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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, *EX REL.* MARK R. HERRING, ATTORNEY GENERAL,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.** CL17-110-1
VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC. (D/B/A VOLKSWAGEN OF AMERICA, INC. OR AUDI OF AMERICA, INC.), AUDI OF AMERICA, LLC, VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS LLC, DR. ING. H.C. F. PORSCHE AG, AND PORSCHE CARS NORTH AMERICA, INC.,	)	
Defendants.	)	

COMPLAINT

I. INTRODUCTION

1. The Commonwealth of Virginia (the "Commonwealth"), by and through its Attorney General, Mark R. Herring, brings this action against defendants Volkswagen AG, Audi AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.), Audi of America, LLC, and Volkswagen Group of America Chattanooga Operations LLC (collectively, "Volkswagen"), and Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (together, "Porsche," and Porsche and Volkswagen collectively, "Defendants") pursuant to the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, to obtain consumer restitution, civil penalties, and appropriate

injunctive and equitable relief for Defendants' marketing, advertising, distribution, sale and lease of certain 2.0- and 3.0-liter diesel passenger vehicles ("the Subject Vehicles")[1] containing undisclosed software allegedly intended to circumvent federal and state emissions standards. During the 2009-2016 model years, Defendants introduced more than 573,000 of the Subject Vehicles into commerce nationwide, including more than 20,000 in Virginia.

2. In particular, the Defendants represented the Subject Vehicles as "Clean Diesel," and further claimed they had low emissions and complied with state and federal emissions standards, including for emissions of nitrogen oxides ("NOx"), were environmentally friendly, and retained a high resale value.

3. In fact, these representations were false and misleading in light of the Defendants' installation in the Subject Vehicles of undisclosed, illegal software ("Defeat Devices") in the Subject Vehicles' electronic control modules designed to defeat or cheat the emissions testing regime. These Defeat Devices increase emissions controls during legally required emissions tests in order to bring NOx emissions within legal limits and decrease emissions controls during regular driving, in order to conceal defects in the emissions systems' design and manufacture and reduce wear on various engine components that would otherwise fail prematurely. As a result of the Defeat Devices, the Subject Vehicles spew NOx emissions of up to 40 times the legal limits in real world driving.

II. JURISDICTION

4. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants and authority to grant the relief requested pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

5. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c)

[1] The Subject Vehicles are identified in the chart at pages 5-6, *infra*.

because some or all of the acts to be enjoined are, or were, being done in the City of Richmond. Venue is permissible in this Court pursuant to Virginia Code §§ 8.01-262 (2), (3), and (4) because Defendant Volkswagen Group of America, Inc.'s registered office is in the City of Richmond and has appointed an agent to receive process in the City of Richmond, all the Defendants regularly conduct substantial business activity in the City of Richmond, and portions of the cause of action arose in the City of Richmond.

6. The Defendants transacted business in Virginia through at least 31 car dealerships. In addition, Defendants marketed and advertised the Subject Vehicles through print and electronic media disseminated throughout Virginia.

7. At all relevant times, the Defendants have purposefully availed themselves of this forum.

8. Prior to the commencement of this action, the Plaintiff gave the Defendants (a) written notice, through communications by a multi-state group of attorneys general, that these proceedings were contemplated, and (b) a reasonable opportunity to demonstrate that no violations of the VCPA had occurred, or, in the alternative, the opportunity to execute an appropriate Assurance of Voluntary Compliance, pursuant to § 59.1-203(B). The Defendants thereafter failed to establish that no violations of the VCPA had occurred, but agreed to execute an acceptable Final Judgment by Consent in lieu of an Assurance of Voluntary Compliance.

III. PARTIES

9. The Plaintiff is the Commonwealth of Virginia appearing by and through its Attorney General, Mark R. Herring.

10. The Attorney General is the chief law officer of the Commonwealth of Virginia and is authorized to bring this action pursuant to Virginia Code §§ 59.1-203, 59.1-205, and 59.1-

206.

11. Volkswagen AG is a corporation organized under the laws of Germany, is the parent corporation of Audi AG and Volkswagen Group of America, Inc., and has its principal place of business in Wolfsburg, Germany.

12. Audi AG is a corporation organized under the laws of Germany, has its principal place of business in Ingolstadt, Germany, and 99.55% of its stock is owned by Volkswagen AG.

13. Volkswagen Group of America, Inc. ("VWGoA") is a corporation organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia. Audi of America, Inc. is an operating unit of Volkswagen Group of America, Inc.

14. Audi of America, LLC is a Delaware limited liability company and a wholly-owned subsidiary of Volkswagen Group of America, Inc., with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

15. Volkswagen Group of America Chattanooga Operations, LLC ("VW Chattanooga") is a Tennessee limited liability company and a wholly-owned subsidiary of Volkswagen Group of America, Inc., with its automotive manufacturing activities and principal place of business in Chattanooga, Tennessee.

16. Dr. Ing. h.c. F. Porsche d/b/a Porsche AG is a corporation organized under the laws of Germany, has its principal place of business in Stuttgart, Germany, and is an indirect wholly owned subsidiary of Volkswagen AG.

17. Porsche Cars North America, Inc. is a Delaware corporation that has its principal place of business at One Porsche Drive, Atlanta, Georgia.

IV. FACTS

A. The Defendants Acted in Concert to Violate Consumer Laws and Perpetrate a Massive Fraud on Regulators and Consumers.

18. The Subject Vehicles include the following makes and models sold or leased in the United States for the 2009 through 2016 model years ("MY"):

2.0 Liter Diesel Models

Model Year	EPA Test Group	Vehicle Make and Model(s)
2009	9VWXV02.035N 9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen
2012 2013 2014	CVWXV02.0U4S DVWXV02.0U4S EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

3.0 Liter Diesel Models

Model Year	EPA Test Groups	Vehicle Make and Model(s)
2009	9ADXT03.03LD	VW Touareg, Audi Q7
2010	AADXT03.03LD	VW Touareg, Audi Q7
2011	BADXT03.02UG BADXT03.03UG	VW Touareg Audi Q7
2012	CADXT03.02UG CADXT03.03UG	VW Touareg Audi Q7
2013	DADXT03.02UG DADXT03.03UG DPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel
2014	EADXT03.02UG EADXT03.03UG EPRXT03.0CDD EADXJ03.04UG	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5

2015	FVGAT03.0NU2 FVGAT03.0NU3 FPRXT03.0CDD FVGAJ03.0NU4	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5
2016	GVGAT03.0NU2 GPRXT03.0CDD GVGAJ03.0NU4	VW Touareg Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5

19. To sell the Subject Vehicles in the United States, Defendants applied for and obtained Certificates of Conformity from the Environmental Protection Agency ("EPA") and Executive Orders from the California Air Resources Board ("CARB"). In those applications, Defendants were required to, among other things, disclose all auxiliary emissions control devices ("AECDs") on the vehicles, i.e., any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system. For each such AECD, Defendants were required to provide: a written, detailed justification; the parameters it senses and controls; and a rationale for why the AECD is not a Defeat Device.

20. Defendants installed Defeat Devices in all the Subject Vehicles distributed, sold and leased in the United States, including in Virginia.

21. The Defeat Devices enable the Subject Vehicles' Electronic Control Modules to detect when the vehicles are being driven on the road, rather than undergoing laboratory emissions testing on a dynamometer. When the Defeat Device detects the vehicles are being driven on the road, it renders certain emission control systems in the Subject Vehicles inoperative, resulting in emissions that exceed EPA-compliant and CARB-compliant levels by as much as 40 times. In contrast, during dynamometer testing, the Defeat Devices' software increases emissions controls and reduce NOx emissions to legally-compliant levels.

22. The Defendants never disclosed the existence of these Defeat Devices to regulators, either in their applications for Certificates of Conformity or applications for Executive Orders, and never disclosed the existence of the Defeat Devices to consumers in their marketing and advertising materials.

23. To the contrary, from 2009 through 2015, the Defendants broadly disseminated Internet, television and print ads advertising the fuel efficiency, performance and environmental benefits of the Subject Vehicles, so as to rebrand diesel as a clean-running, fuel-efficient, fun alternative to their gas and hybrid competitors and to associate the Volkswagen and Audi brands with progressive ideals, environmental or "green" consciousness and innovation. Porsche included in certain of its advertising references to "clean diesel technology."

B. Volkswagen Defrauded Consumers by Promising "Green" "Clean Diesel" Cars.

24. To induce American consumers to purchase the Subject Vehicles, Volkswagen spent tens of millions of dollars on widely-disseminated advertising to convey "diesel's environmental and economic advantages." This advertising reached residences throughout Virginia, including in the City of Richmond.

25. According to Volkswagen's marketing strategy materials, one of the "key messages" it intended to convey through the word "clean" was that Clean Diesel vehicles produce "NOx emissions [that are] reduced by 95 percent[.]"

i. Volkswagen made false and misleading statements in its advertising.

26. Commercial videos lampooned as "old wives' tales" the notion that diesel was dirty and noxious. "[Diesel] used to be dirty," says one character, "but this is 2015." A character places her scarf against the exhaust of a diesel and states, "see how clean it is!" The ad

concludes with a statement, "Like really clean diesel."

27. Separate commercials, including multiple commercials aired during Super Bowls, touted the Volkswagen Jetta TDI and Audi A3 TDI as "Green Car of the Year."

28. A commercial for the Audi A3 TDI depicted the TDI engine as efficient, high performing, and therefore a "more fun" alternative to forms of green transportation such as cycling, bio-diesel, and public transit.

29. Marketing brochures likewise contained misstatements about the effectiveness of the emissions control systems. A brochure for the MY 2015 A3, for example, featuring Audi's slogan "Truth in Engineering" contained the following misleading claim about the A3's NOx reduction technology: "[w]ith innovative diesel particulate filters and the nontoxic AdBlue reducing agent, we eliminate up to 95% of diesel NOx emissions."

30. Print ads featuring tag-lines like "This ain't your daddy's diesel," "Diesel has really cleaned up its act" and "Di*sel - it's no longer a dirty word" were geared toward rebranding diesel as a clean and fun alternative to Volkswagen and Audi's gasoline and hybrid competitors.

31. These ads promised consumers not only a "clean" car, but one that was higher performing, more "fun" to drive and more fuel efficient than non-diesel options.

32. Volkswagen also claimed in advertising that its Clean Diesel models typically retain a higher resale value than similar gasoline vehicles.

33. Volkswagen disseminated these advertisements and marketing materials throughout the United States, including in the Commonwealth and in the City of Richmond.

ii. The Defendants made false representations and warranties to buyers and lessees.

34. In addition to promoting sales through its deceptive advertising campaigns,

Defendants made additional misrepresentations to actual and potential buyers and lessees at the point of sale and after.

35. Window stickers affixed to each of the Subject Vehicles for sale or lease reflected average "smog ratings" when, in fact, the Subject Vehicles' NOx emissions—a major factor in smog ratings—actually exceeded applicable standards by as much as 40 times.

36. Warranty materials provided to original and subsequent purchasers or lessees warranted to each "that every [Subject Vehicle] . . . was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency[.]" This express warranty was false in light of the installation of the Defeat Devices.

37. Through its advertising, public statements, and selling and leasing of cars, Volkswagen also represented to consumers that its Subject Vehicles were durable, well-engineered vehicles that would retain a high resale value.

iii. The Defendants continued to deceptively market the Subject Vehicles despite evidence that they exceeded legal emissions standards.

38. In spring 2014, West Virginia University's Center for Alternative Fuels, Engines & Emissions published a report commissioned by the International Council on Clean Transportation (the "ICCT Report") concerning real world emissions of several light duty diesel vehicles. WVU researchers conducted tests using a portable emissions measurement system ("PEMS")—essentially a lightweight laboratory used to test and/or assess mobile source emissions in real driving conditions—rather than on a dynamometer.

39. The ICCT Report found that a TDI Passat and Jetta contained levels of NOx between 5 and 35 times higher than the legal emissions limits during real world driving.

40. By mid-2014, CARB, EPA, and Volkswagen were communicating regularly regarding possible causes of the excess emissions identified in the ICCT Report.

41. Volkswagen did not disclose the Defeat Devices at that time. Volkswagen commenced a software recall campaign knowing it would not bring the Subject Vehicles' NOx emissions into compliance with legal limits and it continued to market and advertise the Subject Vehicles as producing low emissions, complying with emissions standards, being environmentally friendly, and having a high resale value.

42. On September 18, 2015, EPA issued to Volkswagen a Notice of Violation reflecting the agency's determination that "VW 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' emissions control system that exist to comply with [Clean Air Act] emission standards....Additionally, the EPA has determined that, due to the existence of the Defeat Devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them."

43. The same day, CARB sent an "In-Use Compliance" letter to Volkswagen describing its investigation of the "reasons behind these high NOx emissions observed on their 2.0 liter diesel vehicles over real world driving conditions[]" and its related discussions with Volkswagen. According to CARB, those discussions "culminated in VW's [September 3, 2015] admission to CARB and EPA staff that it has, since model year 2009, employed a Defeat Device to circumvent CARB and the EPA emission test procedures."

44. In a second round of notices issued on November 2, 2015, EPA and CARB notified Volkswagen they had conducted Defeat Device screening and certification testing on a

MY 2016 Audi A6 and a MY2014 Volkswagen Touareg and "observed the same type of emissions behaviors as those in which VW has admitted Defeat Devices exist. These activities corroborate testing conducted by U.S. EPA and Environment Canada on a 2014 VW Touareg (Test Group EADXT03.02UG) and a 2015 Porsche Cayenne (Test Group FPRXT03.0CDD), respectively. This testing has also yielded evidence of a Defeat Device."

45. On November 20, 2015, CARB issued a press release reporting that in a November 19, 2015 meeting with EPA and CARB, "VW and AUDI told EPA and CARB that the issues raised in the In-Use Compliance letter extend to all 3.0 liter diesel engines from model years 2009 through 2016." Thereafter, in an In-Use Compliance Letter dated November 25, 2015, CARB confirmed its determination "that all 3.0 liter model years 2009-2016 test groups of the [Audi AG, Porsche AG, Porsche Cars North America, Volkswagen AG, and Volkswagen Group of America, Inc.] are in noncompliance with CARB standards[.]"

46. Throughout this period, Volkswagen continued to market and advertise the Subject Vehicles as producing low emissions, complying with emissions standards, being environmentally friendly, and having a high resale value.

C. Volkswagen's Deceptive Environmental Message Resonated with Buyers and Lessees of the Subject Vehicles Who Sought to Help the Environment, Not Unlawfully Pollute It.

47. Consumers purchased and leased Subject Vehicles based on Volkswagen's false and misleading representations that the vehicles would be environmentally friendly and clean, fuel-efficient, EPA-compliant, and would provide superior performance. Purchasers were willing to pay thousands of dollars in price premiums for the Subject Vehicles, depending on the model and trim packages.

48. These purchasers have suffered pecuniary damages as a result of Volkswagen's

deception, namely: the premium price they paid for their Subject Vehicles; the significant loss of resale value the Subject Vehicles have suffered since the Defeat Device scandal broke; and the anticipated losses of fuel efficiency and performance, post-recall.

49. Consumers who leased Subject Vehicles have also suffered pecuniary damages as a result of Volkswagen's deception, namely: diminution in the value of their leases; costs associated with termination of leases no longer wanted; and the anticipated losses of fuel efficiency and performance, post-recall.

50. Volkswagen's advertising, sale and lease of Subject Vehicles containing undisclosed and hidden Defeat Devices was deceptive and has caused owners and lessees to suffer pecuniary loss.

51. As a direct result of the disclosure of Volkswagen's "clean diesel" fraud, the Subject Vehicles have decreased in value, continue to decrease in value, and appear to be largely unsalable because many consumers do not want to own and drive cars that emit higher than expected or advertised amounts of NOx.

52. The diminution in value of the Subject Vehicles has also exposed those who bought them with financing to carrying loans that now have balances greater than the values of the Subject Vehicles, or to having substantially reduced equity in the Subject Vehicles.

53. Volkswagen's "clean diesel" misrepresentations have also exposed those who leased Subject Vehicles to a substantial diminution of value of their leases.

54. As a result of Volkswagen's deceptive and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Subject Vehicles emit up to 40 times the allowed levels of NOx pollution, the environment and air quality also has been harmed.

V. CAUSES OF ACTION

COUNT I – VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT

55. The Commonwealth re-alleges the facts above and incorporates them herein by reference.

56. Defendants engaged in deceptive acts or practices in the conduct of trade or commerce, in violation of Virginia Code § 59.1-200 (2), (5), (6), (8), and (14), by and without limitation:

a. Selling, leasing and offering for sale or lease vehicles that failed to comply with applicable state emissions, certification and/or other regulatory standards;

b. Falsely and deceptively advertising, promoting and warranting the Subject Vehicles as complying with applicable state emissions, certification and/or other regulatory standards;

c. Falsely and deceptively advertising, promoting and warranting the Subject Vehicles as "clean" and "green" despite the fact that, in regular driving, they emit NOx at between five and forty times the allowable amounts;

d. Falsely and deceptively advertising, promoting and warranting the Subject Vehicles by failing to disclose that certain performance measures could only be met when the Defeat Devices were operating;

e. Failing to disclose and/or actively concealing from consumers the existence of the Defeat Devices, their harmful environmental impact, and the fact that they were illegal to sell, lease or otherwise place into commerce in Virginia;

f. Falsely and expressly warranting to each buyer and lessor of a Subject Vehicle that the vehicle was designed, built and equipped to conform at the time of sale to

applicable state emissions standards and other applicable state environmental standards; and/or

g. Issuing misleading recalls and/or service actions that failed to provide owners and lessors of the Subject Vehicles with a clear description of the defect being serviced.

57. Defendants are now, and were at all relevant times mentioned herein, "supplier[s]" of "goods" or "services," and engaged in "consumer transaction[s]," as those terms are defined in § 59.1-198 of the VCPA, by advertising, offering, selling, and leasing, either directly or through dealers, vehicles and related goods and services to consumers.

58. Defendants' conduct was knowing and willful.

59. Defendants' conduct has significantly harmed consumers throughout the Commonwealth including in the City of Richmond, who did not receive the benefit of their bargains, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

VI. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Virginia requests that this Court, after trial on the merits, grant the following relief:

A. Enter an order providing relief under Virginia Code §§ 59.1-203 and 59.1-205 to Virginia consumers who purchased, leased or otherwise own a Subject Vehicle sold by Defendants, that requires the Defendants to:

i. Rescind the sale of Subject Vehicles and Repurchase Subject Vehicles from consumers at the fair market value prior to public exposure of

Volkswagen's fraudulent conduct related to Defeat Devices, and pay additional restitution to those consumers reflecting any penalties or unused benefits attributable to automobile financing obligations or extended warranties; or, in the alternative at the consumer's option,

ii. Promptly (1) recall and repair Subject Vehicles in the Commonwealth in a manner that removes or permanently disables any Defeat Device, ensures compliance with all applicable emissions standards, and maintains the performance and efficiency of the vehicle consistent with representations at the time of the vehicle's original sale; (2) pay the consumer restitution and damages for the economic harm suffered as a result of the Defendants' deceptive conduct; and (3) provide a warranty, for the life of the subject vehicle, that it will conform to all applicable emissions standards.

B. Enter an order providing additional relief for harm suffered by consumers, and equitable orders including:

i. Ordering the Defendants to return to each consumer of a Subject Vehicle the premium that the consumer paid for a purportedly Clean Diesel vehicle over the cost of the same model and trim of car with a gasoline engine;

ii. Ordering the Defendants to provide full consumer restitution to each affected consumer including, without limitation, the purchase price of that consumer's Subject Vehicle to the extent any "fix" installed by the Defendants results in a degradation of performance and/or fuel efficiency; any additional sums spent or to be spent on fuel or maintenance as a result of any "fix;" any additional sums spent for purchase of extended

warranties that will go unused due to repurchase; and

iii. Ordering the Defendants to disgorge all profits unlawfully obtained as a result of its fraudulent conduct; and

C. Enter an order permanently enjoining the Defendants from engaging in the unlawful, deceptive, and fraudulent business practices alleged in this Complaint, including, without limitation, falsely advertising or promoting its vehicles in print, broadcast and electronic media.

D. Order the Defendants to pay a civil penalty for each violation of Virginia Code § 59.1-200, together with the Commonwealth's costs and attorneys' fees pursuant to Virginia Code § 59.1-206.

E. Grant such additional relief as the Court deems appropriate and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
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CERTIFICATE OF SERVICE

I, Stephen John Sovinsky, certify that on January 10, 2017, a true copy of the foregoing Complaint was mailed via first class mail to:

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