

FOR IMMEDIATE RELEASE:

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Attorney General Balderas Files Suit against Volkswagen, Audi & Porsche for Defying Clean Air & Consumer Laws with Diesel Emission-Cheating Software

Santa Fe, NM – Today, New Mexico Attorney General Hector Balderas announced that he filed suit on behalf of the State of New Mexico against Volkswagen, Porsche, Audi, and their U.S. subsidiaries for state air quality control act and deceptive trade practice act violations. The Office of the Attorney General’s Fraud Recovery Strike Force filed the suit in state District Court yesterday afternoon. The Attorney General’s suit stems from Volkswagen, Audi, and Porsche’s admitted use of emissions-cheating software in diesel-powered vehicles delivered and sold throughout New Mexico, as well as from those companies’ false advertisement portraying those diesel vehicles as being clean-running and eco-friendly.

“It’s not lawful to profiteer and breach the trust of New Mexico consumers, and Volkswagen, Audi and Porsche will be held accountable for their deceptions,” said Attorney General Hector Balderas. “Our Fraud Recovery Strike Force will work to ensure maximum financial return for New Mexico taxpayers and consumers for the unacceptable behavior by one of the world’s largest automakers. Volkswagen preyed upon hard working New Mexicans who want to protect the environment or save money with fuel efficiency.”

The lawsuit seeks a jury trial as well as damages to be determined by the court. Named plaintiffs are the State of New Mexico by Attorney General Hector Balderas; defendants are the American and German owners of the Audi, Porsche, and Volkswagen businesses. Specific claims include violations of New Mexico’s Air Quality Control Act, Unfair Practices Act, and public nuisance going back to at least 2008, when the diesels were first introduced in New Mexico.

The New Mexico complaint cites the carmakers’ “willful and deliberate violations of New Mexico environmental and consumer protection statutes” during an approximately seven-year charade in which Volkswagen-made vehicles were touted as being “clean diesels” and as eco-friendly tools in the fight against pollution from motor vehicle emissions.

In fact, the diesel versions of 16 different Volkswagen, Audi, and Porsche models marketed and sold in New Mexico were equipped with sophisticated software designed to reduce harmful emissions only when the vehicle was hooked up to testing apparatus. The rest of the time, the Volkswagen-made diesel cars and SUVs emitted illegal amounts of dangerous nitrogen oxides (NOx), which are known contributors to smog and global warming and which are particularly hazardous to children, the elderly, and people with respiratory illnesses.

According to the complaint, Volkswagen was equally shameless in its marketing of these cars for setting new standards in environmental conservation.

One of the cheating vehicles, the Volkswagen Jetta, was named 2009 “Green Car of the Year” by Green Car Journal, an honor later withdrawn after revelation of the scandal. As the complaint describes, Volkswagen began marketing it as the “Official Pace Car of the Environment” – all the while knowing that its sterling low-emissions performance was based on lies and that the Jetta was in fact a noxious, regulation-defying imposter on U.S. roads.

According to today’s complaint, Volkswagen branded itself “the first automaker to make clean diesel cars certified in all 50 states.” In New Mexico and across the country Volkswagen spent tens of millions of dollars promoting its rigged diesel cars as green and environmentally responsible, deceiving and misleading car buyers who believed they were making environmentally conscious driving purchase decisions.

Tellingly, the carmaker maintained the defeat-device software in vehicles made for the U.S. market even though technology had always been available to reduce NOx emissions by honest means.

The case caption for the action is: State of New Mexico, ex rel. Hector Balderas, Attorney General v. Volkswagen Group of America, Inc. It was filed Jan. 19, 2016 in the First Judicial District Court, County of Santa Fe, NM. The Office of the New Mexico Attorney General has retained leading consumer advocacy firm Grant & Eisenhofer to assist in the litigation at no cost to the taxpayers.

See attached for a copy of the complaint as filed.

Background:

Nationwide, up to 600,000 Volkswagen, Audi, and Porsche diesel vehicles were sold with so-called “defeat-device” software designed to fool motor vehicle emissions tests into calibrating approved levels of greenhouse gas exhaust while the cars were operating. A just-announced U.S. Justice Department lawsuit could lead to penalties of more than \$45 billion against Volkswagen for the deception. The federal government is exploring both civil and criminal actions against Volkswagen.

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**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, *ex rel.* HECTOR)
H. BALDERAS, Attorney General,)

Plaintiff,)

v.)

VOLKSWAGEN GROUP OF AMERICA, INC.,)
a New Jersey Corporation; VOLKSWAGEN AG,)
a German Corporation; AUDI OF AMERICA,)
LLC, a Delaware Corporation; AUDI AG, a)
German Corporation; PORSCHE CARS NORTH)
AMERICA, INC., a Delaware Corporation;)
PORSCHE AG, a German Corporation,)

Defendants.)

No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS
OF NEW MEXICO'S AIR QUALITY CONTROL ACT,
UNFAIR TRADE PRACTICES ACT, AND FOR PUBLIC NUISANCE**

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Dated: January 19, 2016

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COMES NOW Plaintiff, the State of New Mexico, by the Honorable Hector H. Balderas, Attorney General of the State of New Mexico (“Plaintiff” or the “State”), and brings this action against defendants Volkswagen Group of America, Inc., Volkswagen AG, Audi of America, LLC, Audi AG, Porsche Cars North America, Inc., and Porsche AG (collectively, “Defendants”), seeking statutory penalties and all damages, including punitive damages, recoverable at law or in equity to remedy Defendants’ willful and deliberate violations of New Mexico environmental and consumer protection statutes, and for public nuisance under New Mexico common law.

By their acts, conduct, and practices alleged below, Defendants violated New Mexico’s Air Quality Control Act (“AQCA,” N.M. Stat. Ann. §§ 74-2-1 through 74-2-17, and regulations promulgated thereunder), New Mexico’s Unfair Trade Practices (N.M. Stat. Ann. § 57-12-1, *et seq.*), and New Mexico’s False Advertising Act (N.M. Stat. Ann. § 57-15-1, *et seq.*).¹ Defendants’ conduct, moreover, has created a public nuisance for which the State seeks nominal and punitive damages under New Mexico statutory and common law.

In support of its Complaint, the State avers as follows:

I. INTRODUCTION

1. Defendants design, manufacture, deliver, sell, and import automobiles under the brand names Volkswagen, Audi, and Porsche. They advertise, market, and sell these automobiles to consumers in the State of Mexico through a network of dealerships, and through a variety of advertising media, including Internet, television, magazines, newspapers, social media, and other printed brochures and advertising materials.

¹ In this Complaint, the Attorney General does not presently allege a specific claim under the False Advertising Act, but has sent the requisite pre-suit notice to Defendants under N.M. Stat. Ann. § 57-15-3, offering Defendants an opportunity to remedy their conduct. A copy of that letter is attached as Exhibit A hereto. Should Defendants fail to comply with the demands of that letter by the deadline stated therein, February 11, 2016, the Attorney General intends to amend this Complaint to assert a False Advertising Act claim against Defendants.

2. As part of the privilege of doing business in the State of New Mexico, Defendants must ensure that their vehicles comply with State environmental regulations concerning vehicle emissions, and must further ensure that their advertising and marketing is fair and not based on unfair, deceptive, false, or misleading information.

3. Here, however, Defendants boldly touted untruths and tried to sell vehicles on the basis of a misleading and deceitful marketing message. This case arises because Defendants have deliberately breached those obligations for many years by designing, engineering, and installing in certain of their vehicles “defeat device” software that was specifically intended to thwart emissions testing for harmful pollutants and then introducing those vehicles into this State.

4. The “defeat device” software that was secretly installed on certain of Defendants’ vehicles would detect the conditions present during an emissions test and then switch the vehicle’s engine into a cleaner running mode for purposes of passing the test. When emissions testing conditions were not present, such as during regular driving of the vehicle, the software released the engine to run in a more powerful manner which also caused the vehicle’s emissions to far exceed fleet average nitrogen oxides emission limits by as much as 30-40%.

5. The specific type of pollutants at issue here are important because Defendants’ engines emit (among other pollutants) nitrogen oxides, or NO_x, which are extremely damaging to the environment (*i.e.*, they contribute to smog and global warming) and harmful to “at risk” populations of people, including children, the elderly, and people with asthma, emphysema, and other pre-existing respiratory disease. Indeed, NO_x gases are so heavily regulated by emissions standards because even light exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to require hospitalization and extended medical care.

6. Over the same period of time that Defendants were secretly and illegally polluting the air in the State of New Mexico with the harmful emissions from their vehicles, they were advertising and touting these very same vehicles as being “clean,” “green” and environmentally-friendly options to consumers in the State.

7. Supported by a massive advertising campaign, Defendants claimed that superior engineering allowed their cars to perform better, consume less fuel, and emit fewer harmful pollutants than diesel cars of the past, making them a great fit for eco-conscious consumers. In fact, the complete opposite was true. Defendants cars were and are not “clean,” or “green” (as that word is understood), or environmentally-friendly vehicles. The vehicles fell far short of meeting applicable vehicle emissions standards, and were un-clean, not “green,” and otherwise harmful to the environment because of the noxious pollutants that they generated.

8. Defendants’ deliberate wrongdoing has been ongoing since at least its marketing and sale of certain 2009 model year vehicles beginning, upon information and belief, in June 2008. Yet Defendants managed to conceal their scheme for years, even in the face of direct questioning by regulators concerning irregularities in Volkswagen emissions figures that were uncovered in a May 2014 study conducted by West Virginia University researchers. *See* Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States, May 15, 2015 (available at [http:// www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final_may2014.pdf](http://www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final_may2014.pdf)). (last accessed January 7, 2016).

9. After more than a year of denials, Defendants finally came clean during a September 3, 2015 meeting with the U.S. Environmental Protection Agency (EPA) and the California Air Resource Board (CARB), admitting that certain of their four-cylinder 2.0 liter

TDI[®] diesel engine vehicles from model years 2009-2015 contained hidden “defeat device” software that was designed and intended to evade emissions testing.

10. Shortly thereafter, on September 18, 2015, Volkswagen’s misconduct was made public when the EPA issued a Notice of Violation of the Clean Air Act (“NOV I”) to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. stating that model year 2009 – 2015 Volkswagen and Audi diesel cars equipped with 2.0 liter TDI[®] engines included “defeat device” software designed and intended to circumvent EPA emissions standards for nitrogen oxides.

11. On November 22, 2015 – just days after the EPA’s issuance of NOV I – Defendants, speaking through Michael Horn, Volkswagen Group of America, Inc.’s CEO, admitted to years of Defendants’ cheating emissions tests through the use of “defeat device” software, and to Defendants’ dishonesty to regulators and consumers alike. Speaking before hundreds of automotive journalists, VW dealers, and others at a new VW Passat launch event at the Brooklyn Naval Yard in New York, Horn stated:

So let’s be clear about this. Our company was dishonest with the EPA, and the California Air Resources Board, and with all of you, and in my German words: ‘we have totally screwed up.’ We must fix those cars to prevent this from ever happening again and we have to make this right with the government, the public, our customers, our employees and also very important, our dealers. And this kind of behavior I can tell you out of my heart is completely inconsistent with our core values.... We are committed to do what must be done and to begin to restore your trust.... You can be sure that we will continue not only to correct this TDI issue, and to straighten things out, and to pay what we have to pay...

See https://www.youtube.com/watch?v=2pIx27_NcQE (last accessed on January 7, 2016).

12. Horn’s frank admission of Defendants’ dishonesty and deliberate wrongdoing was preceded by a written statement and video posted on Volkswagen AG’s website by its then-CEO

Dr. Martin Winterkorn who has since resigned as a result of this scandal. Winterkorn's written statement read, in part:

I personally am deeply sorry that we have broken the trust of our customers and the public. We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter.... We do not and will not tolerate violations of any kind of our internal rules or of the law.

See Volkswagen Press Release, Sept. 20, 2015, "Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG." In Winterkorn's video, he further apologized by stating:

The irregularities in our group's diesel engines go against everything Volkswagen stands for. To be frank with you, manipulation at Volkswagen must never happen again.... I personally am deeply sorry that we have broken the trust of our customers. I would like to make a formal apology to our customers to the authorities and to the general public for this misconduct.

See https://www.youtube.com/watch?v=wMPX98_H0ak (last accessed on January 7, 2016).

13. Defendants have also been frank in their admissions concerning their motive for surreptitiously trying to evade emissions tests, attributing it to their own corporate greed. According to Volkswagen itself, its engineers were having a difficult time getting the Company's diesel engine technology to meet U.S. emissions standards in a cost-effective manner. At the same time, Volkswagen was desperate to overcome the U.S. market's reluctance for its diesel-engine vehicles because of the perception that they were dirty and bad for the environment. Therefore, as Defendants admit, they cheated, equipping their diesel engine cars with sophisticated software designed to pass emissions tests, while also marketing the same cars as being "clean" and "eco-friendly" in order to drive sales.

14. More troubling news followed Volkswagen's initial admissions, when, on November 2, 2015, the EPA issued a second Notice of Violation the Clean Air Act ("NOV II") to Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, Porsche AG, and Porsche

Cars North America, Inc. stating that certain additional model year 2009 to 2016 Volkswagen, Audi and Porsche diesel cars equipped with 3.0 liter TDI[®] engines also included “defeat device” software to circumvent EPA emissions standards for nitrogen oxides. This hidden software allowed emissions of nitrogen oxide up to nine times in excess of regulations under normal driving conditions.

15. After first denying these new allegations, on November 19, 2015, Volkswagen officials *again* admitted culpability for installing defeat device software on certain Volkswagen, Audi and Porsche vehicles equipped with 3.0 liter TDI[®] engines, and confirmed that such cheating had taken place since 2009.

16. Presently, all of Defendants’ 2.0 liter and 3.0 liter TDI[®] diesel engine automobiles marketed and sold in New Mexico (and throughout the United States) since 2008 have been implicated in using defeat device software to evade emissions testing; have been unfairly, deceptively, falsely, and misleadingly marketed and sold; and have been rampantly polluting the environment of this State with excess nitrogen oxides emissions as a result of Defendants’ admitted misconduct. Numerous investigations, domestically, internally at Volkswagen, and across the globe, are still underway.

17. To date, the sixteen (16) makes and models of vehicles marketed and sold by Defendants in the State of New Mexico with illegal emissions and “defeat device” software are as follows:

Affected 2.0 liter diesel models and model years

- Volkswagen Jetta (2009-2015)
- Volkswagen Jetta SportWagen (2009-2014)
- Volkswagen Beetle (2012-2015)
- Volkswagen Beetle Convertible (2012-2015)
- Audi A3 (2010-2015)
- Volkswagen Golf (2010-2015)

- Volkswagen Golf SportWagen (2015)
- Volkswagen Passat (2012-2015)

Affected 3.0 liter diesel vehicle models and model years

- Volkswagen Touareg (2009-2016)
- Porsche Cayenne (2013-2016)
- Audi A6 Quattro (2014-2016)
- Audi A7 Quattro (2014-2016)
- Audi A8 (2014-2016)
- Audi A8L (2014-2016)
- Audi Q5 (2014-2016)
- Audi Q7 (2009-2016)

(hereafter, these vehicles are referred to as the “Affected Vehicles”).

18. It is believed that approximately 580,000 Affected Vehicles were sold in the U.S. during the relevant time frame – with about 500,000 of the Affected Vehicles being equipped with the 2.0 liter TDI[®] diesel engine and about 80,000 of the Affected Vehicles being equipped with the 3.0 liter TDI[®] diesel engine.

19. Upon information and belief, between 4,000 and 10,000 of these Affected Vehicles were delivered, offered for sale, marketed, and sold in the State of New Mexico and many of these Affected Vehicles continue to emit dangerous and harmful pollutants into the air of this State.

II. JURISDICTION

20. This court has personal jurisdiction over each of the Defendants because Defendants’ acts, practices, and conduct which give rise to this civil action occurred in the State of New Mexico. While the engineering, design, and manufacture of the Affected Vehicles took place outside of the State of New Mexico, Defendants deliberately and purposefully marketed and sold such vehicles in the State, and thus illegally polluted the air and the environment here. In addition, each of the Defendants developed, authored, edited, and approved each of the advertisements alleged in this Complaint to be unfair, deceptive, false or misleading. Each of

these advertisements, moreover, targeted consumers who are citizens of the State of New Mexico.

21. The Affected Vehicles designed and manufactured by Defendants flow into the State of New Mexico through the stream of commerce and Defendants knew and expected that these vehicles would be purchased by New Mexico consumers.

22. Indeed, as noted below, Volkswagen specifically claimed that it “was the first automaker to make clean diesel cars certified in all 50 states,” evidencing Defendants’ expectation that the Affected Vehicles would be purchased by New Mexico consumers.

23. Defendants also sold thousands of Affected Vehicles to dealerships in the State of New Mexico, and contracted with dealerships located in the State for the purposes of marketing and reselling those vehicles in this State.

24. By purposefully placing their illegal, polluting vehicles in the State of New Mexico, and purposefully placing advertisements across a variety of media throughout the State of New Mexico, each of the Defendants has purposefully availed itself through specific acts of the privilege of conducting activities within New Mexico and is thereby subject to the specific personal jurisdiction of the Courts of this State under New Mexico’s long-arm statute for claims relating to the Affected Vehicles. *See* N.M. Stat. Ann. § 38-1-16.

25. In addition this Court has personal jurisdiction over Volkswagen Group of America, Inc., Audi of America, LLC, and Porsche Cars North America, Inc. pursuant to N.M. Stat. Ann. § 38-1-6(A).

26. This Court’s exercise of personal jurisdiction over all Defendants is consistent with due process.

27. This Court has subject matter jurisdiction because the claims at issue arise under the statutes and common law of the State of New Mexico, including N.M. Stat. Ann. § 74-2-12(A)(2), N.M. Stat. Ann. § 57-12-8, and N.M. Stat. Ann. § 57-12-11.

I. VENUE

28. Venue is proper in Santa Fe County because a plaintiff resides here, and some or all of the acts, practices and conduct of Defendants which give rise to this civil action occurred here in Santa Fe County. *See* N.M. Stat. Ann. §§ 38-3-1(A), 38-3-1 (B); 57-12-8. In addition, venue is proper in Santa Fe County against the foreign corporation defendants because a plaintiff resides here, and none of the foreign corporation defendants maintain a corporate agent for purposes of service of process within the State. Accordingly, venue is proper in any county of the State. N.M. Stat. Ann. § 38-3-1(F).

III. THE PARTIES

A. PLAINTIFF

29. Plaintiff is the State of New Mexico, by the Honorable Hector H. Balderas, the duly-elected Attorney General of the State of New Mexico, who has the statutory authority to enforce laws for the protection of the public. The Attorney General is authorized to act on behalf of the State in all actions when the interests of the State require action in his judgment, and is further empowered to prosecute all actions and proceedings brought by any state officer or head of a state department, board or commission, or any employee of the state in his official capacity. N.M. Stat. Ann. § 8-5-2(B-C).

30. The Attorney General is specifically authorized to bring suit to enforce the Unfair Practices Act (*see* N.M. Stat. Ann. § 57-12-8), the False Advertising Act (*see* N.M. Stat. Ann. §

57-15-4),² and the Air Quality Control Act, including all ordinances, regulations and standards promulgated thereunder (*see* N.M. Stat. Ann. § 74-2-12.1 (A-C)).

B. DEFENDANTS

1. Volkswagen Group of America, Inc.

31. Defendant Volkswagen Group of America, Inc. (“VW America”) is a New Jersey corporation with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VW America is the wholly-owned U.S. subsidiary of Defendant Volkswagen AG, and it engages in business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50 states, including New Mexico. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50 states, including 95,240 TDI[®] Clean Diesel vehicles. VW America has four dealerships marketing and selling its vehicles in New Mexico.

2. Volkswagen AG

32. Volkswagen Aktiengesellschaft (“VWAG”; VW America and VWAG are collectively referred to herein as “Volkswagen” or “VW”) is a German corporation with its principal place of business in Wolfsburg, Germany. VWAG is one of the largest automobile manufacturers in the world, and is in the business of designing, developing, manufacturing, and selling automobiles. VWAG is the parent corporation of VW America, Audi AG, and Porsche AG. According to VWAG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74 million Audi-branded cars, and 189,849 Porsche-branded cars. Combined with other brands, VWAG boasts a 12.9% percent of the worldwide passenger car market. VWAG’s sales revenue in 2014 totaled €202 billion (approximately \$221 billion) and

² *But, see* n.1, above.

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

33. VWAG engineered, designed, developed, manufactured, and installed the “defeat device” software on the Affected Vehicles equipped with the 2.0 liter TDI[®] diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. VWAG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Affected Vehicles.

3. Audi of America, LLC

34. Audi of America, LLC (“Audi America”) is a Delaware limited liability company with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Upon information and belief, Audi America is a wholly-owned U.S. subsidiary of Defendant Audi AG, and it engages in business, including the advertising, marketing and sale of Audi automobiles, in all 50 states, including New Mexico. According to Audi America, it has established U.S. sales records in each of the past five years, effectively doubling its U.S. sales over this period. Audi now maintains a network of 280 dealers nationwide, with one in New Mexico.

4. Audi AG

35. Audi Aktiengesellschaft (“Audi AG”; Audi America and Audi AG are collectively referred to herein as “Audi”) is a German corporation with its principal place of business in Ingolstadt, Germany. Upon information and belief, Audi AG is the parent of Defendant Audi America and a subsidiary of the Audi Group, which is a wholly-owned subsidiary of Defendant Volkswagen AG. Audi AG designs, develops, manufactures, and sells

luxury automobiles. According to Audi, the Audi Group sold 1.74 million cars worldwide in 2014, with sales revenues in 2014 totaling €53.8 billion (approximately \$58.8 billion). Audi's operating profit in fiscal year 2014 was €5.15 billion (approximately \$5.63 billion).

36. Audi AG engineered, designed, developed, manufactured and installed the "defeat device" software on the Affected Vehicles equipped with the 3.0 liter TDI[®] diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. Audi AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell its Affected Vehicles.

5. Porsche Cars North America, Inc.

37. Porsche Cars North America, Inc. ("PCNA") is a Delaware corporation with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354. PCNA is a wholly-owned U.S. subsidiary of Defendant Porsche AG, and it engages in business, including the advertising, marketing and sale of Porsche automobiles, in all 50 states, including New Mexico. According to PCNA, 2014 represented its best annual results in Porsche history in the U.S., with 47,007 automobiles delivered. PCNA now maintains a network of 189 dealers nationwide, including in the State of New Mexico.

6. Porsche AG

38. Porsche Aktiengesellschaft ("Porsche AG"; PCNA and Porsche AG are collectively referred to herein as "Porsche") is a German corporation with its principal place of business located in Stuttgart, Germany. Porsche AG designs, develops, manufactures, and sells luxury automobiles. Porsche AG is the parent of PCNA and is a wholly-owned subsidiary of Volkswagen AG. According to Porsche, it sold 187,208 cars worldwide in 2014, with sales

revenues in 2014 totaling €17.2 billion (approximately \$18.8 billion). Porsche's operating profit in fiscal year 2014 was €2.79 billion (approximately \$2.97 billion).

39. Porsche AG installed the "defeat device" software on the Affected Vehicles equipped with the 3.0 liter TDI[®] diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. Porsche AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell its Affected Vehicles.

IV. FACTUAL ALLEGATIONS

A. VOLKSWAGEN DEVELOPS A PLAN TO EXPAND THE MARKET FOR ITS DIESEL VEHICLES IN THE UNITED STATES

40. According to Volkswagen, the "starting point" for its scheme to evade U.S. emissions regulations began more than a decade ago with a "strategic decision to launch a large-scale promotion of diesel vehicles in the United States in 2005." *Volkswagen News Release*, Dec. 10, 2015. While most automakers in the early 2000s were investing heavily in the development of hybrid electric vehicles, Volkswagen took a different route, and banked its growth and success on diesel engine technology.

41. Volkswagen had invested a great deal of money developing its TDI[®] (which stands for "turbocharged direct injection") diesel engine technology, and by 2007 it boasted that its TDI[®] diesel engines represented a technological leap in both efficiency and performance, thereby finally making diesel engines more practical and desirable for passenger vehicles in the United States.

42. Volkswagen's problem, however, was the U.S. consumer's acceptance of its TDI[®] diesel engine technology. Unlike in the European market, the U.S. consumer market demonstrated significant reluctance to buy diesel engine-powered vehicles.

43. Among other things, diesel engine vehicles in the U.S. were perceived by consumers as being dirty, sluggish-running vehicles that emitted larger amounts of bad smelling and noxious smoke and soot. Such vehicles were thus perceived as being bad for the environment and, as a result, sales perennially fell short of expectations.

44. Despite Volkswagen's ambitions to push TDI® diesel sales in the U.S., Volkswagen now admits that its engineers were still having difficulty getting the Company's TDI® diesel engine technology "to meet by legal means the stricter nitrogen oxide requirements in the United States within the required timeframe and budget." *Volkswagen News Release*, Dec. 10, 2015.

45. According to news reports, a top former executive at Volkswagen, Wolfgang Hatz, who, at the time, was in charge of engine development, expressed frustration in 2007 with new U.S. emissions standards announced by CARB. Hatz commented during a technology demonstration hosted by Volkswagen in San Francisco in 2007 that "[Volkswagen] can do quite a bit and we will do a bit, but 'impossible' we cannot do." "From my point of view," Hatz continued, "the CARB is not realistic...[and] "I see it as nearly impossible for [Volkswagen]."

46. Volkswagen was plunged into an internal struggle about how to proceed in the U.S. market given the applicable emissions standards. Wolfgang Bernhard, a former Daimler executive who was then a top executive at Volkswagen, championed a technology-sharing agreement with Mercedes-Benz and BMW to jointly develop a system using urea (generically known as a "Diesel Exhaust Fluid" or "DEF" system and marketed as "Bluetec" by Mercedes and as "AdBlue" by Volkswagen and other German vehicle manufacturers), which assists in neutralizing emissions of nitrogen oxides. Hatz originally supported the technology, stating to the public at the Detroit Auto Show in early 2007 that "Bluetec technology allows us to

demonstrate Audi's commitment to always being at the very forefront of diesel technology." But internal friction was building at Volkswagen because of the high costs of the sharing agreement, and the more than \$350 per-vehicle installation cost of a urea-based system.

47. Hatz is reported to have "survived" the internal battle at Volkswagen and led a faction that supported developing and using a less expensive system that did not require urea technology. Bernhard soon resigned and the Bluetec technology-sharing arrangement was scrapped.

48. But with no easy solution, and with the time pressure of new diesel models set for release in the U.S., Volkswagen made the decision to cheat by instead developing and installing "defeat device" software, and continuing its use even after technical (but more costly) solutions were available to reduce nitrogen oxide emissions. Hatz has since resigned after being suspended amidst the fallout of the current "Dieselgate" scandal.

49. According to German news reports, Volkswagen knew that its "software" solutions to meet U.S. emissions regulations were, in fact, illegal, but decided to implement them anyway.

50. Third-party supplier Bosch, which helped to develop and supply the defeat device software installed in the 2.0 liter TDI[®] engines, is reported to have warned Volkswagen specifically that it would be illegal to sell cars with the software set so as to evade emissions testing, but Volkswagen ignored Bosch, and implemented and installed the software in exactly that forbidden manner.

51. Despite its inability to engineer a solution to its diesel emissions problems and despite knowing that the only way it could meet U.S. emissions requirements was to install software to cheat emissions testing, Volkswagen effectively doubled-down on its ambitions in

the U.S. by launching an aggressive ten-year plan to triple its annual U.S. sales with the support of a multi-million dollar marketing push, headlined by its now-rebranded (and falsely described) “Clean Diesel” TDI® engine technology.

52. By 2008, Volkswagen was heavily touting its development of “Clean Diesel” technology, explaining in its own publications that its 2.0 Liter TDI® engine represented a breakthrough in fuel economy, power and cleanliness with a pioneering “exhaust gas after-treatment” system that offered “the potential for future improvements in exhaust gas standards and the associated technologies.” See “Self Study Program 826803: 2.0 Liter TDI Common Rail Bin5 ULEV Engine,” Volkswagen of America, Inc. (2008). According to Volkswagen, its 2.0L TDI® engine’s “after-treatment” system consisted of a particulate filter with upstream oxidation catalyst and an Exhaust Gas Recirculation (“EGR”) system designed to reduce NOx emissions so as to comply with “all emissions regulations” in the United States.

53. Volkswagen used its supposed “Clean” emissions as a selling point to consumers increasingly concerned about the environment, and even professed that its diesel-based technology was on par with, if not better than, the many hybrid electric options offered by Volkswagen’s competitors.

54. For example, in an October 2009 interview with *Business Insider*, Mark Barnes, the Chief Operating Officer of VW America, was pointedly asked “What is the advantage of a diesel over a hybrid?” and he explained:

It’s a fantastic powertrain. It gives very good fuel economy. It’s also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So a very, very clean running engine. Clean enough to be certified in all 50 states.

Gayathri Vaidyanathan, "Volkswagen Preps for a Diesel Revolution," *Business Insider*, Oct. 2009; available at <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10> (last accessed on January 7, 2016).

55. In that same interview, when asked "how do you re-brand something that's dirty like diesel as something that's green?" Barnes stated:

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

Id.

B. VOLKSWAGEN, AUDI, AND PORSCHE DEVELOPED MULTI-MILLION DOLLAR ADVERTISING CAMPAIGNS PREMISED ON DECEIVING CONSUMERS ABOUT "CLEAN" DIESEL

56. Having re-branded its diesel technology with the false, but stereotype-busting, moniker "Clean Diesel," Volkswagen and the other Defendants pushed their diesel-powered vehicles in the State of New Mexico with a massive marketing campaign funded by tens of millions of dollars every year. Consumers in New Mexico were bombarded by print ads (appearing in newspapers, magazines, and brochures), television commercials, Internet websites, online banner ads, YouTube videos, social media feeds, and with direct dealer communications condoned and supported by Defendants. All of this advertising was premised on the lie that Defendants' TDI[®] diesel engine technology was "clean," "green" and good for the environment, without necessitating compromises in vehicle performance or efficiency. None of this was true, and thus all of the advertising for the Affected Vehicles was unfair, deceptive, false, or misleading.

57. Defendants' advertising is comprised of both affirmative misrepresentations and omissions. With respect to omissions, Defendants marketed and sold each of the Affected Vehicles despite knowing that they failed to comply with emissions regulations, and thus Defendants wrongfully omitted, and failed to advise consumers, that the Affected Vehicles were illegal to drive on account of their non-compliant emissions of nitrogen oxides, and undesirable to purchase, own or operate because they were harmful to the environment.

58. With respect to affirmative misrepresentations, Defendants' entire marketing and advertising campaigns for each of the Affected Vehicles was premised on the lie that its diesel-powered vehicles were great performing, highly-efficient, "clean," environmentally-friendly options to consumers, when the exact opposite was true. The touted performance and efficiency of the Affected Vehicles in Defendants' advertising was unfair, deceptive, false or misleading because the touted performance and efficiency ratings were only attainable by dramatically exceeding emissions regulations. The "clean," "green" and "environmentally-friendly" or "eco-friendly" representations were also unfair, deceptive, false or misleading because the cars were dirty, bad for the environment, and dramatically exceeded emissions regulations for harmful pollutants.

59. In all of Defendants' advertisements, moreover, the mere description of the diesel engine technology itself, regardless of the particular Affected Vehicle, as "TDI[®] Clean Diesel" was unfair, deceptive, false, or misleading. Thus, this is a case where Defendants boldly touted untruths, and tried to sell vehicles on the basis of a misleading and deceitful marketing message.

60. While many examples of Defendants misleading advertising and marketing have since been "scrubbed" from a variety of Internet sources by Volkswagen, many examples of these

deceptive advertisements are described below, with additional examples of unfair, deceptive, false, or misleading advertising to be obtained in discovery.

1. Volkswagen's Unfair and Deceptive Advertisements

(a) VW's "Clean Diesel" Campaign

61. Beginning in 2008, Volkswagen set out to change the U.S. consumer's perceptions about diesel engines from being dirty, smoky, sooty, and bad for the environment to being "clean" and a top choice for the eco-conscious car buyer.

62. In August 2008, by way of a corporate press release, Volkswagen boasted that it had developed the first diesel engine to comply with the emissions standards in all 50 states, namely, the 2.0 liter TDI[®] diesel, which initially debuted in the Volkswagen Jetta.

63. According to VW America's then-CEO, Stefan Jacoby: "We are proud to be the first manufacturer to offer a clean diesel vehicle for sale in all 50 states[.]" The press release further touted that the Jetta TDI[®] offered a "no compromise alternative fuel driving experience, that provides the customer with the best of both worlds – excellent fuel efficiency combined with a dynamic driving experience."

64. Starting by at least early 2009, through a variety of print ads, television commercials, and through various means of Internet marketing, Volkswagen embarked on a massive new campaign in North America to promote and tout its now-growing "family" of supposedly "Clean Diesel" TDI[®] vehicles.

65. Volkswagen's re-branding of its 2.0 liter and 3.0 liter TDI[®] diesel engines as "Clean Diesel" was intended to convey, and did convey, to consumers that its TDI[®] diesel engines were better than diesel engines of the past because they purportedly ran "clean," not only with less smoke, soot, and pollutants than older diesel engines, but also in an environmentally-friendly and legally-compliant manner with respect to emissions.

66. In fact, Volkswagen repeatedly used the word “Clean” in its marketing to refer specifically to its engine’s emissions, attempting to appeal to environmentally-conscious consumers who might otherwise have been concerned about pollution known to be associated with diesel engines. Volkswagen’s “Clean Diesel” campaign was designed to convince these environmentally-conscious consumers that such pollution concerns had been eliminated thanks to Volkswagen’s advanced diesel technologies, and that therefore Volkswagen’s “Clean Diesel” family of vehicles might appeal to a consumer that might otherwise be considering hybrid vehicle offerings from Volkswagen’s competitors.

67. All of Volkswagen’s advertisements containing the “Clean Diesel” statement were unfair, deceptive, false, or misleading to consumers because the Volkswagen’s vehicles were not “clean.” In truth, they emitted dangerously high levels of pollutants, including nitrogen oxides, far in excess of legal limits, and were not good or better for the environment when compared to hybrids or virtually any other gas-powered passenger vehicle on the market. Some examples of these misleading “Clean Diesel” promotions are as follows:

**Meet the Volkswagen
TDI Clean Diesel
Family.**



TDI[®] Clean Diesel



Beetle TDI[®] Clean Diesel



TDI

\$25,330*
STARTING MSRP

31 **41***
CITY HWY

- Rearview camera
- Touchscreen sound system
- Keyless access with push-button start



TDI w/ Sun., Sound, & Nav.

\$28,525*
STARTING MSRP

31 **41***
CITY HWY

- Fender[®] Premium Audio System
- Touchscreen navigation
- Rearview camera

68. The supposed cleanliness of Volkswagen's TDI® vehicles was heavily emphasized and became the centerpiece of Volkswagen's diesel advertising campaign. As if "Clean" diesel was not a strong enough message, Volkswagen at times highlighted just how "Clean" by adding "Like really clean diesel" to certain advertisements, as follows:



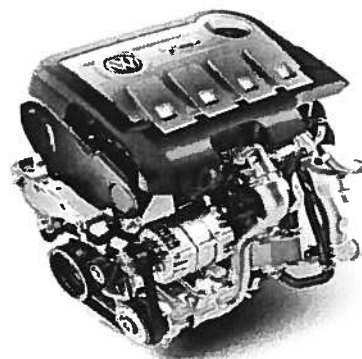
69. In another particular advertisement, appearing at least on a Volkswagen's website, Volkswagen touts: "This ain't your daddy's diesel... Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel."

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

www.vw.com/efficiencyinfo



70. In addition to promoting the idea of “Clean” diesel, Volkswagen also targeted consumers with a misleading message about its efficiency and performance, hoping to lure potential hybrid customers with false promises about TDI® diesel technology.

Efficiency. Now available without compromise.

Hybrids aren't the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for starters. It can go up to 814 miles uninterrupted. Now that's a game changer.

- Seven efficient models to choose from
- Efficiency from up to 29 to 46 hwy mpg
- Ranges from up to 594 to 814 hwy miles on a single tank of fuel

[View key fuel efficiency and range info](#)



Of course, the touted efficiency and performance in this particular ad could only be achieved by cheating emissions tests, and not through any miracle of German engineering. Once these vehicles are brought within the emissions regulations, through the addition of urea injection tanks, or through some other combination of fixes, the touted efficiency and performance features in Volkswagen's advertisements will be diminished or lost entirely.

71. Volkswagen also ran numerous ads, including banner ads on unrelated websites, that promoted its “Clean Diesel” technology by directing consumers to Volkswagen's website, or to other so-called “unbranded” websites that were designed and funded (at least in part) by Defendants, but which were disguised as independent advice concerning diesel-powered cars.

72. For example, Volkswagen ran the following ad, promoting how its diesel technology was “clean” and an “eco-conscious choice,” and then it directed consumers to an unbranded website called “clearlybetterdiesel.org.”

Diesel has really cleaned up its act.

Find out how clean diesel technology impacts fuel efficiency and performance, while also being a more eco-conscious choice.

→ clearlybetterdiesel.org



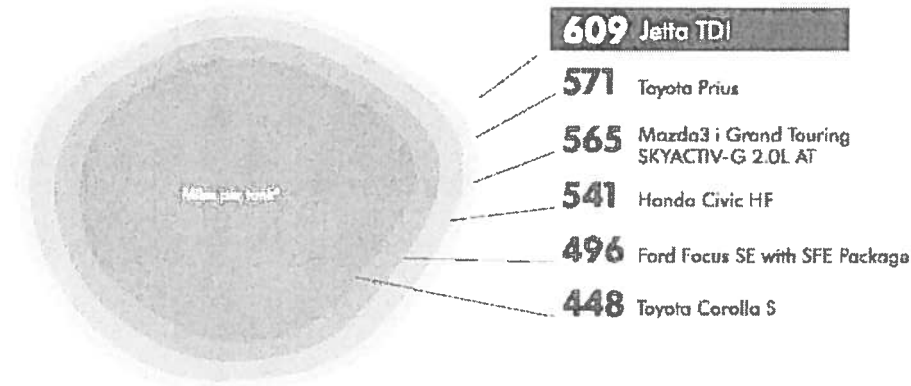
The “clearlybetterdiesel.org” unbranded website remains active, but, curiously, several buttons and links have now been disabled. Specifically, the buttons linking to “Environment” (which presumably boasted about TDI’s high efficiency and low emissions) and “Partners” (which includes Defendants here) are no longer accessible.

73. That website (www.clearlybetterdiesel.org), however, has not yet been completely scrubbed of unfair, deceptive, false, or misleading marketing. For example, the site continues to falsely represent that:

The term “Clean Diesel” refers to innovative diesel engine technology, as well as the latest diesel fuel for vehicles. In contrast to traditional diesel, Clean Diesel is superior, since both *the new generation of engines* and the fuel itself *meet the strictest emission regulations in the U.S. (issued by the state of California)*. Clean Diesel fuel contains less than 15 parts per million of sulphur; our Clean Diesel partner vehicles deliver on average 18% higher fuel efficiency while reducing CO₂ emissions when compared to corresponding gas models. *Since Clean Diesel is not only cleaner but also more fuel-efficient, the new Clean Diesel vehicles are friendlier to both the environment and drivers' wallets throughout the U.S.* (emphasis added).

74. Volkswagen also boasted about “Clean Diesel’s” supposed efficiency when compared to hybrid vehicle offerings of competitors, again in an effort to appeal to the environmentally-conscious consumer. At the same time, Volkswagen would tout how its

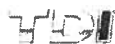
vehicles also ran clean, falsely claiming in one particular ad that the Jetta TDI was “90% cleaner than previous diesel engines,” as follows:



More adventurous.

The very thought that the Jetta TDI can drive up to 609 miles on one tank is impressive all by itself.™ But the fact that it's exceptionally fun to drive with its 236 lbs/ft of torque and turbocharged clean diesel engine is worth writing home about. Which is something you can do when you take it on long drives to faraway places. Like from Los Angeles to Napa Valley in time to hit the wineries when you get there. Or from Maryland to Maine, sampling every crab cake and lobster roll along the way. The fact that it's 90% cleaner than previous diesel engines might encourage you to get up and go more often than you expect, however. Your Jetta encourages spontaneity.

†EPA mileage estimates for the Jetta TDI are based on test results for the Jetta TDI. Actual mileage may vary. ©2009 Volkswagen of America, Inc. All rights reserved. Volkswagen of America, Inc. is a registered trademark of Volkswagen Group of America, Inc. All rights reserved. Volkswagen of America, Inc. is a registered trademark of Volkswagen Group of America, Inc. All rights reserved. Volkswagen of America, Inc. is a registered trademark of Volkswagen Group of America, Inc. All rights reserved. Volkswagen of America, Inc. is a registered trademark of Volkswagen Group of America, Inc. All rights reserved.



Jetta TDI Clean Diesel

(b) Volkswagen’s Think Blue And “Eco-Conscious” Consumer Marketing

75. The ultimate dream for Volkswagen’s marketing arm came to pass in 2009 when the Jetta TDI® was awarded the “2009 Green Car of the Year,” by *Green Car Journal*. As a result of the award – which was bestowed only because of the false emissions and efficiency figures Volkswagen had concocted with its “defeat device” – the Company began marketing the Jetta TDI® as the “Official Pace Car of the Environment.”

76. Marketing TDI[®] as not only “Clean,” but also “green” and “eco-friendly” has pervaded Volkswagen’s advertisements ever since. In 2010, the Audi A3 TDI[®] received the same award. Both awards, however, have since been rescinded.

77. Volkswagen did not hesitate to capitalize on its bogus environmental awards, and created a campaign purportedly dedicated to eco-friendly living and an environmentally-friendly lifestyle that it called “Think Blue.” As part of the Think Blue campaign, Volkswagen’s TDI[®] vehicles were represented as “one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors.” Think Blue, Volkswagen said, was “about being more responsible on the road and more environmentally conscious,” and TDI[®] equipped vehicles supposedly fostered these principles.

78. Marketing materials and advertisements for Volkswagen vehicles since 2009 have consistently portrayed TDI[®] diesel vehicles as being built “for the eco-conscious” consumer and an “eco-conscious choice,” because – according to Volkswagen’s false claims – TDI[®] technology “delivers a dramatic reduction in both fuel consumption and exhaust emissions and offers some of the cleanest and most efficient alternatives on the market today.” One tagline in Volkswagen’s advertisements for the TDI[®] diesel vehicles even stated “Thanks in advance from the environment.”

(c) Volkswagen Print Brochures And Website Statements

79. Volkswagen also made unfair, deceptive, false, or misleading statements in its print brochures, which were made available at dealerships and which were also available online at Volkswagen’s Internet website. These brochures made numerous statements falsely describing Volkswagen’s TDI[®] diesel engine technology, including statements concerning its high efficiency, powerful performance, and supposed “clean” and “green” characteristics. In addition,

the brochures falsely touted eco-friendly emissions figures and the legally-compliant nature of the vehicle's emissions in all 50 states, including New Mexico.

80. For example, a "2012 Volkswagen Family" brochure, applicable to all Volkswagen models, states:

Let TDI Clean Diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles* on a single tank without sacrificing one bit of turbocharged performance. *That's all thanks to the TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.* On most models, you can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level. (emphasis added, notes omitted).

81. Similarly, a "2013 Volkswagen Family" brochure, applicable to all models, states:

When you've had your fill of filling stations, hit the road in your TDI Clean Diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank* without sacrificing one bit of turbocharged performance. *That's all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels.* Far and away, it's our best diesel yet. (emphasis added, notes omitted).

82. A Volkswagen 2012 "Volkswagen TDI Clean Diesel" brochure applicable to the six models of Volkswagen TDIs then on the market (the Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg) states:

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

-and-

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

83. A Volkswagen 2010 Jetta and Jetta SportWagen brochure states:

The 2.0L TDI® Clean Diesel engine gives you 140hp and 236lbs-ft of torque. ***This engine is the toast of Europe for its quickness, low emissions, and fuel efficiency—a staggering 38 city/44 highway mpg (automatic) based on real-world AMCI-certified testing (30 city/42 highway mpg. EPA estimates).**** (emphasis added, notes omitted)

-and-

Jetta TDI Clean Diesel offers fuel efficiency,* power, performance, and a \$1,300 tax credit** from Uncle Sam because ***it qualifies as an Advanced Lean Burn Credit. Or, in other words, lean, mean, cleaner burning machines. Volkswagen believes in delivering a no-compromise German-tuned auto that performs, and still leaves a small carbon footprint. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% less soot than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur.*** It's powerful, with the kind of low-end torque that racers and tuners demand. It's efficient, using a turbocharger and smart exhaust design to burn fuel more effectively. ***So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars certified in all 50 states.*** And best of all, it will help save you money with an out-of-this-world AMCI-estimated mileage of 38 city/44 highway mpg* (automatic) and over 594 miles on a single tank of fuel.† There's even a Jetta SportWagen TDI Clean Diesel, with the same astonishing clean diesel technology, plus a whopping 66.9 cubic feet of cargo room.††” (emphasis added, notes omitted).

84. A Volkswagen 2011 Golf brochure states:

Regardless of which Golf model you get, you'll be seeing a lot fewer gas stations and a lot more road. The 2.5L Golf comes standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg*. ***Opt for the Golf TDI model and you'll enjoy a turbocharged clean diesel engine with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That's up to 609 miles per tank*. * And you'll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet.*** So whether you're in the market for IntelliChoice's 2010 “Best Overall Value Compact Car over \$17,000,”† or you want to go for a variation on that theme and get the ever-popular TDI model, you can't go wrong. In fact, you can go very right for a long, long time.” (emphasis added, notes omitted).

85. A Volkswagen 2012 Passat brochure states:

Let the Passat TDI Clean Diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles* on a single tank without

sacrificing one bit of turbocharged performance. *That's all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.* You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.” (emphasis added, notes omitted);

-and-

The TDI Clean Diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. *So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.*” (emphasis added).

86. A Volkswagen 2013 Beetle brochure states:

Start the TDI® Clean Diesel model and hear the surprisingly quiet purr of *the first clean diesel Beetle*, designed for both power and efficiency.** (emphasis added, notes omitted).

87. A Volkswagen 2014 Beetle brochure states:

2.0L TDI Clean Diesel engine. Engineered with the idea that less is more. The Beetle TDI has lower CO2 emissions compared to 84% of other vehicles.* *So every getaway you make will be a cleaner one.* (emphasis added).

88. A Volkswagen 2014 Touareg brochure states:

3.0L TDI Clean Diesel engine. Engineered with the idea that less is more. The Touareg TDI has lower CO2 emissions compared to 88% of other vehicles.* *So every getaway you make will be a clean one.*” (emphasis added).

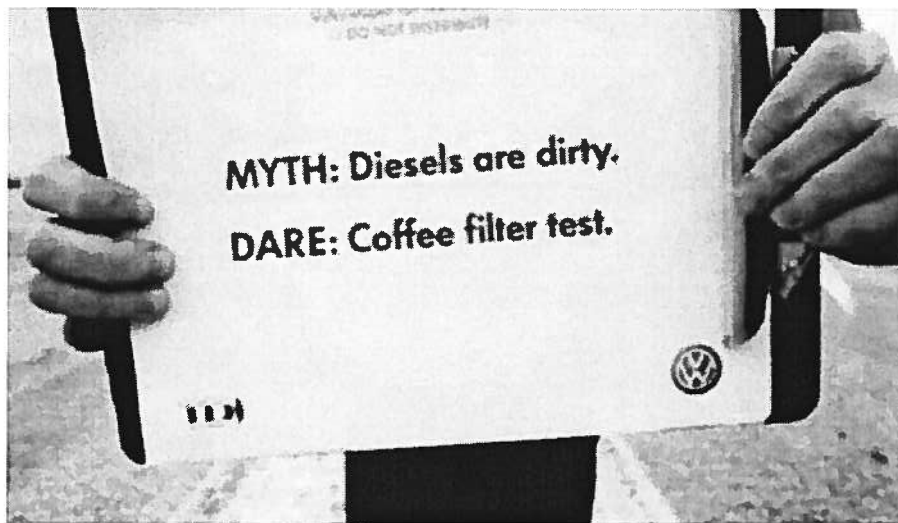
(d) Volkswagen's “TDI Truth & Dare” Campaign

89. In addition to its more traditional vehicle brochure marketing, Volkswagen also pressed its misleading marketing message through Internet marketing. For example, in May 2009, Volkswagen launched its “TDI Truth & Dare” campaign through a website designed to promote its TDI diesel fuel line of cars.

90. The website, www.tditruthanddare.com, featured video clips and interactive tools challenging “myths” like “diesels are slow” and “diesel is dirty.” In the “eco-conscious car showdown,” the Jetta TDI races against the Toyota Prius, and then a purported “Savings

Calculator” showed website visitors the “facts” about how VW’s TDI diesel cars stacked up against their competitors with regard to emissions testing and fuel-efficiency.

91. On the same website, in one of the more startling (and misleading) videos, Volkswagen’s actors performed what it called a “diesel decaf” challenge, where coffee filters were placed on the exhaust pipes of a Touareg TDI® and an old diesel Mercedes, and then coffee was made using both. Screen shots from this video are below:





See <https://www.youtube.com/watch?v=zvt7Wjwc-Q> (last accessed January 7, 2016).

92. According to Volkswagen of America’s VP for Marketing, Tim Ellis, “[w]e have a lot of fun in debunking a lot of the myths... And it’s just the beginning. We’re going to ramp it up in the coming year.” And ramp it up they did, pouring tens of millions of dollars more, year after year, into promoting falsehoods about the purportedly cleanliness and eco-friendly characteristics of their TDI[®] diesel engine technology.

(e) Volkswagen’s “Old Wives Tales” Campaign

93. Another series of enormously successful (and stunningly misleading) Internet and television commercials run by Volkswagen starting in 2013-2014 was its “Old Wives Tales” campaign, which used three “old wives” to purportedly debunk the myths surrounding diesel technology. A screen shot of one of those commercials appears below:



94. In this commercial, one grandmotherly-figure seated in the passenger seat of a sparkling new, white VW Golf SportWagen asks, “Aren’t diesels dirty?” “Diesel in Latin means ‘dirty,’” chimes in her friend in the backseat. To prove them wrong, the old lady in the driver’s seat gets out of the car and holds her white scarf up to the tailpipe of the running car, then exclaims, “See how clean it is?” while holding up her spotless scarf.



See <https://www.youtube.com/watch?v=brp48vioYVM> (last accessed January 7, 2016).

95. In other installments of the “Old Wives” ad campaign, additional supposed myths of diesel technology were attacked and purportedly debunked, including that diesel engines were sluggish, loud, or smelled bad.

(f) Volkswagen's Facebook and Twitter Accounts

96. Volkswagen also targeted consumers with deceptive advertising through other social media sources, including the Company's Facebook and Twitter accounts.

97. On or about May 18, 2009, Volkswagen started bombarding consumers with banner ads, linking people to their "Meet the Volkswagens" Facebook page where they could watch a variety of ads, including the "Truth & Dare" ads, and learn more about the "TDI Clean Diesel" line of vehicles.

98. With respect to the Company's Twitter account (which has since been scrubbed of diesel references), it previously contained false marketing statements about Volkswagen's Clean Diesel technology. For example, a tweet from earlier in 2015 stated: "Diesel cars are really smoky and sluggish? That's the past. The 2015 Golf TDI is, however, a lot of fun." Other tweets stated "Some questions are hard to ask, unless you're asking about top-notch clean diesel. That's easy" and "what is clean diesel exactly? It's a diesel engine that has all the fuel efficiency without the sluggishness or smoke!"

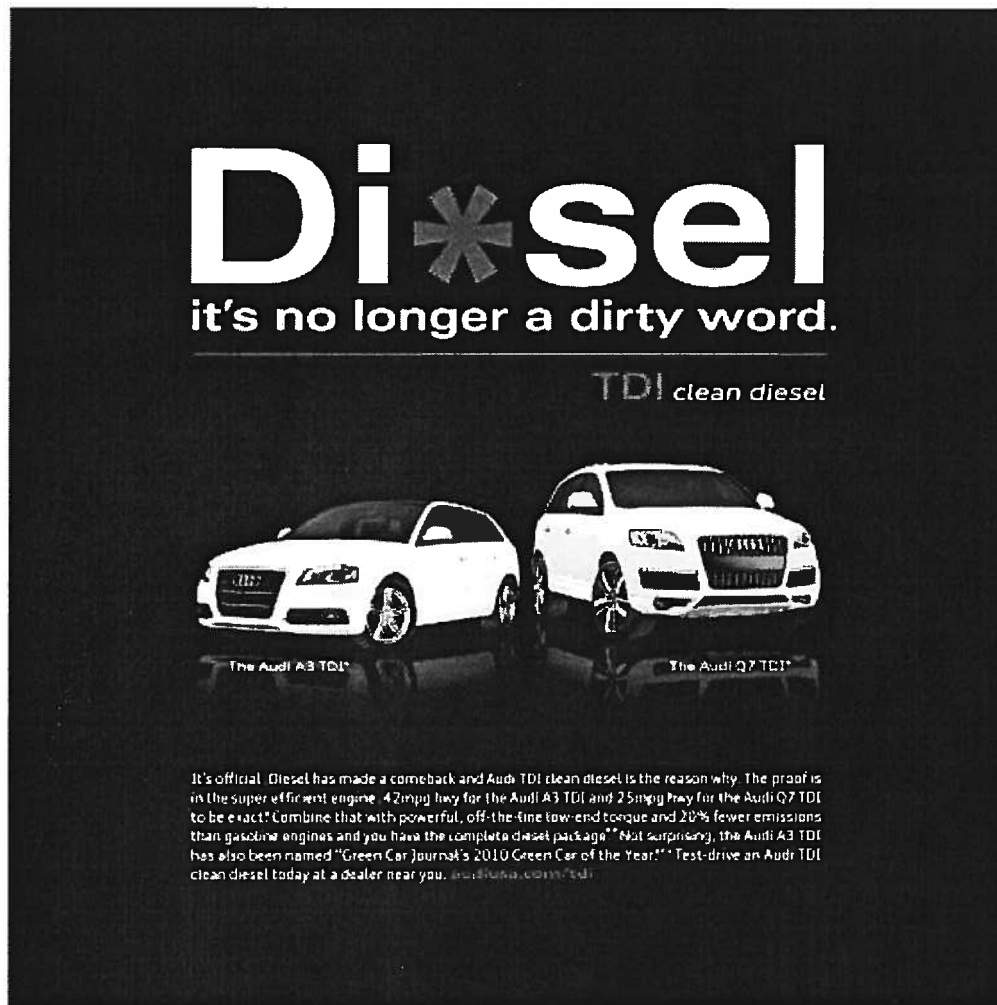
99. In all of its social media marketing, through banner ads, Facebook, and Twitter, Volkswagen's message was consistently unfair, deceptive, false, or misleading because it portrayed its TDI diesel engine vehicles as being "clean," "green," and fit for the "eco-conscious" consumer, when in truth the Affected Vehicles were dirty, high-pollution emitting vehicles that were not only illegal to drive, but that no consumer concerned about the environment would even consider purchasing.

2. Audi's Unfair, Deceptive, False, and Misleading Advertisements

(a) Audi's "Clean Diesel" Campaign

100. Like its parent company, Volkswagen, Audi also adopted the misleading "Clean Diesel" slogan to assist in its marketing push, and it relied on the "Clean Diesel" tagline to

advertise and market its diesel engine vehicles as being “clean,” “green” and environmentally-friendly throughout its advertising. Some examples of Audi’s print and online advertisements include the following:



Di*suel
it's no longer a dirty word.
TDI clean diesel

The Audi A3 TDI[®] The Audi Q7 TDI[®]

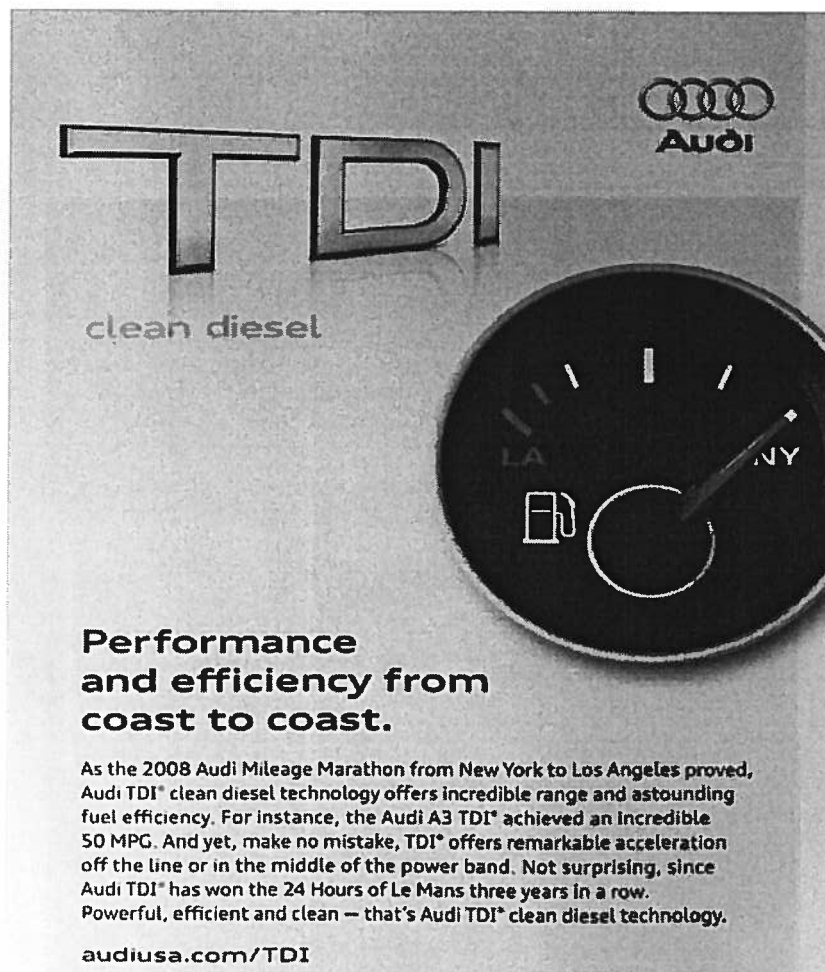
It's official. Diesel has made a comeback and Audi TDI clean diesel is the reason why. The proof is in the super-efficient engine: 42mpg hwy for the Audi A3 TDI and 25mpg hwy for the Audi Q7 TDI to be exact.* Combine that with powerful, off-the-line low-end torque and 20% fewer emissions than gasoline engines and you have the complete diesel package.** Not surprising, the Audi A3 TDI has also been named "Green Car Journal's 2010 Green Car of the Year."** Test-drive an Audi TDI clean diesel today at a dealer near you. audiusa.com/dtdi



Di*suel
it's no longer a dirty word
TDI clean diesel



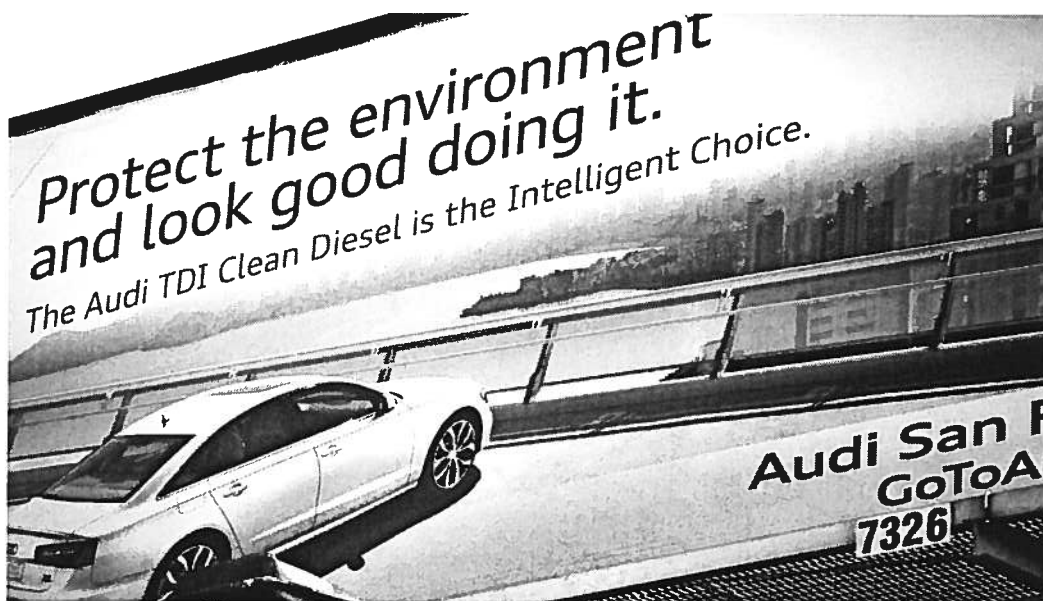
101. Audi’s use of the “Clean Diesel” branding for its Affected Vehicles was unfair, deceptive, false, or misleading for the same reasons as it was Volkswagen. Like Volkswagen, Audi also boasted about performance and efficiency in its diesel vehicles through marketing and promotional advertisements, despite the fact that such performance and efficiency features were only possible with illegal vehicle emissions. For example, Audi ran the following print ad, among many others, touting the supposed performance and efficiency of its TDI® vehicles:



102. Of course, just as with Volkswagen, the performance and efficiency touted in the advertisement were only possible because of Audi's emissions test cheating through the defeat device it installed on all of its Affected Vehicles. Had Audi designed its Affected Vehicles in a manner that actually complied with the emissions laws, it would not have been able to fairly and truthfully make the performance and efficiency claims that it did.

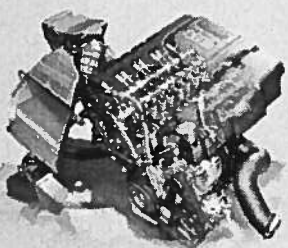
(b) Audi's Environmental Marketing

103. Like Volkswagen, Audi also heavily relied on purported "green" marketing, trying to push the idea that its diesel vehicles were good for, and protective of, the environment. For example, in some print ads, which it also used as billboard advertising in some markets, Audi promoted its diesel cars as being protective of the environment, as follows:



104. In other print ads for the Audi A3, Audi also falsely touted in its advertising that its 2.0L TDI[®] clean diesel engine “meets or exceeds the 50 state emissions requirements” when that was only possible because of illegal defeat device software installed on the Audi A3 2.0L TDI[®] engine.

A3 engines

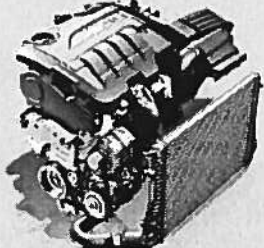


2.0T

The award-winning 2.0 TFSI engine provides 200 hp and 207 lb.-ft. of torque and combines Audi's valvetronic system, variable valve timing and TFSI's direct injection for increased power and efficiency. The Audi 2.0 TFSI has been the engine of choice for more than 1.3 million Audi drivers worldwide and is one of the most awarded engines of the last decade.

2.0 TFSI Specs

Power	200 hp @ 5100 rpm
Torque	207 lb.-ft. @ 1800 rpm
0-60 mph	7.3 sec.
0-100 mph	6.9 sec.
0-150 mph	6.7 sec.
City	21/30 mpg
Highway	22/28 mpg
Combined	21/28 mpg



TDI

With the potent combination of direct diesel injection and turbocharging, the 2.0 liter TDI clean diesel engine delivers exceptional power and performance, complemented by impressive EPA-estimated 30 MPG city and 42 MPG highway ratings*. Producing 30 percent fewer CO2 emissions than a comparable gasoline engine, the 2.0 TDI clean diesel also meets or exceeds the 50 state emissions requirements.

2.0 TDI Specs

Power	140 hp @ 4200 rpm
Torque	236 lb.-ft. @ 1750 rpm
0-60 mph	8.9 sec.
City	30/42 MPG

105. Where Volkswagen had its “Think Blue” campaign, designed to mislead consumers into believing they were dealing with a socially and environmentally-responsible company that manufactured and sold eco-friendly cars, Audi published for consumers its purported “Responsibility Report,” describing social and environmental initiatives that the Company purported to adhere and promote.

106. In Audi’s 2015 Responsibility Report, for example, it highlighted its TDI® diesel technology, and on a page titled “TDI clean diesel,” Audi falsely claims that “thanks to particulate filters that eliminate diesel soot and an AdBlue emissions system that scrubs nitrogen oxide emissions, our diesel engines comply with the world’s most demanding emissions laws” – a knowingly false statement.

(c) Audi Print Brochures And Website Statements

107. Deceptive and unfair descriptions of Audi’s Affected Vehicles also pervaded its print brochures, which were available both online and in hard-copy from dealerships. For example, an Audi 2011 A3 brochure states:

With the potent combination of direct diesel injection and turbocharging, the 2.0 liter TDI® clean diesel engine delivers an impressive 236 lb-ft. of torque and produces 140hp. The power and performance is complemented with impressive EPA-estimated 30 MPG city and 42 MPG highway ratings*. ***Producing 30 percent fewer CO₂ emissions than a comparable gasoline engine, the 2.0 TDI clean diesel also meets or exceeds the 50 state emissions requirements.*** (emphasis added, notes omitted)

-and-

Long gone are the days of dirty, smoking diesel engines. Audi TDI clean diesel technology is responsible for the cleanest diesel engines in the world, with 30 percent fewer CO₂ emissions than comparable gasoline engines, making it an environmentally friendly alternative to gasoline power. In fact, TDI clean diesel is compliant with California’s ULEV II requirement – the world’s most stringent emission standard. The result is a significant reduction in emissions that contribute to global warming. (emphasis added).

108. Audi 2016 A6 and A7 brochures similarly (and falsely) state that the TDI® versions of these cars meet emissions rating “ULEV II” and the 2016 A6, A7, and Q5 brochures all further identically state:

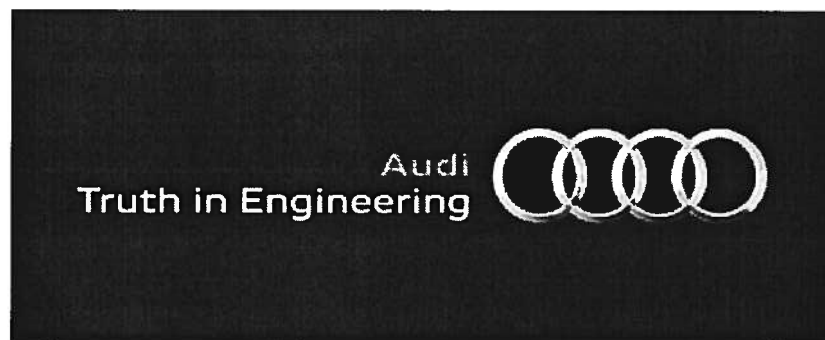
Taking advantage of the greater power density of diesel fuel over traditional gasoline, the available 240-hp 3.0-liter TDI® clean diesel V6 delivers incredible torque (428 lb-ft) and passing power, while boasting impressive fuel efficiency numbers.¹ *It also produces fewer emissions* with a combination of Piezo direct injection, a high compression ratio, *and innovative after-exhaust treatment that helps eliminate up to 95% of diesel NOx emissions.* (emphasis added, notes omitted)

109. An Audi 2016 A8 brochure also lists the TDI® versions of this car as meeting emissions rating “ULEV II” and further states:

With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter TDI® clean diesel engine’s elasticity in the passing lane is almost as impressive as its ability to take on even the longest road trips. *And with features like AdBlue® exhaust after-treatment helping to make every journey a little cleaner, this is a performance win for all sides.* (emphasis added).

(d) Audi’s False “Truth In Engineering” Slogan

110. Most of Audi’s print, Internet, and commercial advertising included Audi’s now-infamous slogan, which was, and remains to this day, “Truth in Engineering.”



111. As we now know, however, Audi’s boasting and touting of its superior engineering was premised not on “truth,” but on a lie. Indeed, the engineering of the Affected Vehicle’s in Audi’s stable can only be described as “Deceit in Engineering” or “Engineering the

Truth” and the slogan “Truth in Engineering” is unfair and deceptive when it applies to the Audi’s stable of TDI® diesel vehicles.

(e) Audi’s “Green Police” Super Bowl Commercial

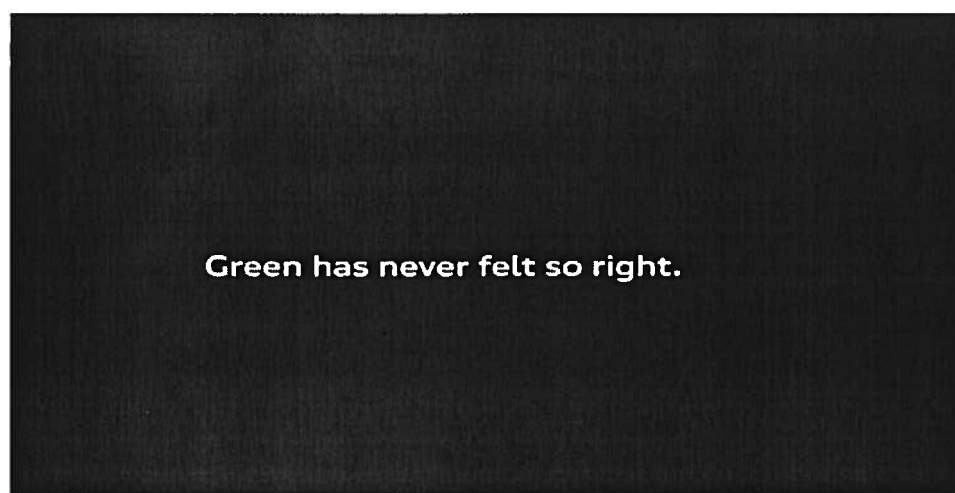
112. Audi ran numerous television commercials for its TDI® “Clean” diesel vehicles, many of which touted the supposed eco-friendly characteristics of Audi’s diesel engine technology. In one particular example, called “The Green Police” – which Audi aired in the most high-profile advertising spot available during the 2010 NFL Super Bowl – Audi showed viewers a special force of environmental police that it called the “Green Police” who were charged with stopping crimes against the environment. Green police were shown arresting people for using styrofoam cups and plastic bags at the grocery store, throwing out batteries, drinking water from plastic bottles, and the like, and then viewers are taken to a highway checkpoint, called an “ECO ROADBLOCK,” where cars that are bad for the environment are being flagged by the Green Police. A screen shot of this commercial appears immediately below:

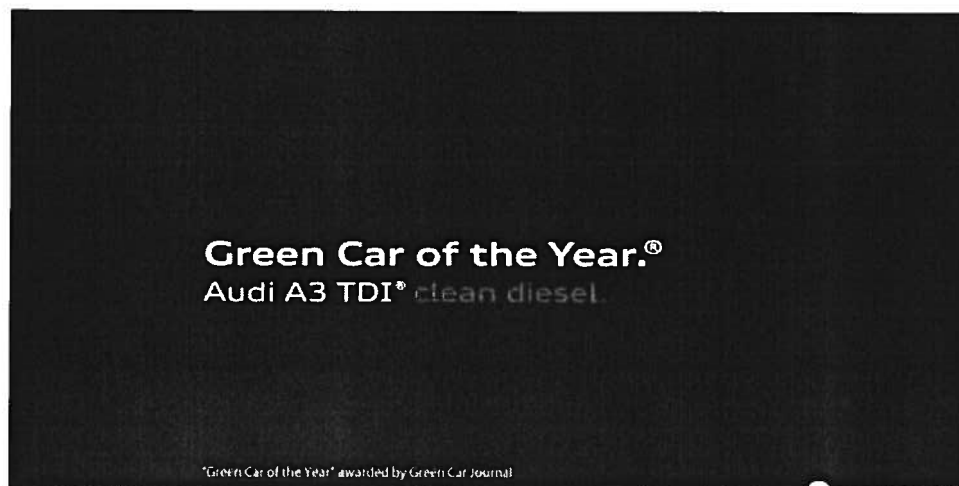


113. When the Green Police at the roadblock see that one car is the Audi A3 TDI® SportsWagen, however, they give the car a “thumbs up,” and the Green Police allow the driver to bypass the roadblock.



114. After speeding past the other vehicles in the white A3 TDI® SportWagen, with the Green Police jingle playing in the background, the screen then fades to black and falsely touts the supposed “green credentials” of the A3 TDI®, as follows:





3. Porsche's Unfair, Deceptive, False, and Misleading Advertisements

115. Like Volkswagen and Audi, Porsche similarly used the “Clean Diesel” branding in its print, website, and social media marketing its Cayenne SUV, equipped with a 3.0 liter TDI® engine, and those ads were unfair, deceptive, false, or misleading for the same reasons.

116. For example, the marketing brochure for Porsche’s diesel-powered Cayenne sport-utility vehicle in 2013, which was available online or in print versions at dealerships, touted the vehicle’s “Intelligent Performance and efficiency – the core characteristics of Porsche engineering.” It boasted that “[t]his is no ordinary diesel. This is a Porsche 3.0 liter V6 turbo diesel engine. It’s a technological marvel, able to take its unique fuel source and transform it into clean, efficient, and incredibly torque-rich power.” Further, the brochure boasted Porsche had “refined” diesel engine technology, making its 3.0 V6 TDI® diesel engine “far advanced from what many people perceive – especially in terms of its acceleration, clean emissions, and quiet running operation.”

117. The 2013 Cayenne Diesel brochure was also more direct in its false descriptions of the supposedly Clean Diesel technology. On a page titled, “A cleaner diesel. Exhaust technologies,” Porsche describes the complete exhaust system of the vehicle and then states

plainly the processes described “help to ensure the reduction of harmful pollutants into the environment and make the Cayenne diesel compliant with U.S. emissions standards.”

118. All of the above marketing and advertising, or substantially similar advertising in preceding and subsequent years, was available to and/or seen by New Mexico consumers during the time period of at least 2008 to the present. Upon information and belief, more than one form of advertisement for each vehicle was “live” and was thus available to and/or seen by New Mexico consumers during each day of the entire period of Defendants’ scheme.

C. DEFENDANTS’ “DEFEAT DEVICE” SOFTWARE IS EXPOSED BY RESEARCHERS AND REGULATORS

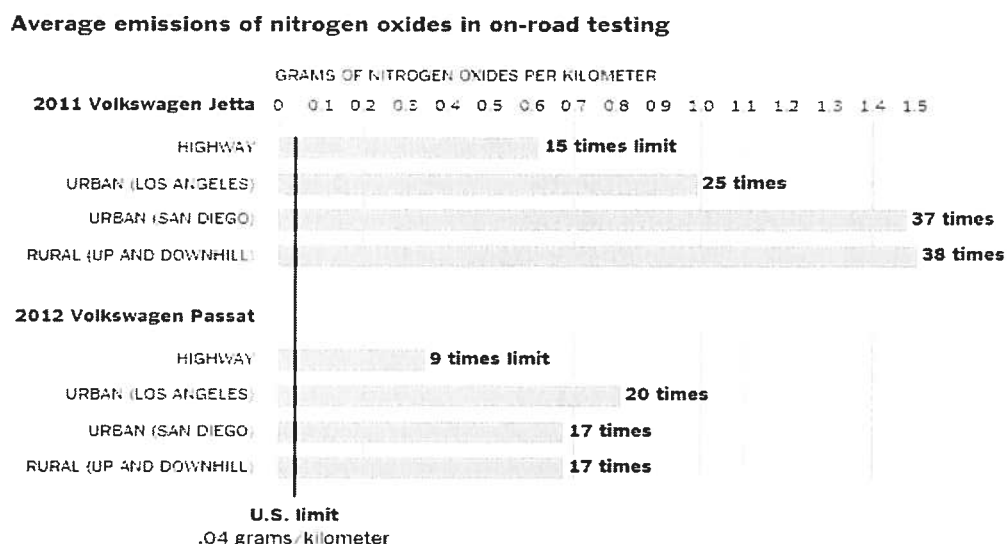
119. After marketing and selling its diesel vehicles in New Mexico and throughout the U.S. for years, in May 2014, independent researchers at West Virginia University, working with the International Council on Clean Transportation (ICCT), uncovered irregularities and inconsistencies between the published emissions levels in certain VW vehicles and the real world road tests that they had performed. *See* Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States, May 15, 2015 (available at http://www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final_may2014.pdf). (last accessed January 7, 2016).

120. ICCT researchers had been testing the real-world performance of so-called “Clean Diesel” cars in Europe, where emissions regulations are more relaxed, and they came away concerned by the emissions results. The ICCT team decided to test similar U.S. cars, fully expecting them to perform better and run cleaner. They found a willing partner for the study on the campus of West Virginia University, where a group of emissions researchers who mainly dealt with heavy trucks were looking for a partner to test diesel-powered cars in the United States.

121. The study did not target Volkswagen specifically, but two out of three diesel vehicles bought for the testing were Volkswagens (Jetta and Passat) and one was a BMW X5. According to reports, the West Virginia researchers were well-versed in real world driving diesel performance, and so they had certain expectations for how the test cars should ebb and flow in their emissions depending on if they were idling in traffic or cruising at highway speeds. The two Volkswagens raised immediate red flags because their emissions did not behave as expected.

122. CARB was informed about the research irregularities and signed on to participate in the research study. The CARB regulators tested the same vehicles in their lab in order to judge cars' compliance with CARB emissions standards.

123. That testing produced a shocking result: In the lab, the Volkswagens easily passed the tests, but on the roads in California, they were failing miserably, with levels of nitrogen oxide that were 30 to 40 times higher than the regulatory standards. As published in 2014, the study found the 2011 Volkswagen TDI® Jetta and the 2012 Volkswagen TDI® Passat far exceeded emissions standards for nitrogen oxides across all driving conditions, as follows:



Source: Arvind Kumar, Center for Alternative Fuels, Engines and Emissions at West Virginia University

124. The EPA and CARB began investigating, and demanded an explanation from Volkswagen officials about the research findings. Volkswagen officials, according to published reports, provided a very limited response, initially denying such allegations and attributing any such irregularities to faulty testing procedures. Dissatisfied with Volkswagen's response, EPA and CARB officials threatened Volkswagen that it might withhold certification of its next-year's diesel models if a more fulsome explanation was not provided.

125. Finally, on September 3, 2015, after being pressed for a sufficient explanation for more than a year, Volkswagen officials disclosed at a meeting with the EPA and CARB that it had installed a secret, sophisticated software algorithm on its 2.0 liter TDI® diesel vehicles that could detect when the car was undergoing emissions testing, and would switch the car into a cleaner running mode for purposes of passing the test. Volkswagen admitted at the time that the software constituted a "defeat device" that was forbidden by state and federal regulations.

126. Approximately 500,000 vehicles were sold in the U.S. between 2008 and 2015 containing the 2.0 liter TDI® diesel engine; primarily installed in the Volkswagen Jetta, Beetle, Golf, and Passat models, as well as in the Audi A3.

127. The presence of defeat device software on VW and Audi vehicles equipped with the 2.0 liter TDI® diesel engine immediately engendered suspicions about VW's similar 3.0 liter TDI® diesel engine. Upon closer scrutiny by the EPA and CARB, VW, Audi, and Porsche received a second Notice of Violation (NOV 2) informing them that defeat device software was detected on vehicles equipped with these engines as well.

128. At first, VW balked at the allegations, and sent out a terse statement on November 2, 2015, that it would cooperate with regulators, but flatly denying the allegations, asserting that

“no software has been installed in the three-litre V6 diesel powered units to alter emissions characteristics in a forbidden manner.”

129. This initial denial by Volkswagen concerning the legality of its 3.0 liter T TDI[®] diesel engines proved short-lived, and demonstrably false. On November 22, 2015, Audi and Volkswagen released a statement admitting that they failed to disclose three auxiliary emissions control devices (AECDs) to U.S. regulators. Without disclosure and subsequent approval of regulators, AECDs themselves are illegal. Audi and Volkswagen further stated: “One of them is regarded as a defeat device according to application U.S. law. Specifically, this is the software for the temperature conditioning of the exhaust gas cleaning system.”

130. Approximately 80,000 to 100,000 vehicles were sold in the U.S. between 2009 and 2016 containing the 3.0 liter TDI[®] diesel engine; primarily installed in the Audi A6 and A7 models, but also installed in the flagship Audi A8 sedan, the Audi Q5 and Q7, the Porsche Cayenne, and the Volkswagen Touareg.

D. NEW MEXICO’S EMISSIONS STANDARDS FOR NEW MOTOR VEHICLES ADOPTED AND ISSUED PURSUANT TO THE NEW MEXICO AIR QUALITY CONTROL ACT

131. With respect to vehicle emissions, the federal Clean Air Act, and regulations implemented thereunder by the federal Environmental Protection Agency, set a federal minimum standard to control vehicle pollution. *See* 42 U.S.C. § 7401.

132. Under a special waiver program, the State of California is entitled to adopt its own standards for the control of emissions from new motor vehicles or new motor vehicle engines so long as those standards are at least, in the aggregate, as protective of the public health and welfare as the applicable federal standards. *See* 42 U.S.C. § 7543(b).

133. States other than California may not adopt or enforce different standards relating to the control of emissions from new motor vehicles, *see* 42. U.S.C. § 7543(a), but are free to

adopt and enforce the vehicle emissions standards issued by the State of California if they so choose. *See* 42 U.S.C. § 7507.

134. The State of New Mexico, through its Environmental Improvement Board as well as through the Albuquerque-Bernalillo County Air Quality Control Board (“Air Quality Board”), adopted California’s regulations and standards governing new motor vehicle emissions at the end of 2007 and the beginning of 2008. All such regulations are adopted by New Mexico pursuant to New Mexico’s Air Quality Control Act, N.M. Stat. Ann. §§ 74-2-1, *et seq.* (hereafter, the “AQCA”), and are all published in the New Mexico Register and incorporated into the New Mexico Administrative Code.

135. Emissions standards for new motor vehicles governing all geographic territory within the State of New Mexico other than Bernalillo County, issued by the Environmental Improvement Board pursuant to the AQCA, were enacted and entered into force on December 31, 2007. *See* N.M.A.C. §§ 20.2.88, *et seq.* (the “Statewide Emissions Standards”).

136. At the time of their enactment, these Statewide Emissions Standards applied to all new motor vehicles, including the Affected Vehicles, “[s]tarting with model for model year 2011 and each model year thereafter[.]” *See* N.M.A.C. § 20.2.88.101.

137. On December 30, 2010, the New Mexico Environmental Improvement Board amended the Statewide Emissions Standards, effective January 31, 2011, to state that “[a]ll requirements of this part are waived from January 31, 2011 through January 1, 2016.” *See* New Mexico Register, Volume XXI, Number 24, Dec. 30, 2010; *see also* N.M.A.C. § 20.2.88.14. On December 13, 2013, the Environmental Improvement Board repealed the Statewide Emissions Standards. *See* New Mexico Register, Volume XXIV, Number 23, Dec. 13, 2013.

138. Thus, the Statewide Emissions Standards apply to “all persons who deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive or register new passenger cars, light-duty trucks, medium-duty motor vehicles within the jurisdiction of the environmental improvement board,” which geographically consists of all of the State of New Mexico other than Bernalillo County, but only for Affected Vehicles model years 2011 and greater between December 31, 2007 and January 31, 2011. *See* N.M.A.C. §§ 20.2.88.2 and 20.2.88.5.

139. Albuquerque-Bernalillo County emissions standards for new motor vehicles, issued by the Air Quality Board pursuant to the AQCA, were enacted and entered into force on January 1, 2008 and continue in force through the present day. *See* N.M.A.C. §§ 20.11.104, *et seq.* (the “Local Emissions Standards”).

140. At the time of their enactment and continuing through the present day, these Local Emissions Standards applied to all new motor vehicles, including the Affected Vehicles, “[s]tarting with model for model year 2011 and each model year thereafter[.]” *See* N.M.A.C. § 20.11.104.101.

141. Thus, the Local Emissions Standards apply to “all persons who deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive or register new passenger cars, light-duty trucks, medium-duty motor vehicles within the jurisdiction of the Albuquerque-Bernalillo county air quality control board,” which geographically consists of Bernalillo County within the State of New Mexico, but only for Affected Vehicles model years 2011 and greater between January 1, 2008 and the present. *See* N.M.A.C. §§ 20.11.104.2 and 20.11.104.5.

142. Both the Statewide Emissions Standards and the Local Emissions Standards set emissions standards for new motor vehicles, requiring any person who sells, delivers for sale, offers for sale, imports, or delivers new passenger cars within the State of New Mexico (or Albuquerque-Bernalillo County, as the case may be) to comply with the emission standards set forth therein.

143. Pursuant to N.M.A.C. §§ 20.2.88.101.A and 20.11.104.101.A, “Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle is certified to the California standards.”

144. Pursuant to N.M.A.C. §§ 20.2.88.7.E and 20.11.104.7.E, “California-certified” means “a vehicle having a valid executive order stating that the vehicle meets all applicable requirements of the applicable sections of CCR [California code of regulations, Title 13] and is approved for sale in California for CARB.”

145. Pursuant to N.M.A.C. §§ 20.2.88.7.F and 20.11.104.7.F, “California standards” means “those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States environmental protection agency pursuant to the authority of 42 U.S.C. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C. Section 7507” and “the emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which California has received a waiver from the United States environmental protection agency (EPA) pursuant to 42 U.S.C. Section 7543 and which other states are authorized to adopt pursuant to 42 U.S.C. Section 7507” respectively.

146. Pursuant to N.M.A.C. §§ 20.2.88.7.G and 20.11.104.7.G NMAC, “Certification” means “a finding by CARB that a motor vehicle, motor vehicle engine, or air contaminant emissions control systems satisfies the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.”

147. Beginning with the first offering for sale of a model year 2011 Affected Vehicle in the State of New Mexico, which, on information and belief, occurred in or around June 2010, Defendants repeatedly violated the above regulations promulgated under AQCA because they delivered for sale, offered for sale, imported, and delivered Affected Vehicles in the State of New Mexico and into Albuquerque and Bernalillo County that failed to comply with New Mexico’s regulatory requirement that such vehicles be validly certified to California standards.

148. On September 18, 2015, Annette Herbert, Chief, Emissions Compliance, Automotive Regulations and Science Division for CARB, sent a letter to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc., stating:

VW disclosed that Gen1, Gen2, and the 2015 model-year improved SCR vehicle (known as Gen3) had a second calibration intended to run only during certification testing. During a meeting on September 3, 2015, VW admitted to CARB and EPA that these vehicles [the approximately 500,000 Gen1, Gen2, and Gen3 2.0 liter diesel vehicles in the United States] were designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicle’s mission control system. This defeat device was neither described nor justified in the certification applications submitted to EPA and CARB. Therefore, each vehicle would not be covered by a valid federal Certificate of Conformity (COC) or CARB Executive Order (EO) and would be in violation of federal and state law.

149. By delivering for sale, offering for sale, importing, and delivering cars equipped with a defeat device that rendered invalid their California certifications, Defendants violated requirements and prohibitions pertaining to New Mexico’s Statewide and Local Emissions

Standards promulgated under the AQCA, from the first date of importation of a model year 2011 affected vehicle continuing through the present.

E. DEFENDANTS ADMIT THAT THEY LIED FOR YEARS TO REGULATORS AND CONSUMERS TO COVER UP THE ILLEGAL POLLUTION CAUSED BY THE AFFECTED VEHICLES

150. Defendants have admitted to the illegal acts, practices and conduct alleged above.

151. First, speaking through the CEO of Defendant Volkswagen Group of America, Inc., Michael Horn, Defendants have admitted to years of cheating emissions tests through the use of “defeat device” software, and to dishonesty to regulators and consumers alike.

152. Speaking before hundreds of automotive journalists, VW dealers, and others at new VW Passat launch event at the Brooklyn Naval Yard in New York, Horn stated:

So let's be clear about this. Our company was dishonest with the EPA, and the California Air Resources Board, and with all of you, and in my German words: we have totally screwed up. We must fix those cars to prevent this from ever happening again and we have to make this right with the government, the public, our customers, our employees and also very important, our dealers. And this kind of behavior I can tell you out of my heart is completely inconsistent with our core values.... We are committed to do what must be done and to begin to restore your trust.... You can be sure that we will continue not only to correct this TDI issue, and to straighten things out, and to pay what we have to pay...

See https://www.youtube.com/watch?v=2pIx27_NcQE (last accessed January 8, 2016).

153. Horn's frank admission of deliberate wrongdoing and dishonesty was preceded a written statement and video posted on Volkswagen AG's website by its then-CEO Dr. Martin Winterkorn (who has since resigned as a result of this scandal). Winterkorn similarly admitted to the misconduct alleged herein, in a statement that read, in part:

I personally am deeply sorry that we have broken the trust of our customers and the public. We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter.... We do not and will not tolerate violations of any kind of our internal rules or of the law.

See Volkswagen Press Release, Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG, dated September 20, 2012. In Winterkorn's video, he further apologized by stating:

The irregularities in our group's diesel engines go against everything Volkswagen stands for. To be frank with you, manipulation at Volkswagen must never happen again.... I personally am deeply sorry that we have broken the trust of our customers. I would like to make a formal apology to our customers to the authorities and to the general public for this misconduct.

See https://www.youtube.com/watch?v=wMPX98_H0ak (last accessed January 8, 2016).

154. On October 8, 2015, Horn also made frank admissions of culpability in his testimony before the House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations. Horn testified: "On behalf of our Company, and my colleagues in Germany, I would like to offer a sincere apology for Volkswagen's use of a software program that served to defeat the regular emissions testing regime." In responding to a question from panel Chairman Rep. Tim Murphy, R-Pa., about whether the software was installed "for the express purpose of beating tests," Horn responded in no uncertain terms that "it was installed for this purpose, yes."

155. Defendants have also been frank in their admissions concerning their motive for surreptitiously trying to evade emissions tests, and have attributed it to their own corporate greed.

156. According to Volkswagen's Chairman, Hans-Dieter Potsch, its engineers were having a difficult time in getting the Company's diesel engine technology to meet the U.S. emissions standards, and so they designed manipulative software meant to fool regulators and falsely represent that the Affected Vehicles complied with those standards, despite knowing that did not do so.

157. With respect to the Affected Vehicles equipped with 3.0 liter TDI[®] engines – engines that were engineered, designed, and manufactured by Audi – Audi released on a

statement on November 22, 2015, admitting that it failed to disclose three auxiliary emissions control devices (AECDs) to U.S. regulators.

158. Without disclosure and subsequent approval of regulators, AECDs themselves are illegal. Audi further stated: “One of them is regarded as a defeat device according to application U.S. law. Specifically, this is the software for the temperature conditioning of the exhaust gas cleaning system.”

159. While Volkswagen, to date, has attempted to insulate its top executives from involvement and complicity in the scheme by initially trying to pin the blame on the work a few rogue engineers, that explanation is entirely implausible.

160. To date, at least ten of Defendants’ top executives have resigned under pressure or have been fired. Among the top executives dismissed to date are Martin Winterkorn, CEO and Chairman of Volkswagen, who resigned almost immediately once the scandal became public; Dr. Ulrich Hackenberg, a top engineering boss in the Audi Group, who was suspended and later resigned; Heinz-Jakob Neusser, described as a Volkswagen “development” boss, who was suspended and later resigned; and, Wolfgang Hatz, Porsche’s “development” boss and previously Volkswagen’s head of engine development, who was suspended and then resigned. Furthermore, one of VW’s top advertising executives purportedly “resigned” (although the Company has said, again implausibly, that this resignation was unrelated to the present scandal).

161. That a few rogue engineers could orchestrate this scheme is implausible not just because of the firings of the above-listed executives, but also because Defendants have been implicated using not just one, but *two* sophisticated defeat device software programs, in *two* separate engines designed and manufactured by different engineers in different corporate facilities. In addition, more than a dozen vehicles involving three separate brands are now

implicated in a deception that was started more than a decade ago. Accordingly, Defendants' initial efforts to pin the blame on a "small group of engineers" is not only implausible, but squarely contradicted by the facts currently made public.

162. The misconduct and violations described above were thus knowing and willful violations.

V. TOLLING OF THE STATUTE OF LIMITATIONS

A. TOLLING BASED ON THE DISCOVERY RULE

163. The claims alleged herein did not accrue until the Plaintiff discovered that the Defendants' Affected Vehicles were equipped with illegal defeat devices. The State of New Mexico had no realistic ability to discern that Defendants' vehicles were equipped with sophisticated, hidden "defeat device" software programs until – at the earliest – after the EPA revealed the results of its investigation on September 18, 2015, with respect to 2.0 Liter TDI[®] vehicles, and November 2, 2015, with respect to 3.0 Liter TDI[®] vehicles.

B. TOLLING BASED ON FRAUDULENT CONCEALMENT AND ESTOPPEL

164. Defendants knew or should have known of the presence of illegal defeat devices in the Affected Vehicles since at least 2008, and certainly well before the Affected Vehicles were marketed and sold in the State of New Mexico.

165. Defendants concealed and/or failed to notify the State of New Mexico of the full and complete nature of the defeat device software installed on the Affected Vehicles.

166. Although Defendants now acknowledge and admit that they used defeat device software on the Affected Vehicles, the existence of the defeat device software was kept secret from the public, and the public had no knowledge of the defeat device software, until the existence was revealed in the EPA's NOV I dated September 18, 2015 and NOV II dated November 2, 2015.

167. Any applicable statutes of limitation have, therefore, been tolled by Volkswagen's knowledge, active concealment, and denial of the facts alleged herein.

168. Defendants, moreover, were and remain under a continuing duty to disclose to the State the true character, quality, and nature of its vehicles. Defendants, however, actively concealed the true character, quality, and nature of the Affected Vehicles and knowingly misrepresented the quality, reliability, characteristics, and performance of the Affected Vehicles.

169. The State reasonably relied upon Defendants' knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, Volkswagen, Audi, and Porsche are estopped from relying on any statutes of limitation in defense of this action.

VI. CLAIMS AND VIOLATIONS ALLEGED

A. COUNT 1 – VIOLATIONS OF THE NEW MEXICO AIR QUALITY CONTROL ACT

170. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-169 above, as though fully set forth below.

171. The purpose of the Air Quality Control Act is to prevent and abate air pollution. *See* N.M. Stat. Ann. § 74-2-5(A).

172. By delivering for sale, offering for sale, importing, selling, and delivering cars equipped with a defeat device that rendered invalid their California emissions certifications, Defendants violated requirements and prohibitions pertaining to emissions standards in new motor vehicles promulgated in the State of New Mexico under the AQCA and are therefore liable for civil penalties thereunder.

173. Defendants are "persons" under the AQCA, as defined by N.M.A.C. § 20.11.1.7.CCC, as incorporated by reference in § 20.11.104.7, and as defined by § 20.11.104.7.AA.

174. Defendants are also “manufacturers” of motor vehicles.

175. The AQCA requires the New Mexico Environmental Improvement Board, or a local board, including the Air Quality Board, to “adopt, promulgate, publish, amend and repeal regulations . . . to prevent or abate air pollution.” N.M. Stat. Ann. § 74-2-5(B)(1).

176. Among other things, the AQCA authorizes the Environmental Improvement Board and the Air Quality Board to promulgate regulations “to prevent significant deterioration of air quality....” N.M. Stat. Ann. § 74-2-5(C)(1).

177. The Environment Improvement Board promulgated Statewide Emissions Standards, as defined above, and the Air Quality Board promulgated Local Emissions Standards, as defined above.

178. Under the Statewide Emissions Standards (while it was in force) and Local Emissions Standards, Defendants had to comply, but failed to comply, with the California emissions standards adopted and incorporated in the New Mexico through the New Mexico Administrative Code, as follows: “Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle is certified to the California standards.” *See* N.M.A.C. §§ 20.2.88.101.A and 20.11.104.101.A.

179. Pursuant to N.M.A.C. §§ 20.2.88.7.F and 20.11.104.7.F, “California standards” means “those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States environmental protection agency pursuant to the authority of 42 U.S.C. Section 7543 and which

other states are permitted to adopt pursuant to 42 U.S.C. Section 7507” and “the emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which California has received a waiver from the United States environmental protection agency (EPA) pursuant to 42 U.S.C. Section 7543 and which other states are authorized to adopt pursuant to 42 U.S.C. Section 7507” respectively.

180. Pursuant to N.M.A.C. §§ 20.2.88.7.E and 20.11.104.7.E, “California-certified” means “a vehicle having a valid executive order stating that the vehicle meets all applicable requirements of the applicable sections of CCR [California code of regulations, Title 13] and is approved for sale in California for CARB.”

181. Pursuant to N.M.A.C. §§ 20.2.88.7.G and 20.11.104.7.G, “Certification” means “a finding by CARB that a motor vehicle, motor vehicle engine, or air contaminant emissions control systems satisfies the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.”

182. Beginning with the first importation, delivery, offering for sale, and/or selling of a model year 2011 or greater Affected Vehicle in the State of New Mexico or Bernalillo County, which, on information and belief, occurred in or around June 2010 and continued each and every day thereafter, Defendants repeatedly delivered for sale, offered for sale, imported, sold, and delivered Affected Vehicles in violation of the Air Quality Control Act because those vehicles, lacking a valid California executive order, were not validly certified to the California standard as required by N.M.A.C. 20.288.101(A) and 20.11.104.101(A).

183. The model-year 2011 and subsequent Affected Vehicles delivered for sale, offered for sale, imported, sold and/or delivered by Defendants in the State of New Mexico were not, and have never been, validly certified to California standards from the date those vehicles first

introduced, imported, delivered, or offered in New Mexico or Bernalillo County and continuing through the present day.

184. Accordingly, Defendants engaged in repeated violations of the provisions of the AQCA prohibiting the delivery for sale, offer for sale, import, sale and delivery of vehicles that are not certified to California Standards from the first date of sale, delivery, import, or offering of a model year 2011 affected vehicle in the State continuing through the time Defendants ceased sales, deliveries, imports, and offerings of Affected Vehicles in the State of New Mexico or Bernalillo County.

185. Pursuant to section N.M. Stat. Ann. § 74-2-12.1(A), a “person who violates a provision of the Air Quality Control Act or a regulation . . . adopted or issued pursuant to that act may be assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs.”

186. Accordingly, this Court should assess a civil penalty of \$15,000 for each violation and for each and every day Defendants delivered for sale, offered for sale, imported, sold, or delivered an Affected Vehicle, all of which lacked a valid California executive order and thereby failed to be validly certified to California standards, in the State of New Mexico or Bernalillo County, for actual damages caused by the violations described herein, and for all other such relief as may be just and proper.

B. COUNT 2 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT

187. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-169 above, as though fully set forth below.

188. The Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1, *et seq.* is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New

Mexico through (among other things) unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

189. Pursuant to N.M. Stat. Ann. § 57-12-2(A), Defendants are each a “person” under the Unfair Practices Act.

190. The Affected Vehicles are “goods” under the Unfair Practices Act.

191. Pursuant to N.M. Stat. Ann. § 57-12-2(D) an “unfair or deceptive trade practice” means “an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods . . . in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person and includes” all of the following specifically declared acts:

(2) causing confusion or misunderstanding as to the . . . certification of goods or services; . . .

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that the person does not have; . . .

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another; . . .

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive; . . . [or]

(17) failing to deliver the quality or quantity of goods or services contracted for[.]

192. Pursuant to N.M. Stat. Ann. § 57-12-2(E) an “unconscionable trade practice” means “an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . that to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a

person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.”

193. Pursuant to N.M. Stat. Ann. § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

194. Pursuant to N.M. Stat. Ann. § 57-12-6(A), the “willful misrepresentation of the age or condition of a motor vehicle by any person . . . is an unlawful practice within the meaning of the Unfair Practices Act[.]”

195. Defendants repeatedly and continuously made unfair, deceptive, false, or misleading statements regarding the environmental characteristics of the Affected Vehicles from the moment the Affected Vehicles were first advertised and offered for sale in the State of New Mexico, including, but not limited to, that the Affected Vehicles were “Clean Diesels,” or otherwise “clean,” “green” and “environmentally-friendly” or “eco-friendly” vehicles. All such representations were unfair, deceptive, false or misleading because the cars were dirty, bad for the environment, and dramatically exceeded emissions regulations for harmful pollutants.

196. Defendants repeatedly and continuously made unfair, deceptive, false, or misleading statements regarding the Affected Vehicles from the moment the Affected Vehicles were first advertised and offered for sale in the State of New Mexico, including, but not limited to, that the Affected Vehicles complied with emissions standards in the United States, all 50 states, those promulgated by the CARB (and adopted by the Environment Department and/or the Air Quality Board), or otherwise complied with “the most stringent” emissions standards in the world. All such representations were unfair, deceptive, false or misleading because the cars did not comply with any of these emissions standards.

197. Defendants also repeatedly and continuously made unfair, deceptive, false, or misleading statements concerning the performance and efficiency attributes of the Affected Vehicles because the touted performance and efficiency of the Affected Vehicles was only attainable by dramatically exceeding emissions regulations, and once (or if) the Affected Vehicles are ever brought into compliance with emissions regulations, the touted efficiency will be diminished if not lost altogether.

198. With respect to omissions, Defendants advertised and marketed the Affected Vehicles despite knowing that they failed to comply with emissions regulations, and thus Defendants wrongfully omitted, and failed to advise consumers, that the Affected Vehicles were illegal on account of their non-compliant emissions of nitrogen oxides, and undesirable to purchase, own or operate because they were harmful to the environment.

199. Defendants made these unfair, deceptive, false, or misleading representations, or omitted truthful material information, knowingly in the connection with the sale or lease of, the Affected Vehicles.

200. Defendants made these unfair, deceptive, false or misleading representations, or omitted truthful material information, in the regular course of Defendants' businesses.

201. Defendants unfair, deceptive, false, or misleading representations, or omissions of material information, were of the types of representations or omissions that may, or tend to, and in fact did, deceive and mislead consumers and regulators.

202. In addition, Defendants engaged in unconscionable trade practices by taking advantage of consumers' and regulators' lack of knowledge of the non-compliance of the Affected Vehicles with environmental laws to a grossly unfair degree, causing detriment to such consumers by causing them to purchase and/or pay a premium for Affected Vehicles that they

otherwise would not have purchased or paid a premium for, and causing detriment to the State of New Mexico by causing vehicles that emit excess and harmful nitrogen oxides into the atmosphere to be sold and driven in the State when they otherwise would not have been.

203. Pursuant to N.M. Stat. Ann. § 57-12-11, “In any action brought under Section 57-12-8 N.M. Stat. Ann. 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty of not exceeding five thousand dollars (\$5,000) per violation.”

204. Defendants committed a separate and independent violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information.

205. Each and every time Defendants sold or enabled an Affected Vehicle to be driven in the State of New Mexico, Defendants committed a separate and independent violation of the Unfair Practices Act through unconscionable trade practices.

206. Defendants have engaged in violations of the Unfair Practices Act by making unfair, deceptive, false, or misleading statements; by omitting material information; and by engaging in unconscionable trade practices, with respect to the Affected Vehicles, since 2008, with multiple violations occurring on each and every day during this period.

207. Defendants should therefore be assessed a civil penalty of \$5,000 for each violation, and all other such relief as may be just and proper should be recovered by the State.

C. COUNT 3 – COMMON LAW PUBLIC NUISANCE

208. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-169 above, as though fully set forth below.

209. Defendants' acts of selling and promoting vehicles that fail to comply with applicable emissions standards, are not validly certified to California standards, in violation of the Air Quality Control Act and regulations promulgated thereunder, and which emit nitrogen oxides in excess of allowed average limits, are activities contrary to law that unreasonably interfere with the public's common right to clean air, and clean water, and thus constitute common law public nuisance.

210. Nitrogen oxides are hazardous and harmful air pollutants (and "greenhouse gases") that, among other things, contribute to ozone formation. Ozone, even at low levels, can cause cardiovascular and respiratory health problems, including chest pain, coughing, throat irritation, and congestion. Ozone can worsen bronchitis, emphysema, and asthma, and particularly impacts children and the elderly. The human health concerns from over-exposure to nitrogen oxides are well-established, and include effects on breathing and the respiratory system, damage to lung tissue, and premature death. Small particles of NO_x can penetrate deeply into sensitive parts of the lungs, and may cause or worsen respiratory diseases like emphysema and bronchitis, and aggravate existing heart disease. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside, and others, are susceptible to such adverse health effects.

211. In addition to negative health effects, ozone, and the visible smog that follows from the presence of ozone in the lower atmosphere, prevent public enjoyment of public lands by diminishing air quality and visibility. Other impacts from ozone include damaged vegetation and reduced crop yields.

212. Nitrogen oxides are also responsible for acid rain, because when with atmospheric NO_x and sulfur dioxide react with other substances in the air, it forms acids that fall to earth as

rain, fog, snow or dry particles. Acid rain causes damages and deterioration of cars, buildings and historical monuments, and causes lakes and streams to become acidic and unsuitable for many fish.

213. Nitrogen Oxides are also strongly link to deterioration in water quality. Increased nitrogen oxides and particulates entering in water bodies, upsets the chemical balance of nutrients used by aquatic plants and animals, and accelerates “eutrophication,” which leads to oxygen depletion and reduces fish populations. NOx emissions in the air, for example, are believed to be one of the largest sources of nitrogen pollution in the Chesapeake Bay.

214. Accordingly, Defendants acts, practices and conduct designed to evade the environmental laws of the State of New Mexico so that the Affected Vehicles could, and did, pollute and degrade the environment of this State, constitutes a public nuisance, for which Plaintiff requests an award all nominal and actual damages, including punitive damages sufficient to penalize and deter the corporate misconduct alleged herein.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, the State of New Mexico, respectfully requests that the Court enter judgment in its favor and against Defendants, as follows:

- a. Awarding the maximum amount of statutory penalties available under N.M. Stat. Ann. § 74-2-12.1 for each day and each violation of New Mexico’s Air Quality Control Act, N.M. Stat. Ann. §§ 74-2-1, *et seq.*;
- b. Awarding the maximum amount of statutory penalties available under N.M. Stat. Ann. § 57-12-11, for each violation of New Mexico’s Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1, *et seq.*;
- c. Awarding actual, nominal, and punitive damages for Defendants’ creation a public nuisance in the State;

- d. Ordering Defendants to disgorge all profits they illegally obtained by and through illegal conduct, and used to further fund or promote the illegal conduct or that constituted capital available for that purpose;
- e. Awarding exemplary or punitive damages in amount to be determined at trial;
- f. Awarding Plaintiff its attorneys' fees and litigation costs; and,
- g. Awarding such other relief as may be available and appropriate under the law or in equity.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all claims upon which a jury trial is available.

Dated: January 19, 2016

Respectfully submitted,

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