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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF SANTA BARBARA**

PETER PARK;  
KELLY PARK;  
KRISTEN SALONTAY;  
JONATHAN SALONTAY;  
JOHANNA SALONTAY; and  
JAMES VENTURINO, individually and on  
behalf of others similarly situated,  
  
Plaintiff,  
  
vs.  
  
VOLKSWAGEN GROUP OF AMERICA, INC.,  
a New Jersey corporation;  
SB-VAL, a California corporation;  
SOLAZYME, INC., a Delaware corporation;  
AMYRIS, INC., a Delaware corporation; and  
DOES 1-100,  
  
Defendants.

Case No.:  
  
**CLASS ACTION**  
  
**COMPLAINT – CLASS ACTION**  
  
**DEMAND FOR JURY TRIAL**

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**I. INTRODUCTION**

Plaintiffs Peter Park, Kelly Park, Kristen Salontay, Jonathan Salontay, Johanna Salontay, and James Venturino (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against the Volkswagen Group of America, Inc. (“Volkswagen”), SB-VAL (which owns Santa Barbara Volkswagen and is referred to herein as “SBVW”), Solazyme, Inc. (“Solazyme”), Amyris, Inc. (“Amyris”), and Doe Defendants 1–100 (“Doe Defendants,” and collectively, “Defendants”), based, where applicable, on personal knowledge, information and belief, and the investigation and research of counsel. Any allegations of this Complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

**II. NATURE OF THE ACTION**

1. Driven in large part by a pollution crisis—and more recently by concerns over draught, wildfires, and climate change in general—California has long been a national leader in adopting stringent standards to protect its air quality, environment, and natural resources. California was the first state to regulate vehicle emissions in 1965 and since then has continued to adopt air pollution standards that exceed those set by the federal government on the national level. While a handful of other states have joined California in voluntarily adopting strict emissions standards, California continues to set the standard nationwide for emissions. In order to protect public health and the environment from harmful pollutants, the California Air Resources Board (“CARB”) rigorously enforces California vehicle regulations through certification, compliance, and enforcement programs. In addition to the new vehicle certification process, CARB regularly tests automobiles to ensure their emissions performance is as expected throughout their life.

2. In 1970, Congress established the Clean Air Act (“CAA”), a comprehensive statutory scheme regulating air emissions from—among other sources—automobiles. Visible pollution in many American cities spurred passage of the CAA, which requires the Environmental Protection Agency (“EPA”) to establish national air quality standards for certain well-known pollutants, including nitrogen dioxide. These standards are intended to protect public health and welfare and to restrict pollution. The CAA requires vehicle manufacturers to certify to the EPA that their products

1 will meet applicable federal emission standards. Every vehicle sold in the U.S. must be covered by  
2 an EPA-issued certificate of conformity. The EPA also monitors vehicle fuel efficiency and makes  
3 certain resources—like fueleconomy.gov—available to the public so that consumers can assess and  
4 compare fuel efficiency across the industry.

5         3. Volkswagen, along with its German parents and affiliates, is the world’s largest  
6 automaker and the industry leader in diesel car sales in the United States. Volkswagen and Audi  
7 brand small diesel vehicles have long been touted as “clean diesels,” and pitched to consumers as  
8 providing a true efficiency competitor and “fun alternative” to hybrid vehicles like the Toyota Prius  
9 and Honda Insight. In addition to the reduced environmental impact, Volkswagen also marketed its  
10 diesel vehicles as fuel-efficient vehicles that would save consumers money on gasoline in the long-  
11 term. Volkswagen partnered with other automakers to create the website clearlybetterdiesel.org,  
12 which praises diesel vehicles for their low emissions and fuel efficiency. Volkswagen received  
13 awards and recognition for its diesel vehicles, including being named the “Green Car of the Year” in  
14 2009. From this marketing and publicity, Volkswagen has cultivated a substantial market of  
15 California’s eco-conscious consumers; Californians account for roughly 10% of the market for  
16 Volkswagen’s diesel vehicles. Additionally, Volkswagen charged a premium for these diesel  
17 vehicles that ranged from \$1,000 to over \$6,000.

18         4. In a press release dated June 2015, Volkswagen’s Belmont facility announced the  
19 successful completion of its Renewable Diesel Evaluation Program in collaboration with Solazyme,  
20 Inc. (“Solazyme”) and Amyris, Inc. (“Amyris”). Volkswagen reported that, beginning in 2012, it  
21 had “measured the environmental impacts for the use of precommercial renewable diesel formulas  
22 with TDI® Clean Diesel technology found in the 2012 Passat TDI . . . and 2012 Jetta TDI . . . .  
23 Initial analysis found that advanced renewable fuels in the test offered comparable performance to  
24 standard crude-based diesel fuel blends while producing less CO2 emissions on average.”  
25 According to a 2012 article in BioMass Magazine, Volkswagen provided the two 2012 models to  
26 both Solazyme and Amyris for those companies “to closely examine the effects that the fuels  
27 produced by Amyris and Solazyme will have on Volkswagen clean diesel technology and the  
28 environment.”

1           5.       Unknown to the consumers, since 2009, Defendants included software in Volkswagen  
2 and Audi branded diesel vehicles that circumvented EPA emissions standards for certain air  
3 pollutants. This software, referred to by regulators as a “defeat device” under the CAA, involved a  
4 sophisticated algorithm that detected when the car was undergoing official emissions testing. The  
5 device turned on the full emissions controls only during emissions testing; when the car was driven  
6 normally, the effectiveness of the emissions pollution control devices was greatly reduced. As a  
7 result, consumers were unaware that their vehicles, contrary to what they had been promised, were  
8 emitting nitrogen oxides (NOx) at up to 40 times the standard. Defeat devices are illegal under the  
9 CAA.

10           6.       NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine  
11 particulate matter. Exposure to these pollutants has been linked with a range of serious health  
12 effects, including increased asthma attacks and other respiratory illnesses that can be serious enough  
13 to send people to the hospital. Exposure to ozone and particulate matter has also been associated  
14 with premature death due to respiratory-related or cardiovascular-related effects. Children, the  
15 elderly, and people with pre-existing respiratory disease are particularly at risk for health effects of  
16 these pollutants. NOx also contributes to atmospheric pollution, or “smog,” when, according to  
17 CARB Executive Officer Richard Corey, it “cooks and creates ozone and fine particles.”  
18 Defendants’ use of their defeat device was both illegal and a threat to public health, specifically  
19 designed to circumvent the federal and state emission standards, and to mislead consumers and the  
20 government.

21           7.       CARB began to suspect an emissions problem in diesel vehicles after conferring with  
22 European regulators. In 2014, the International Council for Clean Transportation and researchers at  
23 West Virginia University notified CARB and the EPA of a concern over elevated NOx emissions,  
24 prompting CARB and the EPA to commence an investigation of Volkswagen, its German parent  
25 corporations, Audi AG and Volkswagen AG, and possible other affiliates (collectively, the  
26 “Volkswagen entities”). Discussions between regulators and the Volkswagen entities lasted several  
27 months. In December 2014, the Volkswagen entities obtained approval from CARB and the EPA to  
28 conduct a software recall of approximately 500,000 vehicles nationwide, including approximately

1 50,000 in California. The Volkswagen entities claimed this recall would resolve the discrepancy in  
2 NOx emissions between test and real-world circumstances. Confirmatory testing conducted by  
3 CARB in May 2015, however, indicated that NOx emissions continued to exceed expectations to a  
4 significant degree. CARB investigators then developed a “dynamometer”—described as a treadmill-  
5 like device used in vehicle testing—to conduct further testing in addition on the road using portable  
6 equipment. In June 2015, after the investigation had revealed continued discrepancies in emissions  
7 behavior between testing and non-testing conditions, CARB shared its findings with the EPA and the  
8 Volkswagen entities. Early in September 2015, the Volkswagen entities admitted to having used a  
9 defeat device since model year 2009 to circumvent CARB and EPA emission test procedures.

10 8. On September 18, 2015, the EPA issued a notice of violation of the Federal Clean Air  
11 Act (42 U.S.C. § 7401 *et seq.*) to all three of the Volkswagen entities. On September 18, 2015,  
12 CARB also issued an In-Use Compliance letter to the three Volkswagen entities. That notice stated  
13 in part that, “the EPA has determined that VW manufactured and installed defeat devices in certain  
14 model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These  
15 defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control  
16 system that exist to comply with CAA emissions standards. . . . Additionally, the EPA has  
17 determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not  
18 conform in all material respects to the vehicle specifications described in the applications for the  
19 certificates of conformity that purportedly cover them.”

20 9. On September 20, 2015, Volkswagen AG’s CEO publicly stated that he was “deeply  
21 sorry that we have broken the trust of our customers and the public.” Also on September 20, 2015, a  
22 spokesperson for the Volkswagen entities said “[w]e have admitted it to the regulator. It is true.”

23 10. The EPA has identified the following model year and diesel vehicle makes as  
24 containing defeat software: VW Jetta (model years 2009-2015), VW Jetta Sportwagen (model years  
25 2009-2014), VW Beetle (model years 2013-2015), VW Beetle Convertible (model years 2013-  
26 2015), Audi A3 (model years 2010-2015), VW Golf (model years 2010-2015), VW Golf  
27 Sportwagon (model year 2015) and VW Passat (model years 2012-2015). The investigations are  
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1 ongoing and may result in inclusion of additional Volkswagen or Audi vehicles in the group of  
2 affected vehicles.

### 3 **III. PARTIES**

4 11. Plaintiff Peter Park is a resident of Santa Barbara County, California, a citizen of  
5 California, and an owner of a 2014 Jetta Wagon TDI.

6 12. Plaintiff Kelly Park is a resident of Santa Barbara County, California, a citizen of  
7 California, and an owner of a 2011 Jetta Wagon TDI.

8 13. Plaintiff Kristen Salontay is a resident of Santa Barbara County, California, a citizen  
9 of California, and an owner of a 2012 Jetta Wagon TDI.

10 14. Plaintiff Jonathan Salontay is a resident of Santa Barbara County, California, a citizen  
11 of California, and an owner of a 2012 Golf Hatchback TDI.

12 15. Plaintiff Johanna Salontay is a resident of Santa Barbara County, California, a citizen  
13 of California, and an owner of a 2009 Jetta TDI Wagon.

14 16. Plaintiff James Venturino is a resident of Santa Barbara County, California, a citizen  
15 of California, and an owner of a 2013 Passat TDI Sedan.

16 17. Defendant Volkswagen Group of America, Inc. (“Volkswagen”) is, on information  
17 and belief, a New Jersey corporation with headquarters in Herndon, Virginia, that manufactures and  
18 sells Audi and Volkswagen branded vehicles in the United States and in California and that is a  
19 subsidiary of Volkswagen AG, a German Corporation. Volkswagen is registered with the California  
20 Secretary of State and has considerable contacts in California. The Volkswagen Group of America’s  
21 Emission Compliance Lab & Test Center—the largest technical center of its kind for the  
22 Volkswagen Group outside of Germany and the group’s only North America emissions test  
23 laboratory—is located in Oxnard California and employs over 50 engineers. That facility—which at  
24 the time of its 2012 opening incorporated a preexisting test center then-located in West Lake Village,  
25 California—is designed as a 64,000 square foot emissions compliance laboratory and vehicle test  
26 center and plays a pivotal role in the product development food chain, acting as the final stop for  
27 many products before they are approved for production. Work at the testing facility is focused on  
28 power train product development, governmental compliance, and field quality testing. The

1 Volkswagen Group’s Electronics Research Laboratory (ERL)—employing about 80 software,  
2 electrical, and mechanical engineers that form part of Volkswagen’s global research and  
3 development network—is located in Belmont, California. In addition, Volkswagen and Audi  
4 branded vehicles are marketed extensively throughout California and sold at dozens of dealerships.

5 18. Defendant SB-VAL (“SBVW”) is, on information and belief, a California  
6 Corporation located in and with headquarters in Santa Barbara County and that owns the Santa  
7 Barbara Volkswagen dealership located at 630 Chapala Street in Santa Barbara. SBVW sold or  
8 leased many of Plaintiffs’ vehicles in addition to marketing and promoting the sale or lease of  
9 Volkswagen and Audi branded diesel vehicles.

10 19. Defendant Solazyme, Inc. is, on information and belief, a Delaware Corporation with  
11 headquarters in South San Francisco, CA. Solazyme develops sustainable, high-performance energy  
12 products “includ[ing] renewable oils and powerhouse ingredients that serve as the foundation for  
13 healthier foods; better home, personal care and industrial products; and more sustainable fuels.” In  
14 addition to being headquartered in California, Solazyme performed its analysis on the 2012 Passat  
15 TDI and Jetta TDI in California. Solazyme analyzed Volkswagen diesel vehicles that—based on  
16 their make and year—had defeat software installed and yet, the same month that Volkswagen  
17 admitted to regulators that it had tampered with its emissions testing, the results of those tests were  
18 favorable. Having conducted years of analysis on affected vehicles, Solazyme knew or should have  
19 known of the discrepancies between stated and actual emissions behaviors.

20 20. Defendant Amyris, Inc. (“Amyris”) is, on information and belief, a Delaware  
21 Corporation with headquarters in Emeryville, CA. Amarys describes itself as “deliver[ing] high-  
22 performance renewable products across a wide range of consumer and industry segments. [Its]  
23 products offer customers a way to reduce environmental impact with No Compromise® in  
24 performance or availability.” In addition to being headquartered in California, Amyris performed its  
25 analysis on the 2012 Passat TDI and Jetta TDI in California. Amyris analyzed Volkswagen diesel  
26 vehicles that—based on their make and year—had defeat software installed and yet, the same month  
27 that Volkswagen admitted to regulators that it had tampered with its emissions testing, the results of  
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1 those tests were favorable. Having conducted years of analysis on affected vehicles, Amyris knew  
2 or should have known of the discrepancies between stated and actual emissions behaviors.

3 21. Defendants Does 1–100, inclusive, are sued herein under fictitious names. Their true  
4 names and capacities are unknown to Plaintiffs. When said true names and capacities are  
5 ascertained, Plaintiffs will amend this Complaint by inserting their true names and capacities herein.  
6 On information and belief, the Doe Defendants reside and/or committed the alleged misconduct in  
7 California and contributed to Plaintiffs’ harm by, *inter alia*, participating in the false and misleading  
8 advertising and/or sale or lease of Volkswagen diesel vehicles, developing and/or installing defeat  
9 software on such vehicles, and knowingly concealing the presence of such defeat software and/or the  
10 true emissions nature of Volkswagen diesel vehicles.

#### 11 IV. JURISDICTION AND VENUE

12 22. This Court has personal jurisdiction over Volkswagen because, by marketing selling  
13 their cars in California and locating significant portions of their research development and testing  
14 operations here—including an emissions compliance laboratory—Volkswagen purposely availed  
15 itself of the state. The controversy is both related to and arising out of Volkswagen’s California-  
16 related economic activity, as Volkswagen targeted California’s eco-friendly consumers and tailored  
17 their deceitful conduct to meet California’s heightened emissions standards and to deceive California  
18 regulators and inspectors. California exercising jurisdiction in this case would comport with notions  
19 of fair play and substantial justice. Indeed, it is especially appropriate for Volkswagen to be held  
20 accountable for their conduct in California, whose regulators and laws Volkswagen took special  
21 efforts to obstruct, and to which Volkswagen’s conduct is especially injurious and abhorrent since  
22 those California regulations were adopted to combat California’s critical pollution problem.

23 23. This Court has personal jurisdiction over SBVW because it is a resident of California  
24 headquartered in Santa Barbara County and participating in the sale, lease, marketing, advertising,  
25 and promoting of Volkswagen and Audi branded diesel vehicles.

26 24. This Court has personal jurisdiction over the Doe Defendants because they reside  
27 and/or took the actions relevant to this Complaint—including participating in the sale or lease of  
28 Volkswagen and Audi branded diesel vehicles to Californians; targeting Californians with



1 knowingly false advertising and representations about these vehicles; developing, installing, using or  
2 concealing the use of defeat software on vehicles sold or leased to California residents; acting to  
3 circumvent California regulators; and otherwise concealing the true nature of the Volkswagen and  
4 Audi branded vehicles—in California.

5         25. Venue is proper in Santa Barbara County because a substantial part of the events or  
6 omissions giving rise to Plaintiffs' claims occurred in this county, and because Plaintiffs signed the  
7 contracts to buy or lease their vehicles in Santa Barbara County and/or resided in Santa Barbara  
8 County at the time of entering into the relevant contracts, and all Plaintiffs currently reside in Santa  
9 Barbara County.

#### 10 11                                   **V. PLAINTIFFS' FACTS**

12         26. Plaintiff Peter Park is a nationally recognized personal trainer with clients in Los  
13 Angeles and Santa Barbara. He travels three times per week to Los Angeles, and has done so for the  
14 last seven years. He drives over 50,000 miles per year. Peter Park purchased a 2010 Jetta Wagon  
15 TDI new in 2010 which he traded in for a 2014 Jetta Wagon TDI in November 2013 at SBVW.

16         27. Plaintiff Kelly Park is a registered nurse, commuting regularly to her job at Cottage  
17 Hospital in Santa Barbara. Kelly Park purchased a 2011 Jetta Wagon TDI in November 2010 at  
18 SBVW.

19         28. Peter and Kelly Park, who are husband and wife, use their Volkswagen vehicles for  
20 all modes of transport, including driving their children to and from school, social activities, and  
21 athletic events. They have serviced their cars at SBVW. Despite considering other, less-expensive  
22 cars, the Parks purchased their Jetta Wagon TDI vehicles for their excellent gas mileage, and in  
23 reliance on the representation that the vehicles met all relevant state and federal emissions standards.  
24 They would not have purchased these vehicles if they had known that the cars would subject their  
25 children, the public, and themselves to illegal levels of NO<sub>x</sub>, or that the vehicles' efficiency would  
26 have been drastically reduced if the emissions standards had been complied with.

27         29. Plaintiff Kristen Salontay is retired from her career as a teacher in the Santa Barbara  
28 Unified School District. Her driving habits consist mostly of in-town errands and personal outings,

1 along with the occasional in-state road trip. She drives approximately 4,800 miles per year. She  
2 purchased her 2012 Jetta Wagon TDI in March 2015 from a private party in Santa Barbara, CA.  
3 Having owned this model before, she wanted to continue driving what she believed to be a reliable,  
4 clean, and economic vehicle, and she only wanted a Volkswagen vehicle because of the brand's  
5 strong reputation and great gas mileage.

6 30. Plaintiff Jonathan Salontay is a 26-year old working professional and entrepreneur  
7 with a B.A. in Environmental Sciences from the University of California Santa Barbara. He  
8 purchased his 2012 Golf TDI Hatchback in January 2015 from a private party in San Juan  
9 Capistrano, CA. He drives his vehicle primarily within the City of Santa Barbara and drives an  
10 estimated 7,800 miles per year. He purchased the car because he has always wanted the Volkswagen  
11 TDI for its claimed gas mileage, economy, reliability, and power, and because of Volkswagen's  
12 strong reputation. He admired Volkswagen's engineering in meeting clean air requirements as  
13 outlined by federal and state regulations. In fact, he only purchased his vehicle after doing  
14 substantial research and comparison over the course of years with other options including the Honda  
15 Fit and Chevrolet Volt. He also encouraged his other family members to purchase their vehicles.

16 31. Plaintiff Johanna Salontay is a 25-year old student working towards her bachelor's  
17 degree in addition to holding a part-time job. She purchased her vehicle because it advertised  
18 excellent mileage and diesel fuel, reliability, and a good resale value, and because of Volkswagen's  
19 strong. She drives her vehicle around Santa Barbara and commutes to work. She drives an  
20 estimated 8,400 miles per year.

21 32. Plaintiff James Venturino leased his vehicle new from SBVW via a fleet-lease  
22 program through his employer in October 2012. He purchased the car in February 2013 when he left  
23 his prior employer. His work as a pharmaceutical sales representative requires extensive driving.  
24 He drives approximately 30,000 miles per year. When considering this vehicle, he considered less  
25 expensive cars, including Fords, but chose the Passat because of its mileage and because it met clean  
26 diesel regulations without sacrificing performance, acceleration, and other positive attributes. He  
27 has serviced his vehicle at SBSW.  
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1           38.     The class members are ascertainable and have a well-defined community of interest  
2 among their members in the questions of law and fact involved. These questions of law and fact  
3 predominate over questions that affect only individual class members and include:

4                   a) Whether Defendants acted negligently, intentionally, fraudulently and/or illegally  
5 in implanting the defeat devices into their diesel passenger cars;

6                   b) Whether Defendants' advertising was false and misleading with respect to  
7 compliance with EPA emission standards:

8                   c) Whether Defendants engaged in unconscionable, deceptive, and/or unreasonable  
9 business practices and conduct;

10                  d) Whether Defendants knowingly, intentionally, or negligently concealed,  
11 suppressed, or omitted material facts concerning the safety of their vehicles' NOx emissions  
12 from the public and/or regulatory agencies;

13                  e) Whether Defendants knowingly, intentionally, or negligently concealed,  
14 suppressed, omitted, or delayed relaying material facts regarding their vehicles' emissions  
15 during prior recalls which should have "cured" the inconsistent emissions control issues; and

16                  f) Whether the Class suffered injury by virtue of Defendants' negligence,  
17 recklessness, carelessness, and/or unconscionable and/or deceptive business practices.

18           39.     The claims of the Plaintiffs are typical of those of the Class and Plaintiffs will fairly  
19 and adequately represent the interests of the Class in that the representative Plaintiffs, like all Class  
20 members, have suffered adverse effects proximately caused by Defendants' malfeasance.

21           40.     Plaintiffs will fairly and adequately represent and protect the interests of the Class.  
22 The proposed counsel for the Class are A. Barry Cappello, Leila J. Noel and Lawrence J. Conlan of  
23 Cappello & Noel LLP. Plaintiffs' proposed counsel have substantial experience in prosecuting  
24 environmental, mass tort, and complex class actions. The undersigned counsel for Plaintiffs have  
25 experience in complex class action litigation and trials, including environmental contamination, race  
26 discrimination under California's Unruh Act, the Santa Barbara oil spill of 1969, and expertise on  
27 punitive damages issues. Plaintiffs and their counsel are committed to prosecuting this action  
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1 vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor  
2 their counsel have interests adverse to those of the Class.

3 41. A class action is superior to all other available methods for the fair and efficient  
4 adjudication of this controversy. Without a class action, individual Class members would face  
5 burdensome litigation expenses, deterring them from bringing suit or adequately protecting their  
6 rights. Because of the ratio of the economic value of the individual Class members' claims in  
7 comparison to the high litigation costs in complex cases such as this, few could likely seek their  
8 rightful legal recourse. Absent a class action, Class members would continue to incur harm without  
9 remedy.

10 42. The consideration of common questions of fact and law will conserve judicial  
11 resources and promote a fair and consistent resolution of these claims. The prosecution of individual  
12 remedies by members of the Class would tend to establish inconsistent standards of conduct for the  
13 Defendants and to result in the impairment of Class members' rights and the disposition of their  
14 interests through actions to which they were not parties.

## 15 16 **VII. CAUSES OF ACTION**

### 17 **First Claim for Relief**

#### 18 **Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 19 17200, *et seq.***

#### 20 **(All Plaintiffs Against All Defendants)**

21 43. Plaintiffs incorporate by reference each and every prior and subsequent allegation of  
22 this Complaint as if fully restated here.

23 44. Defendants have engaged and continue to engage in unfair competition in violation of  
24 California's Unfair Competition Law ("UCL").

25 45. Defendants' conduct constitutes "unfair" and "deceptive" business practices within  
26 the meaning of the UCL in that members of the public have been harmed as a result of their reliance  
27 on Defendants' untrue certifications and advertisements that their vehicles met state and federal  
28 emissions standards, and the fact that their vehicles have emitted excessive NOx into the air.

1           46. Defendants’ conduct amounts to “unfair” business practices as the UCL forbids all  
2 wrongful business activities in any context in which they appear. Moreover, as described above,  
3 Defendants’ practices offend established public policies, are immoral, unethical, oppressive, and  
4 unscrupulous. The impact of Defendants’ practices is in no way mitigated by any justifications,  
5 reason, or motives. Defendants’ conduct has no utility when compared to the harm done to Plaintiffs  
6 and members of the Class.

7           47. Defendants’ conduct was “unlawful” because it violated laws including but not  
8 limited to the CAA, EPA and CARB compliance requirements, and the prohibition against false  
9 advertising, California Business and Professions Code § 17500 *et seq.*

10           48. Plaintiffs did not learn—nor did they have any way of learning through reasonable  
11 diligence—about Defendants’ misconduct until September 18, 2015, when California and federal  
12 government agencies issued public notices of violation. Plaintiffs’ delayed discovery of Defendants’  
13 conduct was due to Defendants’ own fraudulent actions in concealing the true nature of their diesel  
14 cars. Because any delay in the discovery of any accrued cause of action was due to Defendants’ own  
15 conduct, they are moreover estopped from asserting the statute of limitations as a defense. The  
16 statute of limitations under the UCL, if applicable, is therefore satisfied.

17           49. As a direct and proximate result of Defendants’ unfair and unlawful methods of  
18 competition and unfair and deceptive acts or practices, Plaintiffs and the Class have sustained harm  
19 and are entitled to restitution.

20           50. As a proximate result of Defendants’ unfair methods of competition and unfair and  
21 deceptive acts or practices, Defendants have been unjustly enriched and should be required to  
22 disgorge unfair profits, make restitution payments to Plaintiffs and the Class pursuant to Bus. &  
23 Prof. Code § 17203 and should be permanently enjoined from placing into the market any vehicles  
24 which include defeat devices to circumvent legal emissions standards. The acts and omissions of  
25 Defendants were done with malice, fraud, and/or oppression as described in this Complaint.

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**Second Claim for Relief**  
**Violations of California's False Advertising Act, Cal. Bus. & Prof. Code §§**  
**17500, *et seq.***

**(All Plaintiffs Against Volkswagen, SBVW, and the Doe Defendants)**

51. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

52. California prohibits any person, firm, or corporation “to make or disseminate or cause to be made or disseminated before the public in this state, . . . in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement, concerning such . . . personal property . . . or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminated or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, . . . so advertised at the price stated therein, or as so advertised.” Cal. Bus. & Prof. Code § 17500.

53. Volkswagen advertising was false and misleading in that, among other things, they knew or should have known that the mileage efficiency touted was false: it was achieved only through the inclusion of concealed defeat devices which illegally circumvented state and federal emissions standards under normal driving use of the vehicles.

54. Volkswagen, SBVW, and the Doe Defendants employed their false advertising, and promoted public reliance on their claims of EPA-compliant emissions standards, with the intent not to sell their diesel vehicles as so advertised. Plaintiffs relied on Defendants’ false statements in purchasing their diesel vehicles.

55. Plaintiffs did not learn—nor did they have any way of learning through reasonable diligence—about Defendants’ misconduct until September 18, 2015, when California and federal government agencies issued public notices of violation. Plaintiffs’ delayed discovery of Defendants’ conduct was due to Defendants’ own fraudulent actions in concealing the true nature of their diesel

1 cars. Because any delay in the discovery of any accrued cause of action was due to Defendants' own  
2 conduct, they are moreover estopped from asserting the statute of limitations as a defense. The  
3 statute of limitations under the False Advertising Act, if applicable, is therefore satisfied.

4 56. As a result of Defendants' false advertising, Defendants have been unjustly enriched,  
5 and Plaintiffs and the Class have been harmed, and are entitled, under California Business and  
6 Professions Code § 17535, to disgorgement of profits, restitution and for preliminary and permanent  
7 injunction to prohibit the continued use of the Defendants' false advertising.

### 8 9 **Third Claim for Relief**

#### 10 **Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.***

#### 11 **(All Plaintiffs Against Volkswagen, SBVW, and the Doe Defendants)**

12 57. Plaintiffs incorporate by reference each and every prior and subsequent allegation of  
13 this Complaint as if fully restated here.

14 58. The Consumer Legal Remedies Act ("CLRA") "protect[s] consumers against unfair  
15 and deceptive business practices and . . . provide[s] efficient and economical procedures to secure  
16 such protection." Cal. Civ. Code §1760.

17 59. The vehicles sold by Defendants are "goods" under the CLRA. Cal. Civ. Code §  
18 1761(a).

19 60. Defendants are "persons" under the CLRA. Cal. Civ. Code § 1761(c).

20 61. Plaintiffs and Class members are "consumers" under the CLRA. Cal. Civ. Code §  
21 1761(d).

22 62. The purchase and/or lease of Volkswagen vehicles are "transaction[s]" under the  
23 CLRA. Cal. Civ. Code § 1761(e).

24 63. The CLRA expressly prohibits: (a) "[r]epresenting that goods . . . have sponsorship,  
25 approval, characteristics, ingredients, uses, benefits, or quantities which they do not have"; (b)  
26 "[r]epresenting that goods . . . are of a particular standard, quality, or grade, or that goods are of a  
27 particular style or model, if they are of another"; (c) "[r]epresenting that the subject of the  
28 transaction has been supplied in accordance with a previous representation when it has not"; and (d)



1 “representing that the consumer will receive a[n] . . . economic benefit, if the earning of the benefit  
2 is contingent on an event to occur subsequent to the consummation of the transaction.” Cal. Civ.  
3 Code § 1770(a)(5), (7), (16–17).

4 64. As alleged herein, Defendants willfully employed an advertising campaign, including  
5 via hard copy newsprint and marketing pamphlets, and via the Internet, which touted their diesel  
6 passenger cars’ compliance with emissions standards, certification of emissions requirements, and  
7 mileage and efficiency when Defendants were aware that this was a false description of these  
8 vehicle’s attributes. Plaintiffs relied on these statements in deciding to purchase their vehicles. Had  
9 they known the truth, Plaintiffs either would not have paid as high of a price as they did for their  
10 vehicles or would not have purchased their vehicles at all.

11 65. Plaintiffs did not learn—nor did they have any way of learning through reasonable  
12 diligence—about Defendants’ misconduct until September 18, 2015, when California and federal  
13 government agencies issued public notices of violation. Plaintiffs’ delayed discovery of Defendants’  
14 conduct was due to Defendants’ own fraudulent actions in concealing the true nature of their diesel  
15 cars. Because any delay in the discovery of any accrued cause of action was due to Defendants’ own  
16 conduct, they are moreover estopped from asserting the statute of limitations as a defense. The  
17 statute of limitations under the CLRA, if applicable, is therefore satisfied.

18 66. Affidavits required by Cal. Civ. Code 1780(d) are being filed concurrently with this  
19 Complaint.

20 67. Defendants should be permanently enjoined from advertising diesel vehicles as  
21 compliant with state and federal emissions standards when those vehicles include defeat devices  
22 designed to circumvent those emissions standards, and from selling any vehicle which includes a  
23 defeat device or otherwise fails to comport with the stated specifications for that vehicle and all  
24 applicable emissions requirements.

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**Fourth Claim for Relief**

**Fraudulent Concealment**

**(All Plaintiffs Against All Defendants)**

68. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated herein.

69. Defendants intentionally, with the intent to defraud, and in reckless disregard of Plaintiffs' rights, concealed the truth about their diesel vehicles' emissions by installing software designed to fool emissions tests.

70. Defendants had a duty to disclose the true emissions information as well as the presence of "defeat software" in its vehicles because: (a) Defendants' representations about its diesel vehicles' emissions were likely to mislead given the nondisclosure of their true nature and the presence of "defeat software"; (b) Defendants actively and maliciously concealed the true nature of their diesel vehicles through the use of "defeat software," the very nature of which was to thwart efforts by consumers and regulators to ascertain accurate emissions levels; (c) and Defendant had sole knowledge of and access to the material facts and, indeed, took measures to ensure no one could discover the truth.

71. Defendants evidenced an intention to defraud Plaintiffs by marketing its vehicles as "clean diesel" and an alternative to hybrid cars.

72. Plaintiffs believed Defendants' representation about the "clean" nature of Defendants' diesel vehicles and chose to drive Defendants' diesel vehicles because of these representations; had Plaintiffs been aware that Defendants' diesel vehicles were emitting NOx at up to 40 times the legal amount, they would not have paid the price that they did for those vehicles or would not have purchased them at all.

73. Plaintiffs did not learn—nor did they have any way of learning through reasonable diligence—about Defendants' misconduct until September 18, 2015, when California and federal government agencies issued public notices of violation. Plaintiffs' delayed discovery of Defendants' conduct was due to Defendants' own fraudulent actions in concealing the true nature of their diesel cars. Because any delay in the discovery of any accrued cause of action was due to Defendants' own

1 conduct, they are moreover estopped from asserting the statute of limitations as a defense. The  
2 statute of limitations, if any is applicable, is therefore satisfied. Cal. Civ. Code § 338(d).

3 74. As a proximate result of the Defendants’ intentional concealment, Plaintiffs have  
4 been damaged in an amount to be proven at trial, but which exceeds this Court’s jurisdictional  
5 amount, are entitled to all remedies available at law and equity, including punitive damages.

6 **Fifth Claim for Relief**

7 **Violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.***

8 **(All Plaintiffs Against Volkswagen)**

9 75. Under the Song-Beverly Consumer Warranty Act (“SBCWA”), consumer goods sold  
10 in California are accompanied by the manufacturer’s and the retail seller’s implied warranty that the  
11 goods are merchantable. Cal. Civ. Code § 1792.

12 76. The implied warranty of merchantability means, in relevant part, that the consumer  
13 goods (a) “[p]ass without objection in the trade under the contract description” and (b) “[c]onform to  
14 the promises or affirmations of fact made on the container or label.” Cal. Civ. Code § 1791.1(a)(1),  
15 (4).

16 77. Under the SBCWA, consumer goods sold in California are accompanied by the  
17 manufacturer’s implied warranty of fitness when the manufacturer knew or had reason to know at  
18 the time of the sale that the goods are required for a particular purpose and that the buyer is relying  
19 on the manufacturer’s skill or judgment to select or furnish suitable goods. Cal. Civ. Code § 1792.1.

20 78. Plaintiffs are “buyers” under the SBCWA. Cal. Civ. Code § 1791(b).

21 79. The diesel vehicles are a “consumer good” under the SBCWA. Cal. Civ. Code §  
22 1791(a).

23 80. Volkswagen is a “manufacturer” under the SBCWA. Cal. Civ. Code § 1791(j).

24 81. Volkswagen’s conduct breached both the implied warranty of merchantability and the  
25 implied warranty of fitness. Volkswagen knew or had reason to know that Plaintiffs were  
26 purchasing the diesel vehicles for their low emissions—Volkswagen marketed the vehicles  
27 accordingly. Moreover, the diesel vehicles did not pass without objection in the trade under the  
28 contract description; not only were emissions not low, they required the use of illegal software to

1 pass necessary inspections evidencing that Volkswagen willfully sought to sell and lease vehicles to  
2 consumers when those vehicles did not comport with the parameters advertised. Furthermore, it is  
3 clear that the diesel vehicles did not comport with the low emissions advertised on their labels.

4 82. Plaintiffs did not learn—nor did they have any way of learning through reasonable  
5 diligence—about Defendants’ misconduct until September 18, 2015, when California and federal  
6 government agencies issued public notices of violation. Plaintiffs’ delayed discovery of Defendants’  
7 conduct was due to Defendants’ own fraudulent actions in concealing the true nature of their diesel  
8 cars. Because any delay in the discovery of any accrued cause of action was due to Defendants’ own  
9 conduct, they are moreover estopped from asserting the statute of limitations as a defense. The  
10 statute of limitations, if any is applicable, is therefore satisfied.

11 83. As a result of Volkswagen’s breaches, Plaintiffs are entitled to actual and statutory  
12 damages, including the right of replacement, actual damages in an amount to be proven at trial but  
13 which are anticipated to exceed this Court’s jurisdictional amount, double damages for willful  
14 conduct, and attorney fees and costs. Cal. Civ. Code § 1794(b)(1), (c), (d).

#### 15 Prayer

16 Plaintiffs, individually and on behalf of all others similarly situated, request judgment against  
17 Defendants as follows:

18 A. For an order certifying the Class and appointing Plaintiffs as representatives of the  
19 Class and appointing the lawyers and law firm representing Plaintiffs as counsel for the Class;

20 B. Permanently enjoining Defendants from: (a) advertising diesel vehicles as compliant  
21 with state and federal emissions standards which include defeat devices circumventing emissions  
22 standards; and (b) selling or leasing vehicles that are not in compliance with these standards, and (c)  
23 utilizing defeat software in Volkswagen and Audi branded vehicles to circumvent these standards;

24 C. For all recoverable compensatory, statutory, and other damages sustained by  
25 Plaintiffs and the Class;

26 D. For all equitable relief including disgorgement, unjust enrichment, and all other relief  
27 allowed under applicable law;

28

1 E. Granting Plaintiffs and the Class awards of restitution and/or disgorgement of  
2 Defendants' profits from its unfair and unlawful practices described above;

3 F. For costs;

4 G. For both pre-judgment and post-judgment interest on any amounts awarded;

5 H. For appropriate injunctive relief, including but not limited to an order preliminarily  
6 and permanently prohibiting Defendants from selling or advertising affected diesel vehicles until full  
7 public disclosure of the defeat devices has been made, as well as individual disclosure to all pending  
8 but not-yet closed sales of such vehicles;

9 I. For double damages insofar as they are allowed by applicable laws;

10 J. For treble damages insofar as they are allowed by applicable laws;

11 K. For appropriate individual relief as request above;

12 L. For payment of attorneys' fees and expert fees as maybe allowable under applicable  
13 law, including but not limited to the Private Attorneys General Act ("PAGA"), Cal. Code. Civ. P.,  
14 §1021.5; the Consumer Legal Remedies Act, Civil Code § 1780(e); and the Song-Beverly Consumer  
15 Warranty Act Cal. Civil Code § 1794(d);

16 M. For exemplary or punitive damages under Cal. Civ. Code section 3294 and all other  
17 relevant statutes for the oppression, fraud, and malice alleged above; and

18 N. For such other and further relief, including declaratory relief, as the Court may deem  
19 proper.

20 DATED: September 21, 2015

CAPPELLO & NOËL LLP

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22  
23 By: 

A. Barry Cappello  
Leila J. Noël  
Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: September 21, 2015

CAPPELLO & NOËL LLP

By:   
A. Barry Cappello  
Leila J. Noël  
Attorneys for Plaintiff