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15 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 STATE OF ARIZONA, *ex rel.*  
18 MARK BRNOVICH, Attorney General,

19 Plaintiff,

20 v.

21 VOLKSWAGEN AG; VOLKSWAGEN GROUP  
22 OF AMERICA, INC.; AUDI AG; AUDI OF  
23 AMERICA, LLC; DR. ING. H.C.F. PORSCHE  
24 AG; PORSCHE CARS OF NORTH AMERICA,  
25 INC.; and MARTIN WINTERKORN,

26 Defendants.

Case No:

CV 2016-005112

**COMPLAINT FOR INJUNCTIVE AND  
OTHER RELIEF**

(Non-classified; Consumer Fraud)

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1 Plaintiff State of Arizona, *ex rel.* Mark Brnovich, Attorney General, for its Complaint against  
2 Defendants Volkswagen Aktiengesellschaft (“VW AG”); Volkswagen Group of America, Inc. (“VW  
3 America,” and, together with VW AG, “Volkswagen”); Audi Aktiengesellschaft (“Audi AG”); Audi of  
4 America, LLC (“Audi America,” and, together with Audi AG, “Audi”); Dr. Ing. h.c.F. Porsche  
5 Aktiengesellschaft (“Porsche AG”); Porsche Cars of North America, Inc. (“Porsche America,” and,  
6 together with Porsche AG, “Porsche”); and Martin Winterkorn (“Mr. Winterkorn,” and, collectively  
7 with the other Defendants, “the Defendants” or “the VW Group”), alleges as follows:

## 8 I. INTRODUCTION

9 1. The VW Group re-entered the U.S. diesel passenger vehicle market in 2008, with the  
10 2009 Volkswagen Jetta TDI. This reintroduction of Volkswagen diesel passenger vehicles, a key  
11 element of the VW Group’s world-wide sales-growth strategy, was met with immediate praise,  
12 especially from media outlets focused on the environment and vehicle efficiency. Indeed, in late 2008, a  
13 publication called *Green Car Journal* selected the Jetta TDI for its Green Car of the Year award. While  
14 *Green Car Journal* noted that “fulfilling th[e] growing desire for vehicles with better fuel economy and  
15 overall environmental performance is no easy thing,” it declared the 2009 Jetta TDI the victor because  
16 of its “groundbreaking clean diesel” engine that met America’s “stringent tailpipe emissions standards”  
17 even as it delivered “admirable fuel efficiency” and “satisfying performance” at “a very reasonable”  
18 price. Relying on a significant marketing effort and the roll-out of additional “Clean Diesel” models, the  
19 VW Group built off its auspicious beginning. Volkswagen’s U.S. diesel vehicles sales rose to a high of  
20 nearly 24% of its total sales in 2013. And the VW Group became the industry leader in U.S. diesel  
21 automobile sales, selling 78,847 Volkswagen brand diesel passenger vehicles in 2014, well ahead of its  
22 nearest competitor, while also selling an additional 15,732 Audi brand diesel vehicles the same year.

23 2. In light of the VW Group’s U.S. diesel sales success, Volkswagen’s engineers appeared  
24 to have solved the longstanding problem of creating a diesel engine that would provide American  
25 consumers with torque and fuel economy while also controlling for pollutants, such as nitrogen oxides  
26 (hereinafter referred to as “NOx,” a general term that applies to nitrogen oxides, nitrous oxides, and  
27 nitrogen dioxide). But, as was recently disclosed, the VW Group’s success was not a testament to  
28 legitimate engineering prowess. To the contrary, the VW Group’s entire “Clean Diesel” effort was

1 based on a fraud. From the introduction of that first 2009 Jetta TDI—from which *Green Car Journal*  
2 recently rescinded its Green Car of the Year Award—the VW Group had been lying about the attributes  
3 and performance of its “Clean Diesel” vehicles.

4 3. The 2009 Jetta TDI, like the other Volkswagen, Audi, and Porsche “Clean Diesel”  
5 models that followed from 2009-2015, was not “clean” at all. To the contrary, the VW Group had  
6 equipped its “Clean Diesel” vehicles with an illegal software algorithm (commonly known as a “defeat  
7 device”) designed to conceal the fact that the vehicles came nowhere close to complying with U.S.  
8 emissions standards. The VW Group designed the defeat device to detect emissions testing conditions  
9 and cause vehicles to change their fuel-mapping to conform to environmental regulations. Then, when  
10 testing conditions were terminated and the vehicles operated under real-world driving conditions, the  
11 emissions control systems effectively disengaged, causing the vehicles to spew pollution, including  
12 NOx, at as much as 40 times the thresholds allowed by U.S. emissions standards.

13 4. Put simply, instead of using legitimate innovation in order to provide consumers with  
14 segment leading performance that also satisfied their desire for clean, efficient, environmentally friendly  
15 vehicles, the VW Group designed a cheat. And the VW Group crafted seven years of print and media  
16 advertising campaigns around its cheat. These campaigns falsely promoted the VW Group’s line of  
17 diesel vehicles as “fun-to-drive” alternatives to hybrids, which were “powerful” and “fuel-efficient.”  
18 Yet these were barely half-truths: the so-called “Clean Diesels” were powerful and fuel-efficient only  
19 because their engines did not bear the burden of operating a compliant fuel-emission control system in  
20 real-world driving conditions.

21 5. Through this fraudulent advertising and its defeat device, the VW Group deceived U.S.  
22 automobile consumers (a group including thousands of Arizona residents) into (1) buying supposedly  
23 “clean” and efficient VW Group vehicles instead of competitor vehicles from other manufacturers, and  
24 (2) paying a premium measured in thousands of dollars over gasoline models (from \$1,000 to almost  
25 \$7,000, according to list prices) for diesel models that were anything but “clean.” Consumers were  
26 willing to pay the premium for these VW Group diesel vehicles because the VW Group claimed it had  
27 resolved the inherent conflict between environmental responsibility, torque, and fuel economy—an  
28 enticing package that the VW Group knew American consumers were unlikely to ignore.

1           6.       For a time, the VW Group got away with its scheme. Its marketing efforts succeeded in  
2 causing consumers to view the VW Group’s diesel technology as a promising “clean” technology that  
3 could deliver power and performance as fuel economy standards became more stringent. It sold almost  
4 11 million falsely-advertised “Clean Diesel” vehicles worldwide, including approximately 580,000 in  
5 the United States (thousands of which were sold or leased in Arizona). And, as a result of the VW  
6 Group’s increased market share and profitability, Mr. Winterkorn (Volkswagen’s CEO), earned  
7 \$76,000,000 in salary, bonuses, and pension benefits from 2009-2014.

8           7.       Then the scheme began to unravel. In 2014, testing by a group of engineers at West  
9 Virginia University (“WVU”) found discrepancies in NOx emissions coming from WVU’s diesel test  
10 vehicles (two of which were Volkswagens). The vehicles passed emissions tests when analyzed under  
11 testing conditions, but failed conspicuously when tested under real-world driving conditions.

12           8.       When Volkswagen received the WVU test results, it began to scramble. In December  
13 2014, Volkswagen told U.S. regulators that it was already planning a voluntary recall relating to some  
14 hardware durability issues in the exhaust systems of its diesel cars. To appease regulators, Volkswagen  
15 agreed to make certain software changes as part of that voluntary recall that it said would fix the  
16 emissions anomalies that had been discovered in the WVU testing.

17           9.       After the recall was complete, regulators re-tested Volkswagen’s diesel vehicles. Again,  
18 the vehicles failed. Regulators noted a slight reduction in NOx, but the regulators did not consider the  
19 reduction to be significant.

20           10.      Notwithstanding the growing list of troubling test results, the VW Group kept selling  
21 diesel vehicles. But regulators kept testing Volkswagen’s diesel vehicles, and the results continued to be  
22 anomalous. Indeed, regulators began to suspect that Volkswagen might be using an illegal defeat  
23 device. “One of the telltale signs [of a possible defeat device] was that the car was running much  
24 cleaner when cold than when it was hot – contrary to standard automobile engineering,” said one  
25 regulator. He continued: When “[w]e tweaked the test in the lab to fool the car into thinking it was no  
26 longer in the lab and that it was on the open road ... [t]he emissions jumped.”<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> Geoffrey Smith and Roger Parloff, *Hoaxwagen*, *Fortune* (Mar. 15, 2016), <http://fortune.com/inside-volkswagen-emissions-scandal/>.

1           11.     The VW Group continued to make excuses for why its vehicles were not meeting  
2 emissions standards.

3           12.     The VW Group finally decided to (partially) come clean only after numerous meetings  
4 with regulators between July 8, 2015, and September 3, 2015, where regulators threatened to not certify  
5 any of Volkswagen’s 2016 model year 2.0L diesels. On September 3, 2015, in a meeting with the  
6 Environmental Protection Agency (“the EPA”), Volkswagen admitted that “it designed and  
7 manufactured its 2.0L diesel vehicles with defeat devices to bypass, defeat, or render inoperative  
8 elements of the vehicles’ emission-control system.”

9           13.     American consumers learned of Volkswagen’s fraud two weeks later when the EPA  
10 issued a formal notice of violation for nearly 500,000 2.0L diesel cars—stretching across seven model  
11 years and three generations of exhaust-treatment configuration.

12           14.     But the scheme did not stop there. Regulators began looking at the VW Group’s 3.0L,  
13 six-cylinder diesels; as suspected, these vehicles also contained defeat devices.

14           15.     In early November 2015, the EPA issued a second notice of violation relating to the VW  
15 Group’s 3.0L engines. The VW Group continued to misrepresent the facts, saying no software had been  
16 installed in those vehicles to alter emissions characteristics in a forbidden manner. It was almost three  
17 weeks later before Audi, which made the VW Group’s 3.0L engines, admitted that it, too, had  
18 incorporated a defeat device.

19           16.     Arizona residents have been directly affected by the VW Group’s fraud—approximately  
20 4,000 or more vehicles equipped with the VW Group’s illegal defeat device software (“the Affected  
21 Vehicles”) are registered in Arizona. Arizona residents chose the VW Group’s vehicles over competitor  
22 models and paid a premium for purported “Clean Diesel” vehicles that they did not receive. Now these  
23 consumers have learned that their vehicles (1) do not have the key mix of attributes promised by the VW  
24 Group and (2) have also lost significant value in the secondary market due to the VW Group’s scheme.

25           17.     Therefore, the State of Arizona brings this action against the Defendants under the  
26 Arizona Consumer Fraud Act (A.R.S. §§ 44-1521 to -1534). Through this action, the State of Arizona  
27 seeks to hold Defendants accountable for the unlawful acts and practices alleged in the Complaint,  
28

1 prevent future unlawful acts and practices, and obtain other relief, including restitution, disgorgement,  
2 civil penalties, costs of investigation, and attorneys' fees.

## 3 II. PARTIES, JURISDICTION, AND VENUE

### 4 A. Plaintiff

5 18. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General ("the State").

### 6 B. Defendants

7 19. VW AG is a corporation organized and existing under the laws of Germany, with its  
8 principal place of business located in Wolfsburg, Germany. VW AG is one of the largest automobile  
9 companies in the world, and is in the business of designing, developing, manufacturing, marketing and  
10 selling automobiles. VW AG is the parent corporation of VW America, Audi AG, and Porsche AG.

11 20. VW AG engineered, designed, developed, manufactured, and installed the defeat device  
12 software on Volkswagen's fraudulently labeled "Clean Diesel" vehicles and exported these vehicles  
13 with the knowledge and understanding that they would be sold throughout the United States, including  
14 in the state of Arizona. VW AG also developed, reviewed, and approved marketing and advertising  
15 campaigns designed to sell the Affected Vehicles.

16 21. VW America is a New Jersey corporation, with its principal place of business located at  
17 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VW America is a wholly-owned U.S.  
18 subsidiary of VW AG, and engages in business, including the advertising, marketing, and sale of  
19 Volkswagen vehicles, in all 50 states, including Arizona.

20 22. Audi AG is a German corporation with its principal place of business in Ingolstadt,  
21 Germany. Audi AG is the parent corporation of Audi America and a subsidiary of the Audi Group,  
22 which in turn is a wholly-owned subsidiary of VW AG. Audi AG designs, develops, manufacturers,  
23 markets, and sells luxury automobiles.

24 23. Audi AG engineered, designed, developed, manufactured, and installed the defeat device  
25 software in certain Affected Vehicles with the 3.0L TDI diesel engine. Audi AG exported these vehicles  
26 with the knowledge and understanding that they would be sold throughout the United States, including  
27 in the state of Arizona. Audi AG also developed, reviewed, and approved marketing and advertising  
28 campaigns designed to sell the Affected Vehicles.

1           24. Audi America is a Delaware limited liability company, with its principal place of  
2 business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Audi America is a wholly-  
3 owned U.S. subsidiary of Audi AG, and engages in business, including advertising, marketing, and sale  
4 of Audi automobiles, in all 50 states, including Arizona.

5           25. Porsche AG is a German corporation with its principal place of business located in  
6 Stuttgart, Germany. Porsche AG designs, develops, manufacturers, markets, and sells luxury  
7 automobiles. Porsche AG is a wholly-owned subsidiary of VW AG.

8           26. Porsche AG installed the defeat device software on certain Affected Vehicles equipped  
9 with the 3.0L TDI diesel engine. Porsche AG exported these vehicles with the knowledge and  
10 understanding that they would be sold throughout the United States, including in the state of Arizona.  
11 Porsche AG also developed, reviewed, and approved marketing and advertising campaigns designed to  
12 sell the Affected Vehicles.

13           27. Porsche America is a Delaware corporation with its principal place of business located at  
14 1 Porsche Drive, Atlanta, Georgia 30354. Porsche America is a wholly-owned U.S. subsidiary of  
15 Porsche AG, and engages in business, including the advertising, marketing and sale of Porsche  
16 automobiles, in all 50 states, including Arizona.

17           28. Martin Winterkorn is a resident of Germany. Mr. Winterkorn was CEO of VW AG until  
18 he resigned on September 23, 2015, following Volkswagen's admission of its diesel engine fraud. The  
19 German government is investigating Mr. Winterkorn for allegations of fraud; Mr. Winterkorn is  
20 believed to have approved, authorized, directed, ratified, and/or participated in the acts set forth herein.

21           29. Based on information and belief, the State alleges that at all times referenced herein, each  
22 and every Defendant was acting as an agent and/or employee of each of the other Defendants, and at all  
23 times mentioned was acting within the course and scope of said agency and/or employment with the full  
24 knowledge, permission, and consent of each of the other Defendants. In addition, each Defendant's acts  
25 and/or omissions as alleged herein were made known to, and ratified by, each of the other Defendants.

26 **C. Jurisdiction and Venue**

27           30. This Court has jurisdiction to enter appropriate orders both prior to and following a  
28 determination of liability pursuant to the Arizona Consumer Fraud Act (A.R.S. § 44-1521, *et seq.*).

1 31. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

### 2 III. FACTUAL ALLEGATIONS

#### 3 A. Volkswagen's Diesel Scheme and Plan to Dominate the U.S. Automotive Market

4 32. In early 2007, Mr. Winterkorn assumed the leadership of both Volkswagen and Audi, and  
5 was determined to make VW AG the world's number one automaker. Mr. Winterkorn knew that to  
6 accomplish this goal, the Volkswagen brand would have to succeed in the one market where it had  
7 continually failed: the United States, where market share had long languished at 1%. Accordingly, Mr.  
8 Winterkorn set a goal to sell 1 million cars in the United States by 2018: 800,000 Volkswagens and  
9 200,000 Audis. To achieve this lofty goal, U.S. Volkswagen sales would have to grow an average of  
10 14% per year and U.S. Audi sales would have to grow by approximately 8% annually.<sup>2</sup>

11 33. A key component of Volkswagen's U.S. expansion plan centered on increased sales of its  
12 smaller diesel vehicles, a linchpin of its success abroad. While diesels generally offer better fuel  
13 efficiency than gasoline-powered vehicles, making them more economical in Europe where fuel is more  
14 expensive, lower U.S. fuel prices combined with the EPA's increasingly stringent emissions standards  
15 meant that it would be difficult (if not impossible) for Volkswagen to design and sell diesel vehicles in  
16 the U.S. at a competitive cost, particularly at the growth levels set out by Mr. Winterkorn.

17 34. While Volkswagen engineers had been working since 2005 on developing a "Clean  
18 Diesel" engine with emission control technology to help the company compete in the U.S. market, their  
19 efforts had met with little success. Volkswagen engineers had been pursuing two different approaches.  
20 One design used AdBlue technology, based on the BlueTec diesel emissions system created by  
21 Mercedes and Bosch. The BlueTec system used a tank containing the chemical urea to neutralize the  
22 NOx in diesel exhaust. While the BlueTec system improved emissions, it had significant downsides for  
23 the small and mid-size car market, which relied on 2.0L engines (a market Volkswagen had to satisfy to  
24 meet its U.S. sales goals): (1) it was expensive, both to install and maintain, and (2) it required a large  
25 space for the urea tank, which fit significantly better in the larger vehicles that typically had 3.0L  
26 engines. The second design was based on a proprietary, tank-less NOx Trap System still in

27  
28 <sup>2</sup> Michelle Krebs, *Advancing Toward 2018 Sales Goal, VW Adds Tennessee Jobs, Passat Production*, Edmunds.com (Mar. 22, 2012), <http://www.edmunds.com/industry-center/analysis/advancing-toward-2018-sales-goal-vw-adds-tennessee-jobs-passat-production.html>.

1 development; it was less expensive but was also less effective at reducing emissions.

2 35. Weeks after Mr. Winterkorn took the reins at Volkswagen and announced his plans to  
3 make it the world's number one automaker, the BlueTec clean diesel engine program was scrapped as  
4 too expensive; Mr. Winterkorn opted instead to focus on the NOx Trap System.

5 36. Pressure then began to mount inside Volkswagen's diesel program. Mr. Winterkorn's  
6 goal to become the world's top automaker, not just in units, but in profitability, innovation, customer  
7 satisfaction, and all other facets, necessitated that Volkswagen engineers develop a "Clean Diesel"  
8 engine technology that was competitive in price and quality while complying with U.S. emissions  
9 standards. The engineers were skeptical about their ability to meet Mr. Winterkorn's ambitious goals,  
10 but they knew that it was not "acceptable to admit anything is impossible," especially working under  
11 Mr. Winterkorn, who once claimed in an interview that he knew "every screw in our cars."

12 37. In the face of relentless pressure to deliver a satisfactory engine by Volkswagen's 2.0L  
13 "Clean Diesel" rollout deadline, and therefore keep to the VW Group's U.S. sales growth target,  
14 Volkswagen leadership made a pivotal determination—they concluded that it was impossible to meet all  
15 the demands initially placed on the diesel team and therefore decided that U.S. emissions standards,  
16 which could not otherwise be met within the budgetary and performance constraints imposed, would be  
17 circumvented. In 2008, therefore, Volkswagen began installing defeat device software devised to cheat  
18 emissions testing protocols.

19 38. This defeat device software allowed the Volkswagen 2.0L "Clean Diesel" vehicles to  
20 pass U.S. emissions tests while maintaining superior power and fuel efficiency during real-world driving  
21 conditions. Specifically, the defeat device was a software algorithm installed in the engine control  
22 module (ECM). This software was designed to sense when the vehicle was being tested for compliance  
23 with EPA emissions standards based on various inputs, including the position of the steering wheel,  
24 vehicle speed, the duration of the engine's operation, and barometric pressure; these inputs mirrored the  
25 test procedure used for EPA emission certification. When the software algorithm detected that EPA  
26 emission testing was being conducted, the ECM ran software to produce compliant emission results  
27 under an ECM calibration that Volkswagen referred to as the "dyno calibration," a reference to the  
28 equipment used in EPA emissions testing, called a dynamometer. At all other times, during normal

1 vehicle operation, the software algorithm operated in a “road calibration” mode to reduce the  
2 effectiveness of the emission control systems. As a result, under real-world operating conditions, NOx  
3 emissions increased by a factor of 10 to 40 times above compliance levels.

4 39. Of course, this approach was illegal, as Volkswagen well knew. The Clean Air Act  
5 makes it illegal “for any person to manufacture or sell, or offer to sell, or install, any part or component  
6 intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect  
7 of the part or component is to bypass, defeat, or render inoperative any device or element of design  
8 installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this  
9 subchapter.” 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii).

10 40. Volkswagen concealed the defeat device software from U.S. regulators and consumers.

11 41. In 2008, Volkswagen introduced its EA189 2.0L TDI CR engine, which it described as  
12 “the first of a new generation of dynamic and efficient diesel engines from Volkswagen.”<sup>3</sup> This engine  
13 contained Volkswagen’s illegal defeat device software.

14 42. Then, in 2009, the VW Group introduced a new, 3.0L TDI engine for the 2009 Touareg  
15 TDI and Audi Q7 TDI. At its introduction, the 3.0L TDI “Clean Diesel” engine supposedly utilized a  
16 Lean-NOx Trap technology and also used a more sophisticated and expensive emissions control system  
17 called Selective Catalytic Reduction (“SCR”). This engine also contained the defeat device software.

18 43. Beginning in 2012, Volkswagen updated the EA189 2.0L TDI engine with SCR. This  
19 system, which debuted on Volkswagen’s Passat, injected a liquid urea solution into the exhaust to break  
20 down NOx. This updated engine version also contained defeat device software.

21 44. From 2009 to 2014, as these new and updated versions of the “Clean Diesel” engines  
22 were being rolled out, the VW Group expanded the use of its “Clean Diesel” engines to additional  
23 models within the VW Group’s family of brands, including, in the 2013 model year, putting a TDI  
24 engine for the first time into the U.S. version of Porsche’s most popular model, the Cayenne.

25 45. Throughout this expanded roll-out, the VW Group continued with the same emphasis on  
26 its “Clean Diesel” engines offering a highly desirable combination of power, efficiency, fuel-economy,  
27

28 <sup>3</sup> “TDI” stands for “Turbocharged Direct Injection,” referring to the fact that the engines bearing this moniker are turbocharged and use fuel injectors to directly inject fuel into each cylinder.

1 and low emissions. For example, the 2013 Porsche Cayenne diesel was offered as a powerful “Clean  
2 Diesel” offering both low fuel consumption and exhaust emissions. But, as with the VW Group’s claims  
3 about its other “Clean Diesel” models, this representation about the Cayenne TDI was false.

4 46. By model year 2015, the VW Group was able to introduce a third generation of its “Clean  
5 Diesel” vehicles. All diesel vehicles would now come equipped with an updated SCR system. But they  
6 also came with the defeat device software. The VW Group sold approximately 33,000 of these third-  
7 generation vehicles through September 2015.

8 47. As the VW Group updated its diesel engines and their emissions control systems in these  
9 iterations over the years, it also necessarily updated its defeat device software. A U.S. official close to  
10 the Volkswagen emissions investigation stated that “VW would have had to reconfigure the [defeat  
11 device] software for each generation of engines.”<sup>4</sup> The “defeat device software also had to be altered  
12 when VW changed the emissions control system in its engines.”<sup>5</sup> With each of these iterative updates,  
13 redesigns, and expanded new model roll-outs, the VW Group recommitted to its use of a defeat device,  
14 repeatedly deciding that the VW Group’s diesel engines should continue to cheat on emissions tests and  
15 that the truth regarding these engines should stay hidden.

16 **B. The International Council for Clean Transportation/WVU Study**

17 48. In early 2014, the International Council on Clean Transportation contracted the Center  
18 for Alternative Fuels Engines and Emissions (“CAFEE”) at WVU to conduct in-use testing of three  
19 light-duty diesel vehicles, using portable emissions measurement systems (“PEMS”) over test routes  
20 located in California. These vehicles all had been certified as compliant with EPA and California Air  
21 Resources Board (“CARB”) emission standards. The PEMS measured gaseous emissions of NOx,  
22 carbon monoxide, THC, and carbon dioxide. Two of the three vehicles were also selected for chassis  
23 dynamometer testing at CARB’s El Monte, California facility.

24  
25  
26  
27  
28 <sup>4</sup> Andreas Cremer, Bruce Walland, and Paul Lienert, *VW Built Several Devices that Evaded Emissions Tests*, The Huffington  
Post (Oct. 19, 2015), [http://www.huffingtonpost.com/entry/vw-built-several-devices-evaded-emissions-  
tests\\_us\\_5624f539e4b08589ef47fe7f](http://www.huffingtonpost.com/entry/vw-built-several-devices-evaded-emissions-tests_us_5624f539e4b08589ef47fe7f).

<sup>5</sup> *Id.*

1           49. Two of these CAFEE tested vehicles were Volkswagens: a 2012 Jetta and a 2013 Passat.  
2 Each was equipped with a 2.0L TDI "Clean Diesel" engine, one with a Lean-NOx Trap System and the  
3 other with the later-introduced, urea-based SCR system.

4           50. Based on the CAFEE testing, the real-world NOx emissions of the two Volkswagens  
5 exceeded applicable EPA standards by factors of 15 to 35 and 5 to 20, respectively. However, the NOx  
6 emissions for these vehicles were below EPA standards during the chassis dynamometer testing.

7 **C. EPA and CARB Investigations**

8           51. CAFEE published the results of its study on May 15, 2014. Both the EPA and CARB  
9 subsequently opened investigations and began discussions with VW America to determine the reason for  
10 the high NOx emissions measured under real-world driving conditions in the WVU study.

11           52. Over the course of the year following publication of the WVU study, VW America  
12 initiated testing to replicate the WVU testing and identify for EPA and CARB a technical reason for the  
13 high on-road emissions. During this time, Volkswagen continued to assert to CARB and EPA that  
14 increased emissions were attributable to various technical issues and unexpected in-use conditions.

15           53. In December 2014, VW America shared the results of its investigation with EPA and  
16 CARB and announced it would conduct a voluntary software recall to recalibrate both the Lean-NOx  
17 Trap and the SCR systems. VW America asserted that the recall would include approximately 500,000  
18 vehicles and fix, among other things, the real-world driving emissions anomalies.

19           54. Both EPA and CARB agreed that VW America could implement this recall, but  
20 cautioned that they would perform confirmatory testing to ensure that the discrepancies were remedied.

21           55. The agreed-upon voluntary recall was completed in 2015.

22           56. CARB, in coordination with EPA, then began confirmatory testing to determine the  
23 recall's efficacy, including laboratory tests on required certification cycles and road tests using PEMS.  
24 The road testing revealed a small reduction in emissions post-recall, but NOx emissions remained  
25 significantly higher than expected or allowed.

26           57. CARB then broadened its testing in order to (1) pinpoint the exact technical nature of the  
27 test vehicles' poor performances, and (2) investigate why the onboard diagnostic system was not  
28 detecting increased emissions.

1 58. CARB shared its findings with EPA and VW America on July 8, 2015, and conducted  
2 several technical meetings with VW America. EPA and CARB concluded that none of the potential  
3 technical issues VW America had suggested could explain the higher emissions consistently observed  
4 during CARB's confirmatory testing.

5 **D. VW America's Stunning Admission**

6 59. Given the results of CARB's post-recall confirmatory testing and VW America's  
7 inability to explain why its TDI "Clean Diesel" engines were emitting NOx in excess of the EPA and  
8 CARB emissions standards, EPA and CARB turned to their authority to issue certificates of conformity  
9 ("COC") in an effort to force the VW Group to explain itself.<sup>6</sup> More specifically, EPA and CARB made  
10 plain that no COC would issue for any Volkswagen 2016 model year diesel vehicle until VW America  
11 could adequately explain the anomalous emissions seen with prior model years and also ensure the  
12 agencies that Volkswagen's 2016 model year vehicles would not have similar issues.

13 60. Confronted with the threat that its 2016 model year diesel vehicles would not be saleable,  
14 on September 3, 2015, Volkswagen admitted to EPA and CARB that it had designed, manufactured, and  
15 installed defeat devices in its 2.0L diesel engines from 2009 to 2015 for the purpose of bypassing,  
16 defeating, or rendering inoperative elements of its vehicles' emission control systems.

17 61. Shortly after this admission, Mr. Winterkorn resigned as CEO, saying that although he  
18 was unaware of any personal wrongdoing, he accepted responsibility for the crisis.

19 62. As a result of their investigations and Volkswagen's admissions, both EPA and CARB  
20 issued Notices of Violation to VW America, finding that it violated "42 U.S.C. § 7522(a)(1), each time  
21

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22  
23 <sup>6</sup> To obtain a COC, vehicle manufacturers must submit a COC application to EPA for each test group of vehicles that it  
24 intends to enter into United States commerce. The COC application must include, among other things, a list of all auxiliary  
25 emission control devices ("AECDs") installed on the vehicle. 40 C.F.R. § 86.1844-01(d)(11). An AECD is "any element of  
26 design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter  
27 for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system."  
28 40 C.F.R. § 86.1803-01. If an AECD is included in any vehicle, the COC application must also include "a justification for  
each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in  
effectiveness of the emission control system, and [a] rationale for why it is not a defeat device." 40 C.F.R. § 86.1844-  
01(d)(11). A defeat device is an AECD "that reduces the effectiveness of the emission control system under conditions  
which may reasonably be expected to be encountered in normal vehicle operation and use, unless: 1) Such conditions are  
substantially included in the Federal emission test procedure; 2) The need for the AECD is justified in terms of protecting the  
vehicle against damage or accident; and 3) The AECD does not go beyond the requirements of engine starting; or 4) The  
AECD applies only for emergency vehicles . . ." 40 C.F.R. § 86.1803-01. Motor vehicles equipped with defeat devices

1 it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or  
 2 imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor  
 3 vehicles within [the designated] test groups.”<sup>7</sup> Additionally, the agencies found that VW America  
 4 violated 42 U.S.C. § 7522(a)(3)(B) each time it manufactured and installed into these vehicles an ECM  
 5 equipped with a defeat device.

6 63. The Notices of Violation applied to the following 2.0L TDI vehicles:

2.0L TDI AFFECTED VEHICLES	
Model Year	Make and Model(s)
2009	VW Jetta, VW Jetta Sportwagen
2010	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2013	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat, VW Beetle, VW Beetle Convertible
2014	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat, VW Beetle, VW Beetle Convertible
2015	VW Golf, VW Jetta, VW Golf Sportwagen, Audi A3, VW Passat, VW Beetle, VW Beetle Convertible

22 64. On November 2, 2015, EPA announced that further testing uncovered additional illegal  
 23 defeat devices in the VW Group’s 3.0L diesel engines. Following the discovery, officials issued a  
 24 second notice of violation for the following 3.0L TDI vehicles:

25 ///

27 cannot be certified to be in compliance with EPA regulations. EPA, *Advisory Circular Number 24: Prohibition on use of*  
 28 *Emission Control Defeat Device* (Dec. 11, 1972); see also 40 C.F.R. §§ 86.1809-01, 86-1809-10, 86-1809-12.  
<sup>7</sup> See <https://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/dfc8e33b5ab162b985257ec40057813b!OpenDocument>.

3.0L TDI AFFECTED VEHICLES	
Model Year	Make and Model(s)
2009	VW Touareg, Audi Q7
2010	VW Touareg, Audi Q7
2011	VW Touareg, Audi Q7
2012	VW Touareg, Audi Q7
2013	VW Touareg, Audi Q7, Porsche Cayenne Diesel
2014	VW Touareg, Audi Q7, Porsche Cayenne Diesel, Audi A6 Quattro, Audi A7 Quattro, Audi A8, Audi A8L Audi Q5
2015	VW Touareg Audi Q7, Porsche Cayenne Diesel, Audi A6 Quattro, Audi A7 Quattro, Audi A8, Audi A8L, Audi Q5
2016	VW Touareg, Audi Q7, Porsche Cayenne Diesel, Audi A6 Quattro, Audi A7 Quattro, Audi A8, Audi A8L, Audi Q5

65. As when confronted with questions about the 2.0L TDI engines, the VW Group's executives initially denied any problem with the 3.0L diesel vehicles. "Volkswagen AG wishes to emphasize that no software has been installed in the 3-liter V6 diesel power units to alter emissions characteristics in a forbidden manner," Volkswagen declared.<sup>8</sup> However, approximately three weeks later, Audi USA conceded that all VW Group 3.0L diesel engines were equipped with a defeat device.

66. On March 2, 2016, in connection with ongoing securities litigation in the Braunschweig District Court in Germany, Volkswagen conceded that Mr. Winterkorn was informed in May 2014 of

<sup>8</sup> Ryan Beene, *VW, Porsche, Audi 3.0-liter Diesels Also Have 'Defeat Devices,' EPA Says*, Automotive News (Nov. 2, 2015), <http://www.autonews.com/article/20151102/OEM01/151109977/vw-porsche-audi-3-0-liter-diesels-also-have-defeat-devices-epa-says>.

1 the significant discrepancies in emissions testing results for the TDI "Clean Diesel" vehicles, but  
2 management gave the issue no particular attention.

3 67. As of the filing of this Complaint, the Affected Vehicles still contain defeat device  
4 software and do not have all the attributes advertised to consumers at the time of initial sale or lease.

5 **E. Volkswagen's Marketing of the TDI "Clean Diesel" Technology**

6 68. Beginning with the 2009 model year (and the launch of the 2009 Jetta TDI) Volkswagen  
7 began an aggressive marketing strategy touting its "Clean Diesel" line of vehicles, with the goal of  
8 supporting an increase in the VW Group's diesel-powered U.S. vehicle market-share. The entire  
9 marketing strategy was premised on Volkswagen's false and misleading representation that TDI diesel  
10 technology was "clean," "green," and good for the environment without compromising vehicle  
11 performance or fuel efficiency.<sup>9</sup>

12 69. For example, in an October 2009 interview with Business Insider, VW America's chief  
13 operating officer, Mark Barnes, when asked "[w]hat is the advantage of a diesel over a hybrid," stated:

14 It's also good for the environment because it puts out 25% less greenhouse  
15 gas emissions than what a gasoline engine would. **And thanks to the**  
16 **uniqueness of the TDI motor, it cuts out the particulate emissions by**  
17 **90% and the emissions of nitrous oxide are cut by 95%. So, a very**  
18 **very clean running engine. Clean enough to be certified in all 50**  
19 **states.**<sup>10</sup>

20 70. Carrying this theme into practice, Volkswagen implemented several aggressive national  
21 marketing campaigns designed to raise consumer awareness of the VW Group's purported "TDI Clean  
22 Diesel Technology" and dispel "myths" about diesel engines.<sup>11</sup> Consumers in Arizona were inundated  
23 with Volkswagen's "Clean Diesel" campaigns through print ads (appearing in newspapers, magazines,  
24 and brochures), television commercials, internet websites, online banner ads, YouTube videos, social  
25 media feeds, and direct dealer communications approved by Volkswagen.

26 71. One example of Volkswagen's marketing efforts is the following print advertisement:

27 <sup>9</sup> This marketing strategy followed and aligned with the "Volkswagen Group Environmental Principles Products," which  
28 issued on January 12, 2008, and in which the Chairman of Volkswagen's Board of Management, Mr. Winterkorn, defined the  
corporate objectives of "climate protection" and "reduc[tion of] greenhouse gas emissions." See *Volkswagen Group  
Environmental Principles Products*.

<sup>10</sup> Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, The Business Insider, Oct. 2009 (emphasis added).

<sup>11</sup> E.g., One of the first stages of this campaign included the launch of a "Truth or Dare Website," which featured video clips  
challenging "myths" about diesel vehicles, including the "myth" that "diesel is dirty."

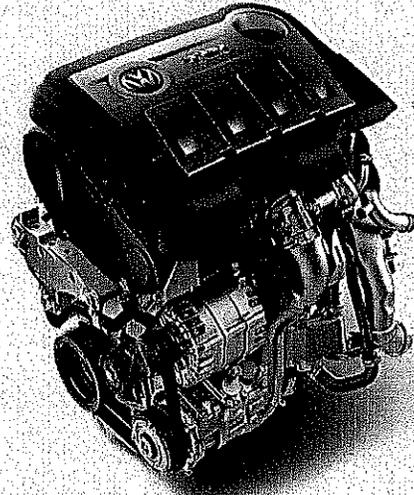
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## This ain't your daddy's diesel.

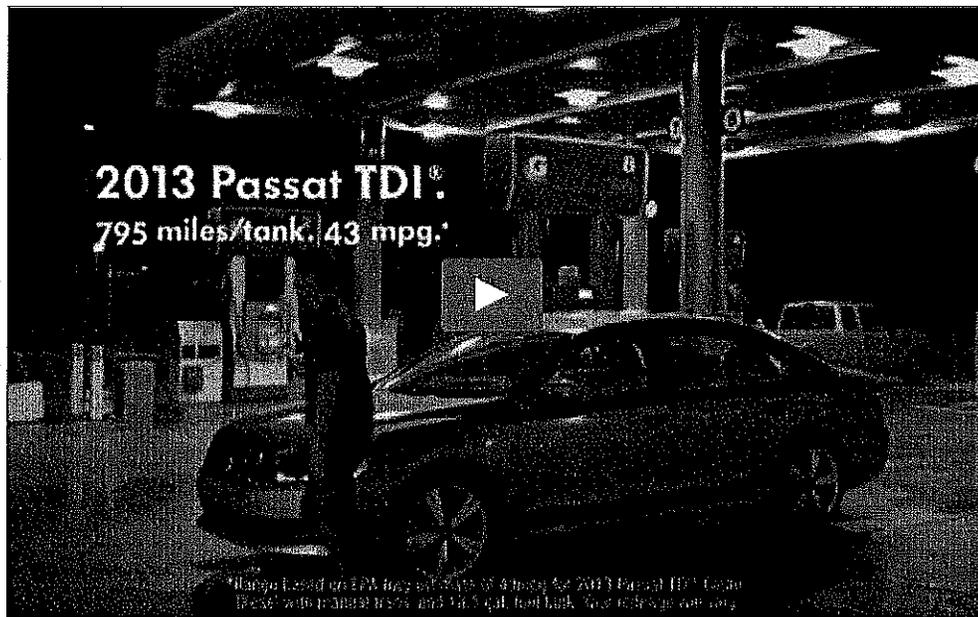
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

- Engineered to burn low-sulfur diesel fuel
- "Common Rail" direct injection system

[View key fuel efficiency info.](#)



12        72.     In another example, beginning in August 2011, Volkswagen began airing a national TV  
13 advertisement for the Passat TDI "Clean Diesel," entitled "Spanish Road Trip." It depicted the Passat  
14 TDI "Clean Diesel" as traveling thirteen hours on a tank of fuel, enabling the driver and passenger  
15 sufficient time to learn to speak Spanish fluently through a "learning Spanish in the car" CD. The  
16 narrator referred to the vehicle as the 2012 Passat TDI "Clean Diesel," and the words "Clean Diesel"  
17 appeared at the bottom of the final screen. The same advertisement was released for the 2013 Passat  
18 TDI:



1           73.     In addition to the Spanish Road Trip advertisement, in 2013, Volkswagen spent  
2 approximately \$2 million to air a national television advertisement, “the TDI Clean Diesel Family.”  
3 “The TDI Clean Diesel Family” advertisement showed six TDI models driving down a highway, while a  
4 narrator stated, “Get exceptional fuel economy and turbo charged performance with a Volkswagen clean  
5 diesel TDI model.” The “TDI Clean Diesel Family” advertisement ran at least 210 times nationally,  
6 primarily during Sunday NFL Games, and contained the following image:



18           74.     In March 2014, Volkswagen spent approximately \$500,000 to air a TV advertisement  
19 that ran 306 times nationally in support of a short-term Passat TDI sale event entitled “Clean Diesel  
20 Event.” The narration in “Clean Diesel Event” stated that the Passat’s fuel economy enabled you to  
21 drive “from Los Angeles to Philadelphia with just three stops for fuel.” The advertisement contained the  
22 following image:

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14 75. In June 2014, Volkswagen spent approximately \$175,000 to run a newer, but virtually  
15 identical, version of the 2013 “TDI Family of Vehicles” advertisement twenty-nine times nationally.

16 76. In the fall of 2014, months after WVU published its report highlighting the discrepancies  
17 in emissions results for Volkswagen TDI vehicles—signaling the beginning of the end of the VW  
18 Group’s scheme—Volkswagen dramatically *increased* its advertising spending for TDI “Clean Diesels.”

19 77. In August 2014, Volkswagen launched a national TV advertisement for the 2015  
20 Volkswagen TDI Golf entitled “Road Trip,” costing Volkswagen an estimated \$11 million. “Road Trip”  
21 depicted a group of friends taking the vehicle from Los Angeles, CA, to Flagstaff, AZ, (a 567 mile trip)  
22 on a single tank of fuel. The narrator describes the car as “the All-New VW Golf TDI Clean Diesel.”  
23 “Road Trip” aired more than 2,350 times on national television between August 4, 2014, and January  
24 19, 2015, during popular programming such as NFL Football, the Golden Globe Awards, and *Scandal*.

25 78. In October 2014, Volkswagen debuted, “No Compromises,” an advertisement for the  
26 2015 TDI Jetta “Clean Diesel.” Volkswagen spent an estimated \$15 million between October 2014 and  
27 February 2015 to air the “No Compromises” advertisement 2,991 times nationally. The narration of that  
28 advertisement stated: “Engineered to be more powerful and miraculously unleash 46 MPG highway --

1 the New VW Jetta TDI Clean Diesel.” “No Compromises” ran during national NFL games and popular  
2 prime-time TV shows such as *The Blacklist* and *The Walking Dead*.

3 79. In 2015, Volkswagen continued to spend millions extolling the merits of its TDI “Clean  
4 Diesels,” while concurrently being unable (after nearly a year) to explain to either EPA’s or CARB’s  
5 satisfaction the emissions discrepancies WVU had uncovered.

6 80. In February 2015, Volkswagen began running a new advertisement, “Diesel Cars,” aimed  
7 to push its full product lineup, with special attention to the Passat TDI “Clean Diesel.” It is estimated  
8 that Volkswagen spent \$950,000 to run “Diesel Cars” sixty-two times nationally between February 17,  
9 2015, and June 28, 2015. In “Diesel Cars,” the narration stated: “Every Volkswagen Clean Diesel  
10 model, including Passat, Jetta, and Golf, delivers turbo-charged performance and great mileage so you  
11 spend more time on the road and less at the pump.” In Arizona, advertising analytics estimate that  
12 “Diesel Cars” had a total of 3,724 household impressions in the Phoenix TV market and 1,080  
13 household impressions in the Tucson market for a total of 4,804 impressions.<sup>12</sup> “Diesel Cars” contained  
14 the following image:

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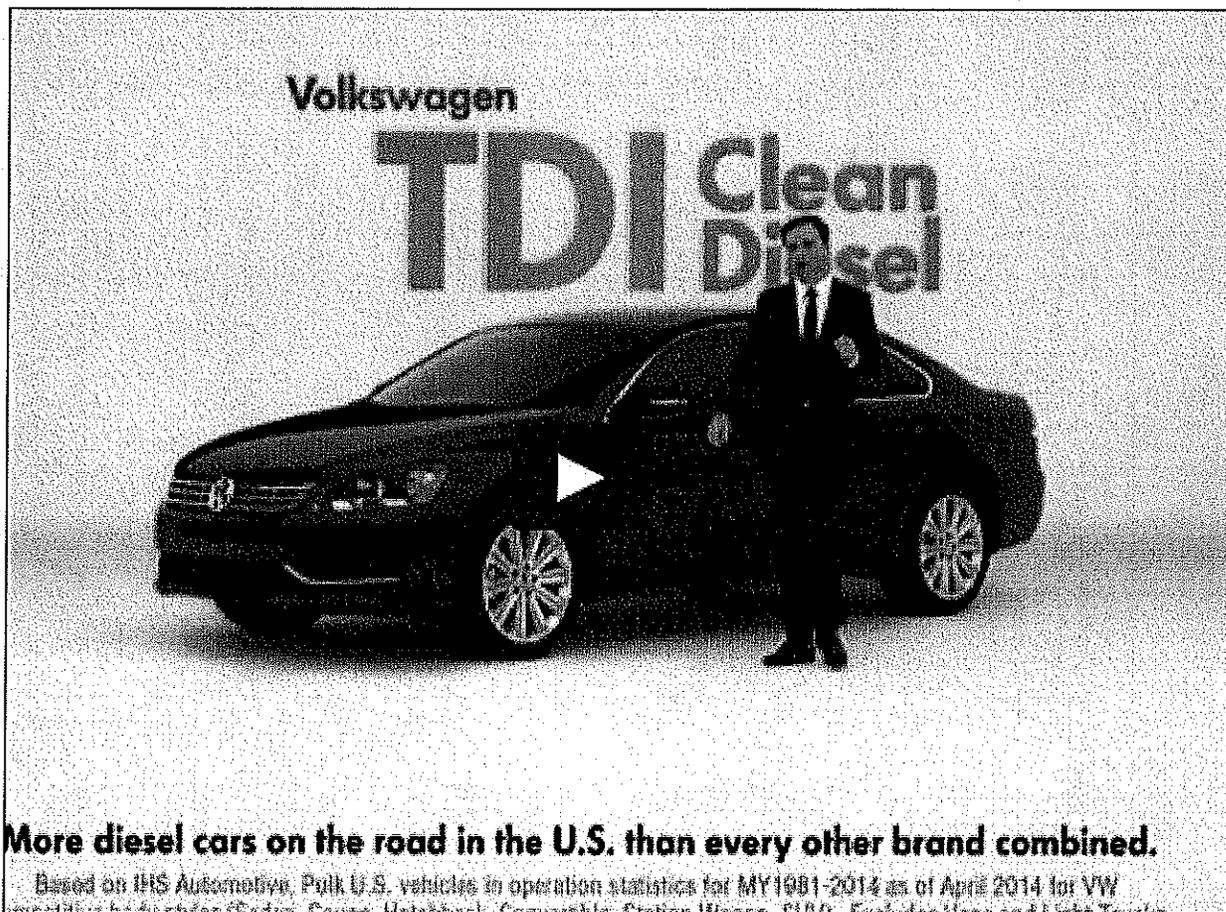
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28 <sup>12</sup> This significantly underestimates the total household impressions in Arizona for several reasons—e.g., the data does not include certain parts of Arizona in other TV markets, such as those proximate to Yuma, AZ, and Albuquerque, NM.



81. In March 2015, Volkswagen launched an advertisement for the Jetta TDI “Clean Diesel” entitled “Found Dog: Duke.” It is estimated that the Company spent approximately \$3,250,000 to run the TV advertisement 745 times nationally in 2015. “Found Dog: Duke” depicted a man finding a dog lost on the streets of San Francisco and driving the dog home to an Oregon address found on the dog’s tag. “Found Dog: Duke” ran from March 2, 2015, to August 23, 2015, during such popular prime-time shows as *The Voice*, *American Idol*, *The Blacklist*, and *Empire*.

82. In Arizona, advertising analytics estimate that “Found Dog: Duke” had 361,281 household impressions in the Phoenix TV market and 63,721 household impressions in the Tucson TV market after July 1, 2015.<sup>13</sup> “Found Dog: Duke” contained the following image:

<sup>13</sup> Each reference to total household impressions in Arizona may underestimate total impressions for several reasons—e.g., (1) the Arizona-specific data cited begins on July 1, 2015, while the advertisement began running prior to that date; and (2) the data does not include certain parts of Arizona in other TV markets, such as those proximate to Yuma, AZ, and Albuquerque, NM.



83. In April 2015, Volkswagen began running a national TV advertisement for the 2014 Volkswagen TDI Passat entitled, “Mom,” set to a Waylon Jennings song (“Don’t Let Your Babies Grow Up to Be Cowboys”). The advertisement depicted several young boys making a mess at a service station while their unsuspecting mother is busy fueling the family car. The advertisement then depicted another mother in a TDI Passat who avoids the mess by virtue of her choice of vehicle. The narration stated: “The Passat TDI Clean Diesel with up to 814 highway miles per tank, just one reason that Volkswagen is the Number One selling diesel brand in America.” The advertisement contained the following visual:

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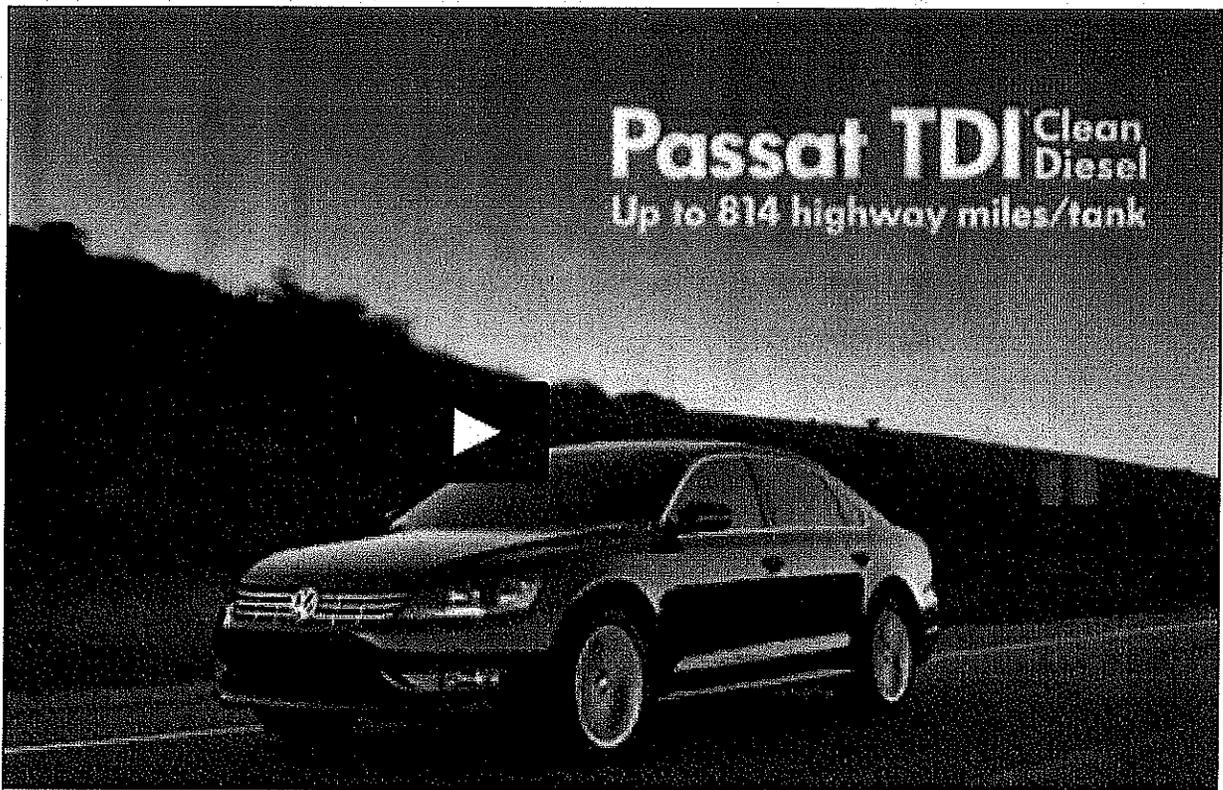
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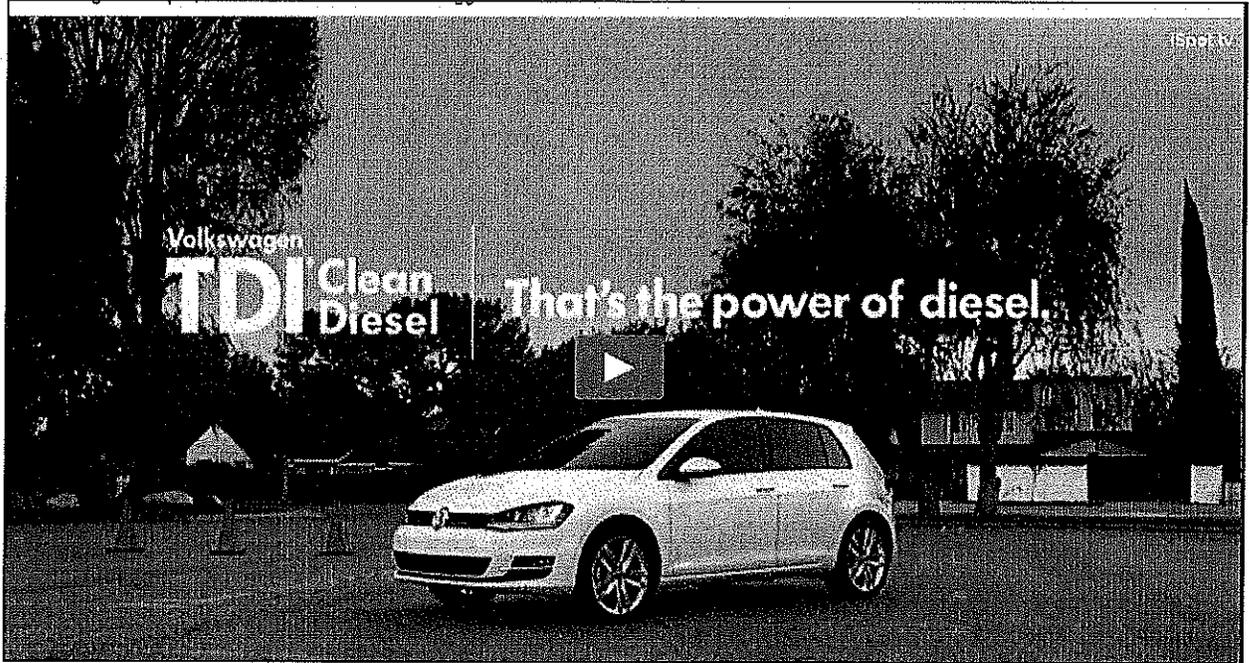


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14 84. Between April and August 2015, Volkswagen spent more than \$13 million dollars to air  
15 “Mom” 3,466 times on national television, during popular prime-time shows such as *NCIS*, *Modern*  
16 *Family*, and *The Big Bang Theory*. In Arizona, advertising analytics estimate that, after July 1, 2015,  
17 “Mom” had 2,238,631 household impressions in the Phoenix TV market, and 389,700 household  
18 impressions in the Tucson TV market.

19 85. Volkswagen continued to run TV advertisements for its “Clean Diesel” product lines  
20 even after Volkswagen executives knew Volkswagen would not be able to immediately remedy the  
21 emissions problems with the agreed-upon 2015 voluntary recall.

22 86. Volkswagen spent approximately \$9 million to air a slightly different version of the  
23 “Mom” advertisement, “Memorial Day Event: Mom,” 2,903 times between May 19, 2015, and July 8,  
24 2015. “Memorial Day Event: Mom” was identical to the original except for a final screen describing a  
25 Memorial Day Sale event, and ran during popular prime-time programming such as the NBA Finals,  
26 *Castle*, *The Middle*, and *Modern Family*. In Arizona, advertising analytics estimate that “Memorial Day  
27 Event: Mom” had 1,863,920 household impressions in the Phoenix TV market, and 283,004 household  
28 impressions in the Tucson TV market.

1 87. The last TV advertisement for the TDI "Clean Diesels" that Volkswagen aired before its  
2 September 3, 2015, admission was "Old Wives Tale #1: Sluggish." "Old Wives Tale #1: Sluggish"  
3 depicted older women learning that, contrary to their pre-conceived notions, Volkswagen TDI Diesel's  
4 engines were powerful and exciting to drive. The advertisement ended with this visual:



17 88. Volkswagen spent an estimated \$4,200,000 to air "Old Wives Tale #1: Sluggish."  
18 nationally 1,200 times between August 1, 2015, and August 10, 2015, well after Volkswagen knew that  
19 post-recall testing was finding the same emissions issues. In Arizona, advertising analytics estimate that  
20 "Old Wives Tale #1: Sluggish." had 7,463,431 household impressions in the Phoenix area and 1,327,406  
21 household impressions in the Tucson area, for a minimum of 8,790,837 overall Arizona household  
22 impressions during August 2015 alone.

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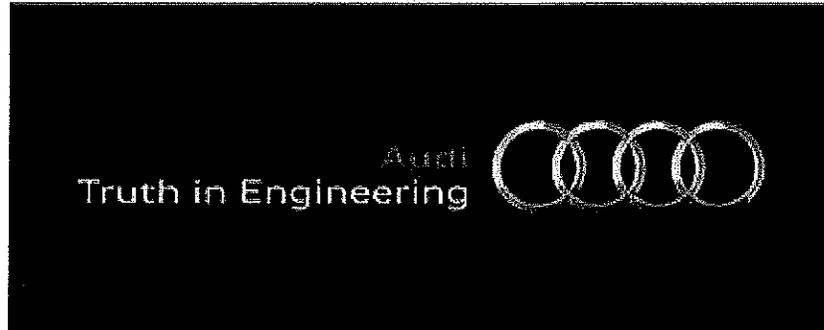
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1 **F. The Audi TV Ad Campaign**

2 89. Throughout the time period of the VW Group's diesel scheme, Audi presented the  
3 following brand slogan with its advertising, including in connection with its diesel marketing:



10 90. The Audi brand also heavily advertised its diesel engines as being "clean." In 2009, Audi  
11 launched its campaign with the "Diesel is no longer a dirty word" ad campaign. That advertisement  
12 depicted oil barrels rolling through streets, while the narration stated, "1.5 million barrels of foreign oil  
13 every day, if only one third of us drove clean diesels we could send it all back." The final screen of the  
14 commercial summarized Audi's consumer pitch:



24 91. In 2010, Audi ran an advertisement entitled, "Green Police" during Super Bowl XLIV.  
25 The advertisement depicted the Audi TDI A3 as the only vehicle acceptable to the "Green Police." As a  
26 Super Bowl advertisement, "Green Police" received millions of views. The advertisement ended with  
27 the following screen:

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4 **Green Car of the Year.®**  
5 Audi A3 TDI® clean diesel.  
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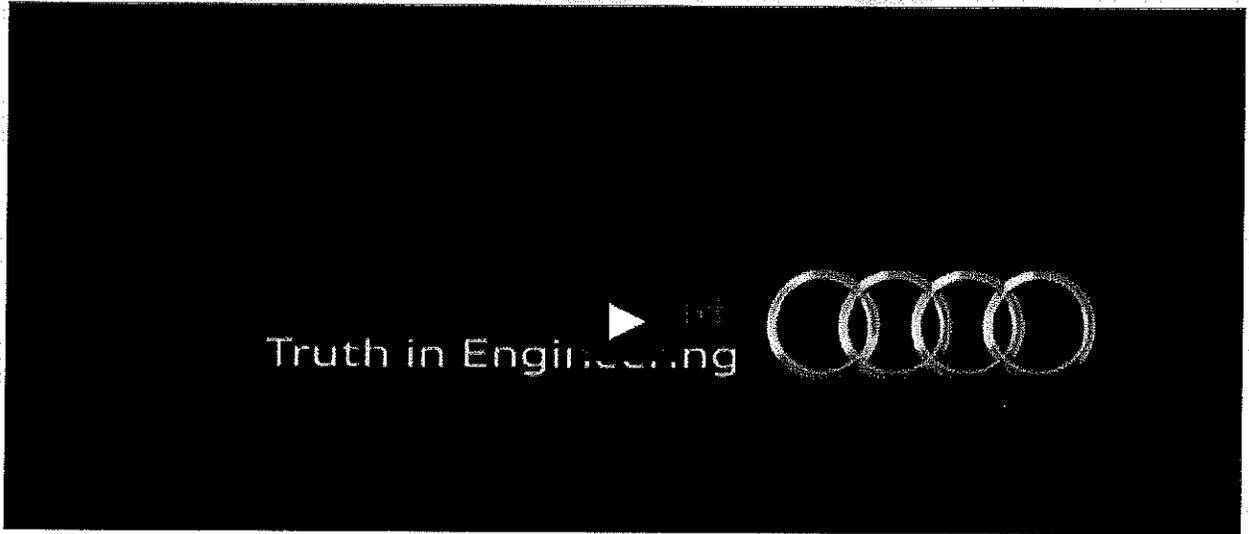
10 "Green Car of the Year" awarded by Green Car Journal.  
11

12 92. In the fall of 2013, Audi spent \$19 million on a national ad for its 2014 Audi TDI  
13 vehicles, entitled "Crestco Gas Station." That advertisement aired 1,592 times during NFL and College  
14 Football games on NBC, among other times. "Crestco Gas Station" was viewed millions of times in  
15 Arizona. "Crestco Gas Station" was Audi's third largest TV ad campaign overall, in terms of cost,  
16 between 2013 and 2016. The final moments of that commercial showed the following:

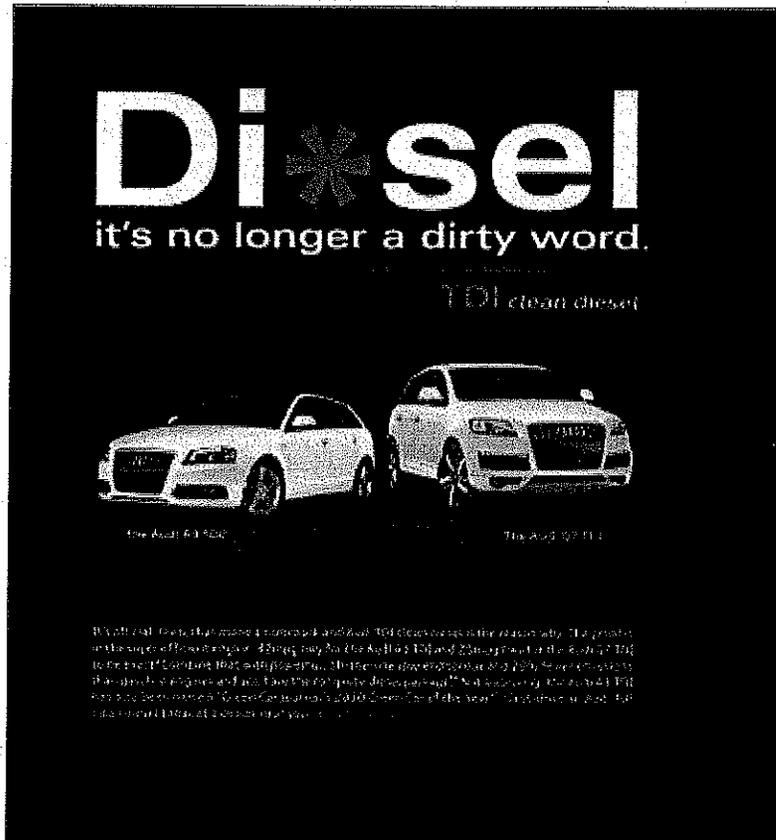
17  
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23 **The future is Audi ▶ TDI® clean diesel.**  
24 **Join the club.**  
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1 Followed by the Audi tag line using its now-infamous slogan:



10  
11 94. There was also a print component to the "Diesel is no longer a dirty word" campaign,  
12 which carried the same message as Audi's TV advertising:

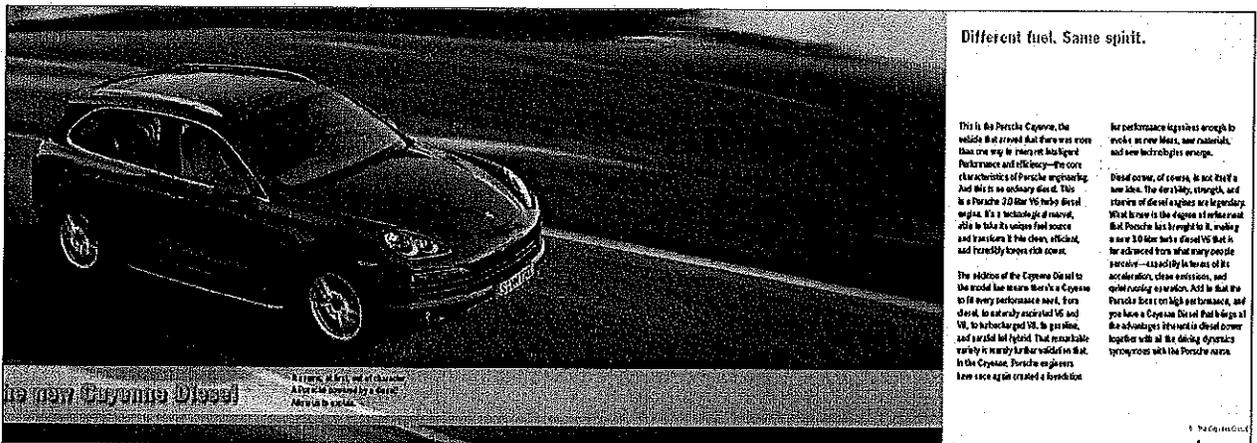


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1 **G. Porsche Advertising**

2 95. Porsche relied on print advertising to market the 2013 Cayenne “Clean Diesel.” The  
3 statements in Porsche’s brochures echo Volkswagen’s and Audi’s claims about the virtues of TDI  
4 “Clean Diesel” engines.

5 96. The brochure for the 2013 Cayenne Diesel portrayed the engine as a “Clean Diesel.” In  
6 relevant part, the brochure described the Cayenne Diesel as a “technological marvel able to take its  
7 unique fuel source and transform it into a clean, efficient and incredibly torque-rich power.” The  
8 brochure also stated that the Cayenne’s 3.0L diesel engine “is far advanced from what many perceive –  
9 especially in terms of its acceleration, clean emissions, and quiet running operations.” The following  
10 image displays an example brochure page:



20 97. A later page described in detail the 2013 Cayenne’s purported “cleaner diesel” emissions  
21 system. Porsche AG claimed that the Cayenne used specific “Clean Diesel” technologies to comply  
22 with U.S. emissions standards:

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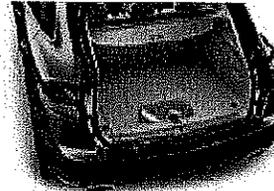
1 **A cleaner diesel.**

2 **Exhaust technologies.**

3  
4 From the moment you start  
5 your Cayenne Diesel, innovative  
6 features intelligently apply  
7 clean diesel technologies.

8 As the exhaust gases exit the  
9 combustion chamber, they will travel  
10 through four separate processes—  
11 Exhaust Gas Recirculation, which  
12 reduces the formation of nitrogen  
13 oxides; the Oxidation Catalytic  
14 Converter, which converts pollutants  
15 such as carbon hydrates into less  
16 harmful substances; the Diesel  
17 Particulate Filter, which traps and  
18 eliminates the majority of particulate;  
19 and the Reduction Catalytic Converter,  
20 which converts the remaining  
21 nitrogen oxides to nitrogen and  
22 oxygen utilizing the AdBlue® agent.

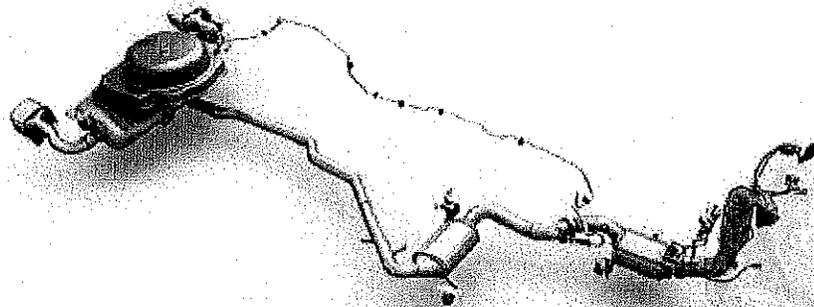
23 These processes help to ensure the  
24 reduction of harmful pollutants  
25 into the environment and make  
26 the Cayenne Diesel compliant with  
27 U.S. emissions standards.



28 Location of AdBlue® tank



SCR system



The Cayenne Diesel engine and exhaust system

15 98. The VW Group also marketed the TDI “Clean Diesel” as “typically hav[ing] a higher  
16 resale value versus comparable gasoline vehicles,” as in this 2015 Audi sales brochure:

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3 **More fuel for thought about diesel.**



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I want a return on my investment...  
more clean diesel models, typically, have higher resale values than comparable gasoline vehicles.

I want to enjoy my drive...  
And the new diesel innovations...  
and the new engines...  
and the new engines...

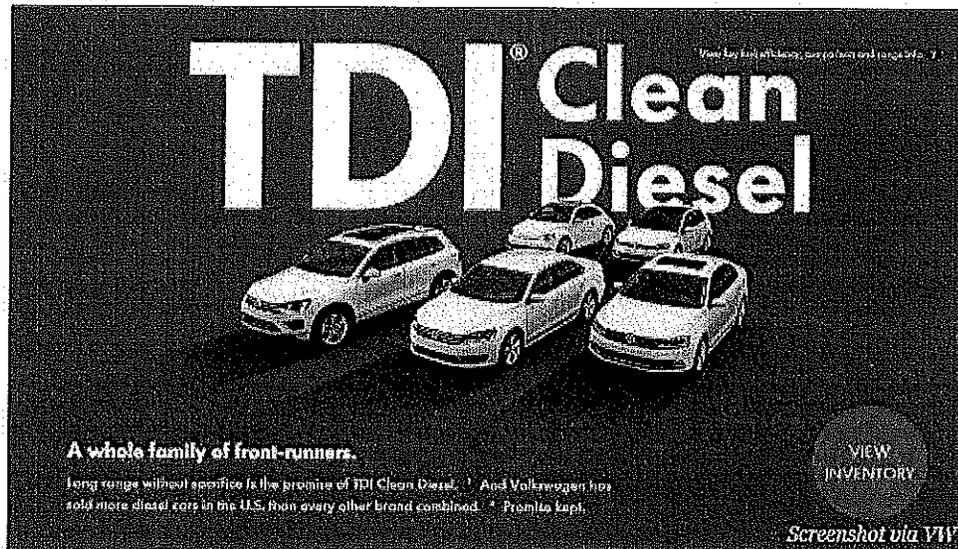
I want more time with my family...  
What else can you do in 2007...  
...to be a part of the future.

20 **H. Results of the VW Group's "Clean Diesel" Advertising and Marketing Effort**

21 99. Each and every statement and representation that the VW Group made in its "Clean  
22 Diesel" TDI advertising, press releases, brochures, or other public statements (examples of which are set  
23 forth more particularly above) stating or suggesting that the Affected Vehicles were "Clean Diesels,"  
24 "cleaner," "efficient," combined fuel efficiency with performance and low emissions, or the like, were  
25 deceptive, constituted a deceptive or unfair act or practice, were fraudulent, showed false pretense or  
26 false promise, contained misrepresentations, or concealed, suppressed, or omitted a material fact with  
27 the intent that others would rely on such concealment, suppression, or omission.

1 100. Nonetheless, the VW Group's "Clean Diesel" marketing campaign was, by all accounts,  
2 spectacularly successful: sales of TDI "Clean Diesel" vehicles rose from just 12,000 annual units in  
3 North America in 2008 to more than 100,000 annual units in 2013, constituting a 78% share of the North  
4 American diesel automobile market.

5 101. Indeed, as Volkswagen touted in its TDI "Clean Diesel" campaign, Volkswagen as a  
6 brand could lay claim to having "sold more diesel cars in the U.S. than every other brand combined:"



### 17 I. Harm to Arizona Consumers

18 102. By misrepresenting its line of "Clean Diesel" vehicles to U.S. consumers, including  
19 Arizona consumers, the VW Group misled consumers into (1) selecting the VW Group's models instead  
20 of competitor models and (2) paying thousands of dollars more for vehicles that do not deliver the  
21 combination of attributes the VW Group promised and otherwise fail to meet U.S. emissions standards.  
22 Consumers selected the VW Group's vehicles and paid a premium to purchase or lease "Clean Diesel"  
23 models because they believed they were getting an eco-friendly vehicle with exceptional fuel economy,  
24 a high level of road performance, and a high resale value.

25 103. But now consumers have learned that their "clean," "green" vehicles are (and have been)  
26 spewing unlawful emissions, may never have the full set of advertised characteristics, *and* have lost  
27 significant resale value due to the revelation of the VW Group's scheme. In the three months following  
28 the VW Group's admissions, average list prices of the Affected Vehicles dropped four times more than

1 did prices for comparable gasoline-powered VW Group vehicles. And owners wanting to sell their  
2 Affected Vehicles have found that they either cannot sell them or that it is taking a substantial amount of  
3 time to do so.

4 104. The lease situation is no better—Swapalease.com, which matches individuals who want  
5 out of their lease with people who are looking for short-term lease agreements, has found that people  
6 taking over Volkswagen vehicles on the online marketplace are down 55% since November 2015.

#### 7 IV. CLAIM FOR RELIEF

##### 8 ARIZONA CONSUMER FRAUD ACT (A.R.S. § 44-1521, et seq.)

9 105. The State realleges and incorporates by reference all prior paragraphs as though fully set  
10 forth herein.

11 106. The Arizona Consumer Fraud Act provides that “[t]he act, use or employment by any  
12 person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise,  
13 misrepresentation, or concealment, suppression or omission of any material fact with intent that others  
14 rely upon such concealment, suppression or omission, in connection with the sale or advertisement of  
15 any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is  
16 declared to be an unlawful practice.” A.R.S. § 44-1522(A).

17 107. Defendants are “persons” within the meaning of A.R.S. § 44-1521(6).

18 108. Volkswagen, Audi, and Porsche brand vehicles sold in Arizona are “merchandise” within  
19 the meaning of A.R.S. § 44-1521(5).

20 109. The VW Group’s marketing materials detailed above are “advertisements” within the  
21 meaning of A.R.S. § 44-1521(1).

22 110. In the course of selling the Affected Vehicles, Defendants systematically acted with a  
23 tendency or capacity to deceive. Defendants engaged in unlawful practices by employing deception,  
24 deceptive or unfair practices, fraud, false pretenses, false promises, misrepresentations, or concealment,  
25 suppression or omission of material facts with intent that others rely upon such concealment,  
26 suppression or omission, in connection with the sale and lease of Volkswagen, Audi, and Porsche brand  
27 vehicles.

28 ///

1           111. The defeat devices on the 2.0L TDI and 3.0L TDI engines used in the Affected Vehicles  
2 were created and installed for the purpose of certifying that the VW Group's diesel TDI vehicles met  
3 EPA and CARB emission standards when, in fact, the vehicles emitted up to 40 times more than the  
4 allowable rates of NOx. In creating and installing defeat devices in the Affected Vehicles, Defendants  
5 engaged in deceptive and unfair business practices in violation of the Arizona Consumer Fraud Act.

6           112. By actively advertising, marketing, selling, and leasing the 2.0L and 3.0L TDI vehicles as  
7 "Clean Diesels" and representing Volkswagen as a "green" company that had a corporate objective of  
8 "climate protection" and "reduc[tion of] greenhouse gas emissions," Defendants engaged in deceptive  
9 and unfair business practices in violation of the Arizona Consumer Fraud Act.

10           113. By actively advertising, marketing, and selling the Audi brand as possessing "Truth in  
11 Engineering" and Audi's TDI vehicles as "Clean Diesels," Defendants engaged in deceptive and unfair  
12 business practices in violation of the Arizona Consumer Fraud Act.

13           114. Defendants misrepresented material facts regarding the 2.0L and 3.0L Affected Vehicles  
14 with intent to mislead Arizona consumers to purchase or lease the Affected Vehicles, which were  
15 materially different and inferior to the vehicles that were represented to Arizona consumers as being for  
16 lease or sale.

17           115. While engaging in the unlawful acts and practices alleged in this Complaint, Defendants  
18 have at all times acted "willfully" as defined by A.R.S. § 44-1531: Defendants knew or should have  
19 known that their conduct was of the nature prohibited by the Arizona Consumer Fraud Act.

20           116. As alleged above, Defendants made materially false and misleading statements about the  
21 2.0L and 3.0L Affected Vehicles in connection with the sale and lease of the Affected Vehicles.

22           117. Defendants owed a duty to purchasers and lessees of the Affected Vehicles (and breached  
23 that duty) because Defendants:

- 24           a. Possessed exclusive knowledge that the VW Group had installed defeat devices  
25           on the Affected Vehicles;
- 26           b. Intentionally concealed the true emission levels from the vehicles;
- 27           c. Falsely advertised and marketed that the vehicles were "clean diesels"; and/or  
28

1 d. Failed to inform buyers that the vehicles could not be made compliant with EPA  
2 standards without degradation in other aspects of vehicle performance.

3 118. Defendants' violations present a continuing harm to owners of the Affected Vehicles as  
4 well as the general public; the unlawful acts and practices complained of here affect the public interest.

5 119. The recalls and modifications instituted by Defendants have, to date, not been adequate to  
6 remedy the issues with the Affected Vehicles, which still fail to perform with the full set of advertised  
7 characteristics.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the State respectfully requests that the Court enter Judgment against the  
10 Defendants as follows:

11 A. Order the Defendants to disgorge profits, gains, gross receipts, or other benefits obtained  
12 by means of any unlawful act or practice as alleged herein, pursuant to A.R.S. §44-1528(A)(3);

13 B. Order the Defendants to pay restitution, damages, or other equitable relief to Arizona  
14 consumers who purchased or leased the Affected Vehicles as a result of a violation of the Arizona  
15 Consumer Fraud Act;

16 C. Order the Defendants to pay the State a civil penalty of not more than \$10,000 for each  
17 willful violation of the Arizona Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

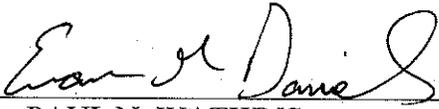
18 D. Order the Defendants to pay the State its costs of investigation and prosecution of this  
19 matter, including its reasonable attorneys' fees, pursuant to A.R.S. § 44-1534; and

20 E. Enter an injunction against the Defendants, permanently prohibiting them from  
21 continuing the unlawful acts and practices alleged in this Complaint or doing any acts in furtherance of  
22 such unlawful acts of practices, pursuant to A.R.S. § 44-1528.

23 F. Award the State such further relief as the Court deems just and proper under the  
24 circumstances.

1 Dated: April 18, 2016

MARK BRNOVICH  
ATTORNEY GENERAL

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3  
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