions, according to Horn, "are deeply troubling. . . . We
18 have broken the trust of our customers, dealerships, and employees, as well as the public and
19 regulators." Horn continued that "[w]e are determined to make things right. This includes
20 accepting the consequences for our acts, providing a remedy, and beginning to restore the trust of
21 our customers, our employees, the regulators, and the American public."

22 261. Also on October 8, 2015, prosecutors in Germany raided Volkswagen's
23 headquarters in Wolfsburg and offices elsewhere, seeking records regarding the emissions
24 scandal. According to the prosecutor's office in Braunschweig, Germany, which is overseeing
25 the probe, three state attorneys and 50 state police officers raided Volkswagen offices and private
26 homes in order to secure documents and data-storage devices that could provide information
27 about those responsible for the emissions scandal.
28

1 262. On October 14, 2015, Winfried Vahland suddenly resigned. Mr. Vahland spent
2 25 years at Volkswagen and lead Volkswagen's Škoda before being appointed to head
3 Volkswagen's North America division less than a month earlier on September 25, 2015.

4 263. On October 15, 2015, the Company suspended Falko Rudolph, the head of its
5 main transmissions plant in Kassel, Germany. Rudolph, who previously ran Volkswagen's main
6 engines plant in Salzgitter, oversaw the development of diesel engines at Volkswagen between
7 2006 and 2010.

8 264. Also on October 15, 2015, Germany's Ministry for Transport ordered
9 Volkswagen to conduct a mandatory recall of 2.4 million cars in Germany, and consequently, 8.5
10 million cars in Europe implanted with its emissions-cheating technology. Under EU rules, cars
11 that are cleared (or not cleared) to operate in one country are automatically approved (or not
12 approved) across the European Union, so the recall in Germany also affected the approval of
13 vehicles elsewhere in the Union.

14 265. On October 16, 2015, the U.S. Attorney's Office in Detroit and the DOJ's Fraud
15 Section joined the sweeping federal probes of VWAG over emissions-test cheating.

16 266. On October 20, 2015, VWAG suspended its Quality Control Chief Frank Tuch,
17 the fifth senior executive to be put on leave in connection with the emissions-cheating scandal.
18 Defendant Winterkorn hand-picked Tuch in 2010 to head the Company's quality-control
19 department. At the time of Tuch's appointment, Winterkorn said the quality-control expert "will
20 bring us forward in the U.S.A." Tuch and Winterkorn worked together closely, and met together
21 every Monday to discuss quality issues, often taking test drives in vehicles manufactured by the
22 Company.

23 267. On October 21, 2015, the *Financial Times* reported that VWAG suspended
24 Richard Dorenkamp, former head of technical development for low-emission engines, and that
25 Peter Doerfler, head of group auditing and Volkswagen's anti-corruption officer, was also being
26 replaced.

27 268. On October 22, 2015, *Bild* reported that top management at Volkswagen knew
28 about problems with emissions levels of diesel vehicles at least as early as the spring of 2014,

1 when the EPA sent a letter to Volkswagen questioning the discrepancies between Volkswagen's
2 purported emissions and the levels measured by ICCT and WVU. Winterkorn and other top
3 executives discussed the letter and possible responses. Further, according to *Bild*, Neußer also
4 received information from the United States in the spring of 2014 regarding possible violations
5 of U.S. emissions standards.

6 269. Further, on October 25, 2015, the Company suspended Hanno Jelden,
7 Volkswagen's Head of Powertrain Electronics, in connection with the emissions scandal.
8 Volkswagen also suspended numerous other unspecified employees, ranging from board-level
9 executives at Volkswagen divisions to technicians who may be implicated in the scandal, at the
10 recommendation of counsel at Jones Day.

11 270. On November 2, 2015, the EPA issued a second NOV of the Clean Air Act to
12 VWAG, Audi AG, VWGoA, Porsche AG, and Porsche Cars North America. This NOV stated
13 that Volkswagen developed and installed a defeat device in larger vehicles equipped with 3.0-
14 liter diesel engines for Model Year 2014 through 2016 that masked the fact that the cars emitted
15 NOx at up to nine times EPA's standard, in violation of U.S. Tier 2, Bin 5. The affected diesel
16 models include the (1) 2014 VW Touareg; (2) 2015 Porsche Cayenne; and (3) 2016 Audi A6
17 Quattro, A7 Quattro, A8, A8L and Q5. In total, the second NOV covers approximately 10,000
18 diesel passenger cars already sold in the United States. The EPA and CARB also began an
19 investigation into these violations.

20 271. Similar to the September 18, 2015 NOV, the November 2, 2015 NOV states that
21 Volkswagen manufactured and installed software in the electronic control module of these
22 vehicles that senses when the vehicle is being tested for compliance with EPA emissions
23 standards. When the vehicle senses that it is undergoing a federal emissions test, it operates in a
24 low NOx "temperature conditioning" mode. Under that mode, the vehicle meets emission
25 standards. In all other driving conditions, the cars operate in "normal mode" and emit NOx at up
26 to nine times the EPA standard. Given the effect this software had on the emissions for
27 Volkswagen's 3.0 liter diesel engines, the EPA determined that it was an unjustified and illegal
28 defeat device. According to Cynthia Giles, Assistant Administrator for the EPA's Office of

1 Enforcement and Compliance Assurance, “VW has once again failed its obligation to comply
2 with the law that protects clean air for all Americans.”

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

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

10 274. On November 19, 2015, Volkswagen officials informed the EPA that the illegal
11 defeat devices existed in all of the Company’s U.S. 3.0-liter diesel models since 2009. This
12 increased the number of 3.0-liter diesel engine cars implicated by the EPA’s second NOV issued
13 to Volkswagen on November 2 by approximately 850%, from 10,000 vehicles to 85,000
14 vehicles, going back in time further than previously alleged by the EPA. Violations include all
15 Volkswagen and Audi U.S. vehicles with 3.0-liter diesel engines from the 2009–2016 Model
16 Years.

17 275. On December 1, 2015, the *New York Times* reported that the German Federal
18 Motor Transport Authority, Kraftfahrt-Bundesamt (the “KBA”), determined that the software
19 that Volkswagen installed in its diesel cars in Europe constituted an illegal defeat device and,
20 consequently, violated Euro-5 rules.

21 276. On December 3, 2015, Hackenberg resigned as top manager of the Audi luxury-
22 car division.

23 277. On December 10, 2015, Pötsch, the Chairman of Volkswagen’s Supervisory
24 Board, provided an update with regard to the Company’s internal investigation. To that point, the
25 investigation confirmed that the Company’s decision to cheat emissions tests was made in 2005,
26 after Volkswagen realized that it would be unable “to meet by legal means the stricter nitrogen
27 oxide requirements in the United States within the required timeframe and budget.” Pötsch
28 stated that the cheating took place in a climate of lax ethical standards and that “[t]here was a

1 tolerance for breaking the rules.” “It proves not to have been a one-time error, but rather a chain
2 of errors that were allowed to happen.”

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

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

22 280. The DOJ’s suit seeks up to \$48 billion in damages and according to an analyst
23 report issued by Goldman Sachs, the suit “serves as a reminder/reality check of VW’s still
24 unresolved emissions issues.”

25 281. On January 12, 2016, CARB rejected Volkswagen’s proposal to recall and
26 remedy the Company’s diesel cars equipped with 2.0-liter engines, finding that the plans were
27 “incomplete, substantially deficient, and fall far short of meeting the legal requirements to return
28 these vehicles to the claimed certification configuration.” CARB also issued another NOV to

1 VWAG and VWGoA on January 12, explaining that the Company's 2.0-liter diesel vehicles
2 certified under LEV, LEV II, LEV III, ULEV, and ULEV II did not meet emissions standards.
3 Following the rejection, CARB Chair Mary D. Nichols stated that "Volkswagen made a decision
4 to cheat on emissions tests and then tried to cover it up. They continued and compounded the lie
5 and when they were caught they tried to deny it. The result is thousands of tons of nitrogen
6 oxide that have harmed the health of Californians. They need to make it right. Today's action is
7 a step in the direction of assuring that will happen."

8 282. On January 22, 2016, the German newspaper *Süddeutsche Zeitung* reported that
9 "almost all executives involved in the emissions problems in the engine development knew about
10 the manipulations or even were involved in it. In the relevant department, it had been no secret
11 that this was the only way Volkswagen could officially meet the emission limits for nitrogen
12 oxide in the emissions test of the authorities in the United States and Europe. Many employees
13 and managers in this division were privy to this." According to the report, one whistleblower
14 involved in the deception had alerted Neußer as early as 2011, but Neußer apparently did
15 nothing. *Süddeutsche Zeitung* based its report on information from Volkswagen's internal
16 investigation, which has not yet been made public.

17 283. On February 4, 2016, CARB told Volkswagen that the Company's 3.0 liter cars
18 produced excess emissions and were otherwise non-compliant under applicable California
19 standards. Also on February 4, 2016, Volkswagen announced that it replaced the head of
20 VWGoA's legal department, David Geanacopoulos, who was also the head of VWGoA's public
21 affairs department.

22 284. On February 8, 2016, VWAG's Head of Quality Assurance, Tuch—who was
23 appointed by Winterkorn in 2010—announced that he would leave the Company.

24 285. On March 2, 2016, VWAG issued a press release stating that it concealed its fraud
25 because it believed that fines in only a "two-digit or lower three-digit million amount would be
26 imposed" and that the issue "could be contained" by "technical solutions." VWAG also
27 confirmed that the diesel scandal began as early as 2005, when the Company decided to begin a
28 major push to increase market share in the United States through the use of purportedly "clean

1 diesel” technology. Because Volkswagen was unable to meet the United States’ strict emissions
2 standards, the Company decided to cheat and install defeat devices in its diesel cars.
3 Volkswagen also confirmed that Winterkorn received a memo on May 23, 2014 regarding the
4 defeat devices, as well as a second memo on November 14, 2014 that warned the then-CEO that
5 Volkswagen could face a fine of approximately €20 million arising out of the diesel scandal in
6 the United States. Then, according to Volkswagen, on July 27, 2015, Defendant Winterkorn and
7 Herbert Diess attended a meeting at which they specifically discussed the diesel issues. Still, no
8 disclosure was made to investors.

9 286. On March 7, 2016, prosecutors in France announced that they had opened a
10 serious fraud investigation into Volkswagen over the devices the automaker fitted into cars to
11 cheat on emissions tests. According to Serious Fraud Office Chief Nathalie Homobono,
12 investigators had already established that Volkswagen had cheated “with intent” and that the
13 Company’s actions were “intentional.”

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

22 288. Also on March 8, 2016, German prosecutors announced that they widened their
23 criminal investigation of VWAG’s diesel emissions-cheating scandal to cover 17 people, up
24 from 6.

25 289. On March 9, 2016, Defendant Horn resigned as President and CEO of VWGoA,
26 after 25 years at the Company.

27 290. Shortly after his resignation, on March 10, 2016, the *Financial Times* reported
28 that the May 15, 2014 email sent to Defendant Horn (summarized by *Bild* on February 14, 2016)

1 by then-Head of Volkswagen’s U.S. Regulatory Compliance Office Oliver Schmidt attached a
2 letter stating that 500,000–600,000 cars in the United States from Model Years 2009– 2014
3 could be affected by the diesel scandal. Significantly, the letter also enumerated the potential
4 fines of “EPA: \$37,500, and CARB: \$5,500” per violation and specifically warned Horn that
5 given the potential level of penalties, “[t]he contents of this [ICCT] study cannot be ignored!” In
6 fact, subsequent disclosures have confirmed the accuracy of that email as it has been revealed
7 that a total of 580,000 U.S. diesel cars were impacted.

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

22 292. On April 13, 2016, VWAG’s Management Board accepted bonus cuts of at least
23 30% in a tacit acknowledgement that they are responsible for the scandal.

24 293. On April 20, 2016, *Reuters* reported that VWAG and U.S. officials reached a deal
25 under which VWAG would offer to buy back almost 500,000 2.0-liter diesel cars that used the
26 emissions-cheating devices. This includes versions of the Jetta sedan, the Golf compact, and the
27 Audi A3 sold since 2009. According to *Reuters*, the buyback offer does not apply to the 80,000
28 larger, 3.0-liter diesel vehicles that also exceeded U.S. pollution limits, including Audi and

1 Porsche SUV models. In addition to buying back the cars, VWAG also agreed to establish a
2 compensation fund for owners. Volkswagen is also expected to offer to repair polluting diesel
3 vehicles if U.S. regulators approved a fix.

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

9 295. On April 21, 2016, Volkswagen formally announced before the Court that it
10 reached an agreement in principle with U.S. regulators to buy back 500,000 2.0 liter diesel
11 vehicles, along the lines of the deal announced by *Reuters* on April 20. The settlement was
12 approved by the Court on October 25, 2016 at \$14.7 billion dollars – with Volkswagen liable for
13 up to \$10.033 billion for buybacks and owner compensation, and \$4.7 billion to programs to
14 offset excess emissions and boost clean-vehicle projects, making it one of the largest corporate
15 settlements on record. In a June 28, 2016 article on CNN Money, titled “Volkswagen Agrees to
16 Record \$14.7 Billion Settlement Over Emissions Testing,” AutoTrader analyst Michelle Krebs
17 described the settlement as “unprecedented in its dollar amount, but the situation was
18 unprecedented, in that it was not a mistake but a deliberate deception.”

19 296. Volkswagen announced on April 21, 2016 that it reached an agreement in
20 principle on the basic features of a settlement with the civil class-action plaintiffs representing
21 purchasers, lessees, and dealers of Volkswagen cars.

22 297. On April 22, 2016, VWAG published its consolidated financial statements for
23 2015. Specifically, VWAG disclosed that it needed to set aside €16.2 billion (over \$18 billion)
24 in special items to fund the recall of millions of cars, legal claims, and related costs arising out of
25 the diesel scandal, resulting in an operating loss of approximately €4.1 billion and a net loss of
26 €5.5 billion for 2015.

27 298. Also on April 22, 2016, VWAG announced that the investigation by law firm
28 Jones Day would not conclude until the fourth quarter of 2016, and did not provide a timeline for

1 the release of any results of the report (if results are ever released at all). Even though VWAG
2 has in its possession interim results of the investigation (and had promised to release the results
3 by late April 2016), it claimed it was unable to release them because doing so “would present
4 unacceptable risks for Volkswagen and, therefore, cannot take place now.”

5 299. On April 30, 2016, *Bild* reported that the DOJ is investigating a senior lawyer in
6 Volkswagen’s legal department, given the pseudonym “Christoph R.”, who asked colleagues in
7 August 2015 to delete “incriminating material” regarding the emissions fraud. *Bild*’s report is
8 based on testimony given to Jones Day during the course of its investigation into the Company
9 following a meeting of Volkswagen’s Product Safety Committee on August 24, 2015.
10 According to *Bild*, several confidential documents can no longer be found on the Company’s
11 systems. Christoph R. also advised colleagues in the summer of 2015 to avoid the words “defeat
12 device” in any written statements. In fact, Volkswagen waited until September 1, 2015, a week
13 later, to issue a litigation hold. Significantly, Christoph R., the lawyer who told colleagues to
14 delete the “incriminating material” is the same lawyer who issued the litigation hold to
15 Volkswagen employees.

16 300. On May 7, 2016, *Bild* further reported that Volkswagen had for many years
17 misled authorities and misrepresented emissions data with the knowledge of former CEO
18 Winterkorn. Specifically, in November 2013, the Company’s Quality Assurance Department
19 warned Winterkorn of a “borderline consumption situation” with regard to carbon dioxide
20 (“CO2”) emissions of Volkswagen cars. According to Volkswagen’s analysis, many of its car
21 models met CO2 requirements only under the “best possible test conditions.” During a “real-life
22 test,” the CO2 emissions and fuel consumption rose by 10% to 18%, and did not meet CO2
23 requirements or the CO2 values set in Volkswagen’s catalogues. The “action recommendation”
24 that Volkswagen’s Quality Assurance Department gave to Winterkorn was to set “realistic CO2
25 catalogue values” in the future. Winterkorn, however, blatantly disregarded this
26 recommendation. Rather than correct the embellished consumption data, on July 17, 2014,
27 Winterkorn ordered subordinates to close the “target gap between labelling and measured
28 consumption” with unnamed and unknown technical innovations to be developed in the future.

1 This directive came in spite of the internal Volkswagen analysis conducted in July 2014 showed
2 that “since the market year 2012, the critical consumption concepts (CO₂) are rising
3 significantly.” In fact, Volkswagen engineers prepared a crisis report in November 2014
4 warning of a “disproportionate increase of the red concepts (CO₂ > 108%),” and that “All Polo
5 diesel concepts are red. Situation is no longer manageable. No reporting to KBA possible.
6 Possible withdrawal of affected type permits.”

7 301. The DOJ Office of Public Affairs website published an article on September 9,
8 2016 titled “Volkswagen Engineer Pleads Guilty for His Role in Conspiracy to Cheat U.S.
9 Emissions Tests,” where the details of former VWAG engineer James Robert Liang’s guilty plea
10 and indictment under seal were released. Mr. Liang pled guilty to one count of conspiracy to
11 defraud the United States, to commit wire fraud, and to violate the Clean Air Act.

12 302. According to Mr. Liang’s Plea Agreement, from 1983 until May 2008, Liang was
13 an employee of VWAG, working in its diesel development department in Wolfsburg, Germany.
14 Liang admitted that beginning in about 2006, he and his co-conspirators started to design a new
15 “EA 189” diesel engine for sale in the United States. According to Liang’s admissions, when he
16 and his co-conspirators realized that they could not design a diesel engine that would meet the
17 stricter U.S. emissions standards, they designed and implemented software to recognize whether
18 a vehicle was undergoing standard U.S. emissions testing on a dynamometer or being driven on
19 the road under normal driving conditions (the defeat device), in order to cheat the emissions
20 tests. Liang admitted that he used the defeat device while working on the EA 189 and assisted in
21 making the defeat device work. In May 2008, Liang, a citizen of Germany, moved to the United
22 States to assist in the launch of Volkswagen’s new “clean diesel” vehicles in the U.S. market,
23 according to the plea agreement. While working at Volkswagen’s testing facility in Oxnard,
24 California, he has held the title of Leader of Diesel Competence.

25 303. According to the plea agreement, employees of VWAG and its U.S. subsidiaries
26 met with the EPA and the California Air Resources Board (CARB) to seek the certifications
27 required to sell each model year of its vehicles to U.S. customers. Liang admitted that during
28 some of these meetings, which he personally attended, his co-conspirators misrepresented that

1 Volkswagen diesel vehicles complied with U.S. emissions standards and hid the existence of the
2 defeat device from U.S. regulators.

3 304. As part of the certification process for each new Model Year, including Model
4 Years 2009 through 2016, the co-conspirators continued to falsely and fraudulently certify to
5 EPA and CARB that Volkswagen diesel vehicles met U.S. emissions standards and complied
6 with the Clean Air Act, according to the plea agreement. Liang admitted that during this time, he
7 and his co-conspirators knew that Volkswagen marketed its diesel vehicles to the U.S. public as
8 “clean diesel” and environmentally-friendly, and promoted the increased fuel economy. Liang
9 and his co-conspirators knew that these representations were false and that Volkswagen’s diesel
10 vehicles were not “clean,” he admitted.

11 305. In connection with pleading guilty, Liang admitted that he helped his co-
12 conspirators continue to lie to the EPA, CARB and Volkswagen customers even after the
13 regulatory agencies started raising questions about the vehicles’ on-road performance following
14 an independent study commissioned by the International Council on Clean Transportation, which
15 showed that the diesel vehicles’ emissions on the road were up to 40 times higher than shown on
16 the dynamometer.

17 306. Volkswagen still faces possible criminal charges, as well as civil penalties for
18 Clean Air Act violations. The DOJ is investigating possible criminal charges against both the
19 company and individuals, said Deputy Attorney General Sally Yates. Volkswagen’s wrongdoing
20 constituted “the most flagrant violations of our consumer and environmental laws in our
21 country's history,” said Yates. “We cannot undo the damage that's been done to our air quality,
22 but we can offset that damage,” said Yates.

23 **X. ADDITIONAL ALLEGATIONS SUPPORTIVE OF FALSITY AND SCIENTER**

24 307. As alleged in this Complaint, Defendants engaged in a decade-long scheme to
25 defraud investors through numerous materially false and misleading representations and
26 omissions, as well as to violate governing emissions standards and defraud consumers.
27 Defendants, when they committed that misconduct, acted with scienter in that they knew, or
28 recklessly disregarded, that the public documents and statements issued or disseminated in the

1 name of VWAG, VWGoA, VWoA and AoA detailed above were materially false or misleading,
2 and knowingly and substantially participated or acquiesced in the issuance or dissemination of
3 those statements or documents as primary violators of the federal securities laws.

4 308. At all relevant times, Defendants were aware or, alternatively, recklessly
5 disregarded that (i) approximately 11 million of Volkswagen's diesel vehicles worldwide
6 contained illegal defeat-device software that had no proper or lawful purpose, but enabled the
7 vehicles to pass emissions tests while far exceeding emissions limits under real-world, on-road
8 driving conditions; (ii) Volkswagen pursued and met its aggressive U.S. growth goals through a
9 concerted effort to market and sell approximately 580,000 purportedly "clean diesel" cars that
10 failed to comply with governing federal and state emissions standards; and (iii) Volkswagen
11 significantly overstated its profits by failing to properly record provisions for the Company's
12 inevitable massive liability arising out of its fraudulent misconduct.

13 309. VWAG has admitted that it defrauded consumers and misled regulators. Among
14 other things, Defendants have stated that "these vehicles were designed and manufactured with a
15 defeat device to bypass, defeat, or render inoperative elements of the vehicles' emissions control
16 system" and "[w]e have admitted it to the regulator. It is true." Defendant Winterkorn
17 apologized that VWAG had "broken the trust of our consumers and the public." And Defendant
18 Horn admitted that "our company was dishonest. With EPA, and [CARB], with all of you... [w]e
19 have totally screwed up."

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

27 311. According to sources within the company that spoke to *Handelsblatt Global*, "top
28 management at VW knew about the existence of a U.S. probe for more than year before it went

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

13 312. Moreover, as detailed above, Winterkorn’s hand-picked officers at VWAG, Hatz
14 and Hackenberg, were instrumental in the development and introduction of the defeat devices at
15 the center of this case. Given Winterkorn’s detail-oriented nature, his knowledge of everything
16 his two closet lieutenants were doing reasonably implies knowledge from the outset of the Class
17 Period.

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

26 314. Even as Volkswagen’s cheating was discovered through the ICCT and WVU
27 study published in May 2014, and notice from regulators including the EPA and CARB that they
28 had discovered abnormalities in Volkswagen’s emissions-testing results, Defendants continued

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

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

14 316. New reports indicate that even once the fact of Volkswagen’s use of illegal defeat
15 devices emerged, top executives directed Volkswagen’s employees to destroy evidence in order
16 to hide and minimize Volkswagen’s culpability and exposure. A high-level official in
17 Volkswagen’s legal department, “Christoph R.,” is reported to have directed colleagues in
18 August 2015 to delete “incriminating material” concerning the diesel scandal, days before
19 sending employees a “litigation hold” to preserve relevant documents. In other words, the
20 Volkswagen executive responsible for ensuring the preservation of evidence was, at the same
21 time, personally directing the destruction of that evidence. Destruction of evidence from high-
22 level officials as early as August further supports that the widespread use of defeat devices was
23 not something limited to a small group of rogue engineers

24 317. Further indications that there was intentional spoliation of evidence relating to the
25 emissions scandals are supported by allegations in other actions.

26 318. In March 2016, a wrongful termination lawsuit was filed where former employee
27 Daniel Donovan states he called Volkswagen’s Chief Information Officer for the Americas,
28 Abdallah Shanti, on September 18, 2015 to tell him to “stop deleting data effective immediately”

1 in compliance with instructions from the Department of Justice, though the Company did not
2 cease deletions until 3 days later. Mr. Donovan was subsequently fired.

3 319. The U.S.-based Volkswagen entities—VWGoA, VWoA, and AoA, as well as
4 VWGoA and VWoA executive Horn —acted with scienter because they were centrally involved
5 in the process for acquiring all necessary approvals and certifications so that their vehicles could
6 legally be sold and driven in the United States. As part of the regulatory process, those entities
7 regularly and frequently interacted with regulators, and were responsible for understanding and
8 complying with emissions limits and regulations. The entities were responsible for submitting
9 numerous applications and made detailed representations to regulators and the public confirming
10 the vehicles’ compliance with governing regulations, evidencing a high degree of knowledge of
11 the vehicles’ emissions and compliance. The Liang Plea Agreement corroborates that these false
12 and fraudulent representations were made by Volkswagen representatives who knew such
13 representations and omissions were false or misleading. VWGoA, VWoA, AoA, and Horn
14 either knew or were reckless in not knowing that the purportedly “clean diesel” vehicles that
15 were subject to these regulatory processes were equipped with defeat devices and in reality
16 emitted NOx emissions far in excess of allowable limits.

17 320. Volkswagen’s culture, including Defendant Winterkorn’s hands-on
18 micromanagement, supports a strong inference that Winterkorn and other top executives were
19 aware that Volkswagen implemented a sophisticated emissions-cheating scheme for over a
20 decade, as the Company has admitted that the current diesel scandal has its roots in the
21 Company’s “strategic decision to launch a large-scale promotion of diesel vehicles in the United
22 States in 2005.” In the ensuing years, it was widely known at Volkswagen that engineers were
23 unable to successfully design a high-performance and low-emissions “clean diesel” engine.

24 321. Among other things, when Winterkorn took over as VWAG’s CEO, he personally
25 appointed Hatz and Hackenberg to positions overseeing diesel and the emissions scheme.
26 Beginning in late 2006, the Company committed to aggressively expand its diesel sales in the
27 United States but also abandoned Volkswagen’s use of the effective SCR system in favor of
28 cheaper, less effective NOx traps. Winterkorn, Hatz, and Hackenberg, all demanding, detail-

1 oriented engineers, were hostile to environmental regulations and had long opposed any
2 measures that reduced emissions but had any negative impact on driving performance. By all
3 accounts, Winterkorn was imperious and focused on engineering details, going so far as to attend
4 auto shows with a tape measure and a magnet to precisely examine vehicles.

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

18 323. Reports indicate that the idea for the defeat devices was originally developed
19 under Winterkorn’s leadership at Audi in 1999 and that, by the time years later when
20 Volkswagen implemented the defeat devices, Hackenberg himself was one of the executives
21 known to order the emissions cheating. And Hatz stressed how important it was for Volkswagen
22 to “keep the pleasure” so that its cars were “fun to drive,” while also admitting that it was
23 “nearly impossible” for Volkswagen’s diesel engines to meet CARB’s emissions standards. As
24 *Bild* has reported, when Volkswagen first installed defeat-device software in 2008, “there was no
25 way . . . to reconcile meeting emission standards within the targeted cost of the engine. . . .
26 Otherwise, the company would have to abandon the introduction of the engine, development of
27 which was begun in 2005.”
28

1 324. Further, a top Volkswagen technician gave a PowerPoint presentation in 2006
2 laying out, in detail, ways that Volkswagen could cheat on U.S. emissions testing. The
3 PowerPoint made clear that Volkswagen insiders knew that its diesel engines exceeded
4 emissions standards, but executives repeatedly rejected proposals to lower emissions levels, and
5 the entire Volkswagen Management Board—led by Defendant Winterkorn—repeatedly refused
6 technical proposals to upgrade emissions controls.

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

14 326. The delay in rolling out the purportedly “clean diesel” Jetta in the United States in
15 2008 evidences Defendants’ scienter. After announcing a spring-2008 rollout of the Jetta TDI,
16 Volkswagen was forced to push back the rollout until summer 2008 due to the Company’s
17 inability to develop a high-performance diesel engine that met emissions standards. That
18 decision garnered significant industry scrutiny, and was a significant blow to Volkswagen’s
19 acknowledged aspirations to use “clean diesel” vehicles as the primary driver of U.S. market
20 growth.

21 327. There is a compelling inference of scienter because growth through “clean diesel”
22 sales was a central focus for Volkswagen throughout the Class Period. As discussed above,
23 VWAG saw expanding diesel sales—particularly in the United States—as a critical driver of
24 market and earnings growth that would enable Volkswagen to become the world’s largest
25 automaker. In turn, the U.S.-based entities—VWGoA, VWoA, and AoA—were pushed to
26 expand diesel sales and implemented aggressive, large-scale campaigns to sell purportedly
27 “clean diesel” vehicles and take over an increasing portion of the U.S. environmentally friendly
28

1 car market. That focus manifested itself in television and print advertising, as well as in
2 numerous statements to investors throughout the Class Period.

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

10 329. The numerous investigations and legal actions concerning Volkswagen's diesel
11 cheating scandal evidence scienter. The Company's internal investigation is ongoing, as are
12 investigations and prosecutions by the EPA and CARB, as well as the DOJ, the Federal Trade
13 Commission, the U.S. House Energy Committee, the Attorneys General of all 50 states and the
14 District of Columbia, the British Parliament, and the German, French, and Italian governments—
15 along with Volkswagen consumers and dealers. Volkswagen is attempting to finalize the details
16 of the resolution of certain claims of the U.S. government and consumers, including committing
17 billions of dollars to buy back affected vehicles, repair vehicles if possible, and pay into funds
18 for environmental remediation.

19 330. VWAG, VWGoA, and VWGoAF each acted with scienter because the scienter of
20 top executives Winterkorn and Horn is imputed to the companies that those individuals spoke on
21 behalf of and controlled. Winterkorn was VWAG's CEO during the Class Period and Chairman
22 of the VWAG Management Board. Horn was the President and CEO of VWGoA, as well as
23 president for the VWoA brand. Winterkorn spoke on behalf of VWAG and controlled VWGoA
24 and VWGoAF, and Horn spoke on behalf of and controlled VWGoA, and controlled VWGoAF,.
25 Each of Winterkorn and Horn made, caused to be made, or certified materially false statements
26 and omissions that misled investors with regard to the companies' financial results, compliance
27 with governing emissions standards, and use of illegal defeat devices, as detailed in this
28 Complaint.

1 **XI. PRESUMPTION OF RELIANCE**

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

6 332. Plaintiff and the Class are also entitled to a presumption of reliance on
7 Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market
8 doctrine because, at all relevant times, the market for the Volkswagen Bonds was efficient for
9 the following reasons, among others:

10 (a) Volkswagen communicated with eligible Bond purchasers via offering
11 memoranda bearing the same or substantially similar information;

12 (b) Volkswagen filed periodic public reports readily available to all actual
13 Bondholders and potential bondholders;

14 (c) Volkswagen regularly communicated with the public via established
15 market communication mechanisms, including through regular disseminations of press
16 releases on the national circuits of major newswire services and through other wide-
17 ranging public disclosures, such as communications with the financial press, securities
18 analysts, and other similar reporting services;

19 (d) Volkswagen was followed extensively by the media and by numerous
20 securities analysts employed by major brokerage firms who wrote over 495 analyst
21 reports about Volkswagen during the Class Period, which were public available and
22 entered the public market place;

23 (e) Analysts for major credit rating agencies provided ratings on the Bonds in
24 their initial offering and throughout the Class Period; and

25 (f) the market value of the Bonds was sizeable during the Class Period and
26 prices reacted promptly to the dissemination of new public information regarding
27 Volkswagen.
28

333. Accordingly, Plaintiff and other members of the Class did rely and are entitled to have relied upon the integrity of the market price for the Bonds and to a presumption of reliance on Defendants' materially false and misleading statements and omissions during the Class Period.

XII. INAPPLICABILITY OF STATUTORY SAFE HARBOR

334. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false or misleading statements pleaded in this Complaint. The statements alleged to be false or misleading herein all relate to facts and conditions existing at the time the statements were made. No statutory safe harbor applies to any of Defendants' materially false or misleading statements.

335. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. Additionally, to the extent applicable, Volkswagen's verbal "safe harbor" warnings accompanying its oral forward-looking statements issued during the Class Period were ineffective to shield those statements from liability. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false and/or the forward-looking statement was authorized and/or approved by an executive officer of Volkswagen who knew that those statements were false when made.

XIII. CLASS ACTION ALLEGATIONS

336. Plaintiff brings this action on its own behalf and as a class action pursuant to Rules 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities who purchased or otherwise acquired Volkswagen Bonds exempt from registration with the SEC under Rule 144A between May 23, 2014 and September 22, 2015, inclusive, and who were damaged thereby. Specifically, VWGoAF issued \$3.5 billion in bonds on May 23, 2014,

\$2 billion in bonds on November 20, 2014, and \$2.8 billion in bonds on May 22, 2015, all guaranteed by VWAG, as follows:

- VW 1.250% Guaranteed Notes due 5/23/17, CUSIP: 928668AA0 (Issue Date: 5/23/14)
- VW 2.125% Guaranteed Notes due 5/23/19, CUSIP: 928668AB8 (Issue Date: 5/23/14)
- VW Floating Rate Guaranteed Notes due 11/23/15, CUSIP: 928668AE2 (Issue Date: 5/23/14)
- VW Floating Rate Guaranteed Notes due 5/23/16, CUSIP: 928668AD4 (Issue Date: 5/23/14)
- VW Floating Rate Guaranteed Notes due 5/23/17, CUSIP: 928668AC6 (Issue Date: 5/23/14)
- VW Floating Rate Guaranteed Notes due 11/20/17, CUSIP: 928668AG7 (Issue Date: 11/20/14)
- VW 1.6% Guaranteed Notes due 11/20/17, CUSIP: 928668AF9 (Issue Date: 11/20/14)
- VW 2.45% Guaranteed Notes due 11/20/19, CUSIP: 928668AH5 (Issue Date: 11/20/14)
- VW 2.4% Guaranteed Notes due 5/22/20, CUSIP: 928668AM4 (Issue Date: 5/22/15)
- VW 1.65% Guaranteed Notes due 5/22/18, CUSIP: 928668AK8 (Issue Date: 5/22/15)
- VW Floating Rate Guaranteed Notes due 05/22/18, CUSIP: 928668AL6 (Issue Date: 5/22/15)
- VW Floating Rate Guaranteed Notes due 11/22/16, CUSIP: 928668AJ1 (Issue Date: 5/22/15)

337. Excluded from the Class are Defendants, the officers and directors of the Company and its wholly-owned subsidiaries at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which Defendants have or had a controlling interest. For the avoidance of doubt, “affiliates” are persons or entities that directly, or indirectly through one or more intermediaries, control, are controlled by, or are under common control with one of the Defendants, and include any employee benefit plan organized for the benefit of Volkswagen’s employees.

338. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiff believes that the proposed Class numbers at least in the hundreds and that they are geographically dispersed. Class members who purchased Volkswagen Bonds may be identified from records maintained by Volkswagen, its transfer agent(s), or the sponsor(s) of the bond program, and may be notified of this class action using a form of notice similar to that customarily used in securities class actions.

339. Plaintiff’s claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

1 340. Plaintiff will fairly and adequately protect the interests of the members of the
2 Class and has retained counsel competent and experienced in class and securities litigation.
3 Plaintiff has no interests that are contrary to or in conflict with those of the Class members that
4 Plaintiff seeks to represent.

5 341. Common questions of law and fact exist as to all members of the Class and
6 predominate over any questions solely affecting individual members of the Class. Among
7 questions of law and fact common to the Class are:

8 (a) whether the federal securities laws were violated by Defendants' acts as
9 alleged herein;

10 (b) whether Defendants' regulatory filings, press releases, reports, offering
11 memoranda and public statements made by Defendants during the Class Period contained
12 misstatements of material fact or omitted to state material facts necessary in order to
13 make the statements made, in light of the circumstances under which they were made, not
14 misleading;

15 (c) whether Defendants acted with scienter;

16 (d) whether the price of the Bonds during the Class Period was artificially
17 inflated due to the non-disclosures and misrepresentations complained of in this
18 Complaint; and

19 (e) the extent of damages sustained by Class members and the appropriate
20 measure of damages.

21 342. A class action is superior to all other available methods of fair and efficient
22 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
23 damages suffered by individual Class members may be relatively small, the expense and burden
24 of individual litigation makes it impracticable for members of the Class to individually redress
25 the wrongs done to them. Plaintiff knows of no difficulty that will be encountered in the
26 management of this litigation that would preclude its maintenance as a class action.
27
28

XIV. CLAIMS FOR RELIEF

COUNT I

**For Violations Of Section 10(b) Of The Exchange Act And
Rule 10b-5 Promulgated Thereunder Against Defendants VWAG, VWGoA, VWGoAF,
Winterkorn, and Horn**

343. Plaintiff repeats and realleges each of the allegations contained above as if fully set forth herein.

344. This claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against Defendants VWAG, VWGoA, VWGoAF, Winterkorn, and Horn.

345. As alleged in this Complaint, throughout the Class Period, VWAG, VWGoA, VWGoAF, Winterkorn, and Horn, individually and in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, including without limitation the U.S. mails and interstate telephone communications, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Defendants carried out a plan, scheme, and course of conduct, in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Defendants VWAG, VWGoA, VWGoAF, Winterkorn, and Horn intended to and did, as alleged in this Complaint, (1) deceive the investing public, including Plaintiff and the other members of the Class; and (2) cause Plaintiff and the other members of the Class to purchase or acquire Volkswagen Bonds at artificially inflated prices. Defendants

346. Defendants VWAG, VWGoA, VWGoAF, Winterkorn, and Horn were individually and collectively responsible for making the material misstatements and omissions alleged in this Complaint and for engaging in a plan, scheme, and course of conduct designed to deceive Plaintiff and the other members of the Class, by virtue of having spoken, written, prepared, approved, signed, and disseminated documents that contained untrue statements of material fact and omitted facts necessary to make the statements in the documents not misleading. Defendants each had a duty to promptly disseminate accurate and truthful information regarding the Company's financial condition, performance, growth, operations,

1 financial statements, business, markets, management, earnings and present and future business
2 prospects and to correct any previously issued statements that had become materially misleading
3 or untrue so that the price of the Bonds would be based upon truthful and accurate information.
4 Defendants' material misrepresentations and omissions and participation in a scheme to defraud
5 during the class period violated these specific requirements and obligations.

6 347. Defendants VWAG, VWGoA, VWGoAF, Winterkorn, and Horn had actual
7 knowledge of the misrepresentations and omissions of material facts set forth herein, or acted
8 with reckless disregard for the truth in that they failed to ascertain and to disclose such facts,
9 even though they had access to such facts and such facts were available to them. Defendants'
10 material misrepresentations and/or omissions were done knowingly or recklessly and for the
11 purpose and effect of concealing Volkswagen's financial condition from the investing public and
12 supporting the artificially inflated price of its Bonds. As demonstrated by Defendants' false and
13 misleading statements during the Class Period, Defendants, if they did not have actual
14 knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain
15 such knowledge by failing to take steps necessary to discover whether those statements were
16 false or misleading.

17 348. At the time of said misrepresentations and omissions, Plaintiff and other members
18 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the
19 other members of the Class and the marketplace known the truth obscured by Volkswagen's
20 material misstatements and omissions, Plaintiff and other members of the Class would not have
21 purchased or otherwise acquired Volkswagen Bonds, or, if they had acquired such Bonds during
22 the Class Period, they would not have done so at the artificially inflated or distorted prices at
23 which they paid. As alleged in this Complaint, when the true facts were subsequently disclosed,
24 the prices of Volkswagen Bonds declined precipitously. Plaintiff and other members of the
25 Class were harmed and damaged as a direct and proximate result of their purchases of
26 Volkswagen Bonds at artificially inflated prices and the subsequent declines in the prices of
27 Volkswagen Bonds when the truth was disclosed.
28

1 misstatements and omissions in connection with the purchase and sale of securities and by
2 participating in a scheme and course of business or conduct throughout the Class Period. This
3 conduct was undertaken with the scienter of Defendants Winterkorn and Horn, who knew of or
4 recklessly disregarded the falsity of VWAG's, VWGoA's, and VWGoAF's statements or their
5 omissions of material fact and the nature of their scheme during the Class Period.

6 356. Winterkorn was a controlling person of VWAG, VWGoA, and VWGoAF during
7 the Class Period, due to (a) Winterkorn's senior executive position at VWAG; (b) Winterkorn's
8 direct involvement in VWAG's day-to-day operations, financial reporting, and accounting and
9 Winterkorn's signatures on and participation in the preparation and dissemination of VWAG's
10 public statements and regulatory actions; (c) VWAG's ownership of 100% of VWGoA's and
11 VWoA's America's stock; (d) VWAG's possession and exercise of the authority to appoint all of
12 VWGoA's, VWoA's, and AoA's directors and executive officers; (e) Winterkorn's signatures on
13 at least three certifications in the 2015 and 2015 Bond Offering Memoranda attesting to the truth
14 and accuracy of the Company's financial position, the development and performance of its
15 business, and descriptions of the material opportunities and risks associated with the Company's
16 expected development; and (f) VWAG's direct involvement in VWGoA's, VWoA's and AoA's
17 day-to-day operations, and financial reporting,

18 357. Horn was a controlling person of VWGoA and VWGoAF during the Class
19 Period, due to (a) Horn's senior executive position at VWGoA; (b) Horn's direct involvement in
20 VWGoA's day-to-day operations, financial reporting, and accounting and Horn's signatures on
21 and participation in the preparation and dissemination of VWGoA's public statements and
22 regulatory actions; (c) VWGoA's 100% ownership of VWGoAF; and (d) VWGoA's direct
23 involvement in VWGoAF's day-to-day operations and financial reporting.

24 358. By reason of the foregoing, Defendants VWAG, VWGoA, Winterkorn and Horn
25 are liable to Plaintiff and other members of the Class for violations of Section 20(a) of the
26 Exchange Act.
27
28

1 **XV. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the relief and judgment individually, and on behalf of
3 the Class, as follows:

4 A. Declaring this action to be a proper class action pursuant to Rule 23 of the Federal
5 Rules of Civil Procedure and certifying Plaintiff as Class Representative and Lead Counsel as
6 Class Counsel;

7 B. Awarding compensatory damages in favor of Plaintiff and against all Defendants,
8 jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an
9 amount to be proven at trial, including interest on that amount;

10 C. Awarding Plaintiff and members of the Class their reasonable costs and expenses
11 incurred in this action, including attorneys' and experts' fees and expenses; and

12 D. Awarding such other and further relief as the Court may deem just and proper.

13 **XVI. JURY DEMAND**

14 Plaintiff demands a trial by jury for all issues so triable.

15 Dated: December 16, 2016

Respectfully submitted,

16 ABRAHAM, FRUCHTER &
17 TWERSKY, LLP

18 /s/ Ian D. Berg

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