

NICOLE R. DITOMO
Deputy Attorney General
Attorney I.D. #315325
Office of Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Phone: 717-787-9707
Fax: 717-705-3795
Email: nditomo@attorneygeneral.gov

DOUGLAS G. WHITE
Supervisory Counsel
Department of Environmental Protection
Attorney I.D. #68066
Office of Chief Counsel
2 E. Main Street
Norristown, Pennsylvania 19401
Phone: 484-250-5864
Fax: 484-250-5931
Email: douwhite@pa.gov

ROBERT J. SHEA
Senior Deputy Chief Counsel
Attorney I.D. #32314
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212
Phone: 717-787-5299
Fax: 717-772-2741
Email: rshea@pa.gov

Attorneys for Plaintiffs

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

:
:
: CIVIL ACTION

and

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

: Case No. 423 MD2016

PLAINTIFFS

v.

VOLKSWAGEN AKTIENGESELLSCHAFT
d/b/a VOLKSWAGEN AG; AUDI AG;
VOLKSWAGEN GROUP OF AMERICA, INC.;
DR. ING. H.C. F. PORSCHE AG d/b/a
PORSCHE AG; and PORSCHE CARS
NORTH AMERICA, INC.,

DEFENDANTS

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
-1 AUG 2016 09 14

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you

by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MIDPENN LEGAL SERVICES
213-A NORTH FRONT STREET
HARRISBURG, PENNSYLVANIA 17101
717-232-0581

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 N. FRONT STREET
HARRISBURG, PENNSYLVANIA 17101
717-232-7536

NICOLE R. DITOMO
Deputy Attorney General
Attorney I.D. #315325
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Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Phone: 717-787-9707
Fax: 717-705-3795
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COMPLAINT

I. Introduction

1. The above captioned Plaintiffs bring this action on behalf of the health, safety, and welfare of the Commonwealth and its residents in order to hold the above captioned Defendants accountable for their wrongful conduct.

2. For nearly forty years, Pennsylvania law has required all persons, including car manufacturers, as a condition of selling cars, to conform to certain emissions standards, which limit pollution emanating from vehicles.

3. Pennsylvania law has also forbidden all persons, including car manufacturers, from using any device or component to disable, change, or alter the emission control system of a vehicle (“defeat device”). 75 Pa. C.S.A. § 4531.

4. The Pennsylvania Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. §§ 4001-4015 (“APCA”), sets forth the policy of the Commonwealth of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the protection of the public health, safety and well-being of its citizens, and for the prevention of injury to plant and animal life and to property, among other things. 35 P.S. § 4002(a).

5. Under the authority of Section 5 of the APCA, 35 P.S. § 4005, the Pennsylvania Environmental Quality Board adopted and incorporated by reference California’s vehicle emission standards for new passenger cars and light-duty

trucks, with several express exceptions, into the Pennsylvania Clean Vehicles Program, 25 Pa. Code ch. 126, subch. D §§ 126.401–126.451.

6. A violation of the California Air Resources Board (“CARB”) emission standards adopted and incorporated by reference by Pennsylvania constitutes a violation of the Pennsylvania Clean Vehicles Program regulations. 25 Pa. Code §§ 126.401(b) and 126.411(b).

7. At all times relevant to this Complaint, Pennsylvania incorporated and enforced the CARB emissions standards for new passenger cars and light-duty trucks under the Pennsylvania Clean Vehicles Program.

8. The CARB and Pennsylvania emission standards are more stringent than the emission standards adopted by the U.S. Environmental Protection Agency (“EPA”).

9. The Pennsylvania Clean Vehicles Program was designed to reduce, among other pollutants, emissions of oxides of nitrogen (“NO_x”).

10. NO_x emissions in Pennsylvania are a key contributor to ambient ozone and fine particulate matter pollution, which is associated with premature death, increased hospitalizations, emergency room visits due to exacerbation of chronic heart and lung diseases, and other serious health impacts.

11. A major contributor to NO_x emissions is combustion from diesel engines and vehicles.

12. As more fully detailed below, the defendants are the German automaker Volkswagen Aktiengesellschaft d/b/a Volkswagen AG (“Volkswagen AG”), and its subsidiaries Audi AG (“Audi AG”) and Dr. Ing. h.c. F. Porsche d/b/a Porsche AG (“Porsche AG”), and their wholly-owned American affiliates and subsidiaries, Volkswagen Group of America, Inc. (“VWGoA”), and Porsche Cars North America, Inc. (“Porsche NA”) (collectively, “Defendants” or “Volkswagen”).

13. The Defendants have violated Pennsylvania’s environmental and vehicle laws and misled government regulators and the public by manufacturing and installing undisclosed defeat devices in model years 2009 through 2016 diesel light-duty Volkswagen, Audi, and Porsche vehicles equipped with 2.0-liter and 3.0-liter engines (the “Unlawful Vehicles”),¹ which were sold between 2008 and 2015 throughout the Commonwealth of Pennsylvania.

14. On October 8, 2015, in prepared testimony before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, Horn offered the following details, confirming:

“that emissions in [Volkswagen’s] four cylinder diesel vehicles from model years 2009-2015 contained a ‘defeat device’ in the form of hidden software that could recognize whether a vehicle was being operated in a test laboratory or on the road. The software made those emit higher levels of nitrogen oxides when

¹ The Unlawful Vehicles are identified on the chart at pages 16-17, *infra*.

the vehicles were driven in actual road use than during laboratory testing.”

15. Defendants’ defeat devices are comprised of software that causes the vehicles’ emissions control systems to activate when the vehicles are being tested for emissions, but to disengage those emissions controls at all other times.

16. As a result, the Unlawful Vehicles were certified for sale after emissions testing despite not meeting the emission standards in regular driving.

17. In regular driving these Unlawful Vehicles emit pollution, specifically NO_x, up to forty times the allowable amounts under Pennsylvania law.

18. Volkswagen sold nearly 560,000 Unlawful Vehicles nationwide with more than 23,000 sold in Pennsylvania.

19. These vehicles emitted illegal emissions of at least 45,000 additional tons of NO_x onto American streets, including those in Pennsylvania, exacerbating asthma and other respiratory diseases of those who breathed them.

20. In so doing, Defendants violated the law countless times, on a daily basis, for more than six years, causing substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

21. The excess emissions caused by Defendants’ Unlawful Vehicles have caused, and continue to cause, substantial environmental harm and dangerous effects to the health, comfort and welfare of humans, animals and vegetation in Pennsylvania.

22. Unlawful Vehicles were certified as compliant by CARB and received CARB Executive Orders due to the defeat device, when the Unlawful Vehicles in fact emitted pollutants in excess of the emissions standards every day, in nearly all driving conditions.

23. For many years, Defendants have been aware that defeat devices were installed in their diesel models.

24. And yet, for more than sixteen months after researchers identified the giant gap between Defendants' compliant emissions performance in the laboratory and its failing emissions performance in road testing, Defendants denied the validity of the research and that its cars violated the emissions regulations.

25. Only when it found itself under pressure from the EPA and the CARB, including EPA's refusal to certify for sale model year 2016 diesel vehicles, did the Defendants admit that they had installed defeat devices in most of their diesel fleet and misled state and federal regulators on an unprecedented scale.

26. With utter disregard for the environment and the health effects of its conduct, Volkswagen implemented the defeat devices in willful contempt of the laws of the Commonwealth.

27. The Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"), and the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT") (collectively "Commonwealth" or "Plaintiffs"), by

and through the Pennsylvania Office of the Attorney General, bring this action against the Defendants pursuant to: (a) the Pennsylvania Vehicle Code, at 75 Pa. C.S.A. §§ 4107 and 4531, prohibiting, *inter alia*, the sale of a vehicle with equipment that is noncompliant with law or the rendering inoperative of vehicle equipment required to be installed at the time of manufacture or the use of any device or component to disable, change, or alter the emission control system of a vehicle (“defeat device”); and (b) the Pennsylvania Air Pollution Control Act (“APCA”) and the regulations promulgated thereunder including, but not limited to, 25 Pa. Code §§ 126.401-126.441.²

28. In light of the extensive environmental harm, and the detrimental effects on the health and well-being of humans, animals and vegetation, wrought by Defendants, the Plaintiffs seek appropriate relief from Defendants including imposition against Defendants of substantial civil penalties and the forfeiting of their economic benefit resulting from their violations, Plaintiffs’ reasonable costs of investigation and litigation, including reasonable attorney’s fees, and other equitable relief as may be determined to be appropriate and equitable in order to address and prevent additional harm from Defendants’ unlawful conduct.

29. In support of this action the Commonwealth respectfully represents the following:

² These statutory and regulatory schemes are more fully described in Section V, *infra*.

II. JURISDICTION

30. This court has jurisdiction over all civil actions or proceedings brought by the Commonwealth government, pursuant to Section 761(a)(2) of the Judicial Code, 42 P.S. § 761(a)(2).

31. Section 4(10) of the APCA, 35 P.S. § 4004(10), authorizes DEP to institute, in a court of competent jurisdiction, proceedings to compel compliance with this act and any rule or regulation promulgated under this act.

32. Section 13.6 of the APCA, 35 P.S. § 4013.6, authorizes DEP to file a suit in Commonwealth Court seeking to abate a violation and asking this Court to levy a penalty.

33. Sections 6102 and 6103 of the Vehicle Code, 75 Pa.C.S. §§ 6102, 6103, charge PennDOT with the administration of the Vehicle Code and the promulgation of rules and regulations by which it will carry out its duty.

34. Chapters 41 and 43 of the Vehicle Code charge PennDOT with the responsibility for vehicle equipment standards relevant to this litigation including the authority under Section 4108, 75 Pa.C.S. § 4108, to petition any court of the Commonwealth to restrain a violation of those standards.

35. This action is based solely on state laws as herein provided.

III. THE PARTIES

A. Plaintiffs

36. Plaintiffs are the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP") and the Department of Transportation ("PennDOT"), by and through the Pennsylvania Office of Attorney General.

37. Pursuant to the Commonwealth Attorneys Act, 71 P. S. §§ 732-101 *et seq.*, the Attorney General shall represent the Commonwealth and its agencies in any action brought by or against the Commonwealth or its agencies. 71 P. S. § 732-204(c).

38. The DEP is an agency within the Executive Branch of the Commonwealth government vested with the duty and authority to protect the environment, prevent and remediate pollution, and protect the public health, comfort, safety and welfare.

39. DEP was created³ by the passage the act of June 28, 1995 into Pennsylvania law. P.L. 89, No. 18, 71 P.S. § 1340.501.

40. DEP has the duty and authority to administer and enforce the APCA; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L.

³ DEP's predecessor was the Department of Environmental Resources (DER), created by the act of December 3, 1970 (P.L. 834, No. 275). Prior to passage of Act 18 of 1995, DER was the Executive Branch agency with the duty and authority to administer the Air Pollution Control Act and regulations thereunder. Section 1901-A of the Administrative Code of 1929, P.L. 177, as amended, 71 P.S. § 510.1.

177, as amended, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder.

41. DEP maintains its principal office at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101.

42. PennDOT is an agency within the Executive Branch of the Commonwealth government vested with the duty and authority to, *inter alia*, exercise powers relating to motor vehicles and operators thereof under the provisions of the Vehicle Code. 71 P.S. § 511.

43. PennDOT was created by the passage the act of May 6, 1970 into Pennsylvania law. P.L. 356, No. 120, 71 P.S. § 201.

44. PennDOT has the duty and authority to promulgate, administer and enforce standards for vehicle equipment, the performance of which is related to safety, noise control and air quality and to make unlawful the sale or use of items which do not comply with the requirements of the Vehicle Code or regulations promulgated thereunder. 75 Pa.C.S. § 4101.

45. PennDOT maintains its principal office at the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120.

B. Defendants

46. Volkswagen Aktiengesellschaft d/b/a Volkswagen AG (“Volkswagen AG”) is a corporation organized under the laws of Germany and has its principal place of business in Wolfsburg, Germany.

47. Volkswagen AG is the parent corporation of Audi AG, Volkswagen Group of America, Inc., and Porsche AG.

48. Volkswagen AG is the parent company of the Volkswagen Group (“VW Group”), an organizational and trade term referring to Volkswagen AG’s financial services business and automotive division, which includes Volkswagen Passenger Cars, Audi, Bentley, Porsche, and others.

49. Volkswagen Group of America, Inc. (“VWGoA”) is a corporation doing business in the Commonwealth, is organized under the laws of the State of New Jersey, and maintains a principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

50. VWGoA is a wholly owned subsidiary of Volkswagen AG.

51. VWGoA registered as a foreign corporation with the Pennsylvania Department of State on June 28, 1976.

52. Volkswagen of America, Inc. (“VoA”) is an operating unit of VWGoA.

53. VoA registered as a fictitious name of VWGoA with the Pennsylvania Department of State, on February 12, 2008 and provided a registered address of 3800 Hamlin Road, Auburn Hills, Michigan, 48326.

54. Audi of America, Inc. ("AoA") is an operating unit of VWGoA.

55. AoA registered as a fictitious name of VWGoA with the Pennsylvania Department of State, on February 12, 2008, and provided a registered address of 3800 Hamlin Road, Auburn Hills, Michigan, 48326.

56. Audi AG ("Audi AG") is a member of the VW Group.

57. Audi AG is a corporation organized under the laws of Germany with a principal place of business in Ingolstadt, Germany and Volkswagen AG owns 99.55% of its stock.

58. Dr. Ing. h.c. F. Porsche d/b/a Porsche AG ("Porsche AG") is a member of the VW Group.

59. Porsche AG is a corporation organized under the laws of Germany with a principal place of business in Stuttgart, Germany and is a 100% subsidiary of Volkswagen AG.

60. Porsche Cars North America, Inc. ("Porsche NA") is a corporation doing business in the Commonwealth and is a Delaware corporation, with its principal place of business at One Porsche Drive, Atlanta, Georgia.

61. Porsche NA registered as a foreign corporation with the Pennsylvania Department of State on May 1, 1989.

62. Defendants engaged in trade or commerce by and through 17 Audi, 9 Porsche, and 36 Volkswagen motor vehicle franchises located throughout the Commonwealth.

63. At all times relevant to this action, Defendants were engaged in the business of manufacturing, importing, delivering, selling, leasing, offering for sale or lease, titling or registering the Unlawful Vehicles in this Commonwealth.

64. Each of the aforementioned Defendants is a "person" and/or a "motor vehicle manufacturer" as defined under the APCA and its regulations, and a "person" as defined by the Vehicle Code.

IV. FACTS

A. The Defendants Acted Together to Violate the Environmental and Motor Vehicle Laws and Perpetrated a Massive Fraud on Regulators.

65. Unless otherwise specified, whenever reference is made in this Complaint to any act of any of the Defendants, or any employee and/or agent of the Defendants, such allegation shall be deemed to mean the act of Volkswagen AG, VW Group, Audi AG, VWGoA, AoA, VoA, Porsche AG, and Porsche NA, acting individually, or jointly and severally, or in concert with one another.

66. Volkswagen AG, and its subsidiaries Audi AG, Porsche AG, and VWGoA, designed the Unlawful Vehicles specifically for sale to U.S. customers by their U.S. affiliates.

67. Volkswagen AG allocates and controls the overall research and development and marketing budgets for the brands in the VW Group.

68. The three brands in the VW Group (VWGoA, Audi AG, and Porsche AG), share engineering research and development and engine concepts and designs, including, in this case, Volkswagen's incorporation of Audi-designed software and hardware elements into its EA 189 diesel engine for the Generation 1 and 2 Unlawful Vehicles, and Porsche's use of the Audi 3.0-liter diesel engine for its Cayenne SUV Unlawful Vehicle.

69. At all relevant times, Volkswagen AG, Audi AG and Porsche AG acted with and through their U.S. affiliates, in particular, VWGoA's Michigan-based Engineering and Environmental Office ("EEO") and Porsche NA, to interact with regulators to obtain legal certification to sell the Unlawful Vehicles.

70. Additionally, the EEO and Porsche NA engaged with regulators regarding emissions-related compliance and notification issues, for Volkswagen AG, including the defeat device-related allegations described herein.

71. Each Defendant willfully engaged in multiple violations of the Commonwealth's environmental and motor vehicle laws.

B. Defendants Placed Defeat Devices in U.S.-Marketed Audi, Volkswagen, and Porsche Models Equipped with 2.0 and 3.0-Liter Diesel Engines, Model Years 2009 Through 2016.

72. The Unlawful Vehicles include the following makes and models sold or leased in the United States for the 2009 through 2016 model years:

2.0 Liter Diesel Models:

Model Year (MY)	Generation (Gen)/Engine	Test Group	Vehicle Make and Model(s)
2009	Gen 1/EA189	9VWXV02.035N 9VWXV02.0U5N	VW Jetta, VW Jetta SportWagen
2010	Gen 1/EA189	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2011	Gen 1/EA189	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2012	Gen 1/EA189	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2013	Gen 1/EA189	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2014	Gen 1/EA189	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen
2012 2013 2014	Gen 2/EA189	CVWXV02.0U4S DVWXV02.0U4S EVWXV02.0U4S	VW Passat
2015	Gen 3/EA288	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf SportWagen, VW Jetta, VW Passat, Audi A3

3.0 Liter Diesel Models:

Model Year (MY)	Test Group(s)	Vehicle Make and Model(s)
2009	9ADXT03.03LD	VW Touareg, Audi Q7
2010	AADXT03.03LD	VW Touareg, Audi Q7
2011	BADXT03.02UG BADXT03.03UG	VW Touareg Audi Q7
2012	CADXT03.02UG CADXT03.03UG	VW Touareg Audi Q7
2013	DADXT03.02UG DADXT03.03UG DPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel
2014	EADXT03.02UG EADXT03.03UG EPRXT03.0CDD EADXJ03.04UG	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5
2015	FVGAT03.0NU2 FVGAT03.0NU3 FPRXT03.0CDD FVGAJ03.0NU4	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5
2016	GVGAT03.0NU2 GPRXT03.0CDD GVGAJ03.0NU4	VW Touareg Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5

73. For simplicity and clarity, throughout this Complaint the 2.0 and 3.0-liter vehicles will be referred to collectively as the “Unlawful Vehicles.”

74. Volkswagen and/or its affiliates and agents sold, leased, and warranted more than 475,000 Unlawful Vehicles equipped with 2.0-liter diesel

engines and more than 83,000 Unlawful Vehicles equipped with 3.0-liter diesel engines in the United States.

75. Of those Unlawful Vehicles, Volkswagen caused more than 23,000 to be sold in this Commonwealth after fraudulently obtaining CARB Executive Orders for those vehicles.

76. As of October 1, 2015, nearly 22,000 Unlawful Vehicles were registered through the Commonwealth Department of Transportation, Bureau of Motor Vehicles.

C. NO_x Emissions from the Unlawful Vehicles Are up to Forty Times Higher than Permitted under the Applicable Emissions Standards and Caused Serious Harm to Public Health and the Environment, and Defendants Knew of these Effects when They Installed the Defeat Devices.

77. The defeat devices Defendants manufactured and installed in the Unlawful Vehicles consist of sophisticated software that detects when the Unlawful Vehicles are undergoing official emissions testing procedures and turns full emissions controls “on” during the tests to circumvent emissions testing, but at all other times of normal vehicle operation and use, suppresses the operation of the emissions controls, resulting in unmitigated tailpipe NO_x emissions.

78. Defendants manufactured the Unlawful Vehicles identified above, with one or more defeat devices that were not revealed or disclosed to anyone before the Unlawful Vehicles were entered into commerce and placed for sale in Pennsylvania.

79. The defeat devices the Defendants installed on the Unlawful Vehicles varied, depending on the engine size.

80. On the Unlawful Vehicles featuring 2.0-liter diesel engines, the defeat device consists of software in each Unlawful Vehicle's electronic control module ("ECM"), which circumvents emissions testing procedures by recognizing various operational parameters applicable when being tested for compliance with the applicable emission standards, such as the position of the steering wheel, vehicle speed, duration of the engine's operation, and barometric pressure.

81. The ECM runs software to circumvent emissions standards, which produces compliant emission results under an ECM calibration that Defendants have called "dyno calibration," referring to the equipment used in emissions testing, called a dynamometer.

82. At all other times during normal operation of each Unlawful Vehicle, the defeat device is activated and the vehicle ECM software runs a separate "road calibration" that reduces the effectiveness of each Unlawful Vehicle's emission control system, whether a selective catalytic reduction system ("SCR") or a lean oxygen trap.

83. As a result, the 2.0 liter Unlawful Vehicles' NO_x emissions are up to 40 times higher than the EPA- or CARB-compliant levels, depending on the type of drive cycle (e.g., city or highway driving).

84. On the Unlawful Vehicles featuring 3.0-liter diesel engines, Defendants' defeat devices consist of software in the ECMs that operates in a different manner, by indicating that a temperature conditioning mode is active during the emissions test and altering injection timing, exhaust gas recirculation rates, and common rail fuel pressure in such a way that the parameters yield low engine-out NO_x emissions and high exhaust temperatures that heat the SCR catalyst and improve its ability to reduce tailpipe NO_x emissions to below the applicable standards.

85. The defeat device in these Unlawful Vehicles also have a timer that ceases use of the temperature-conditioning mode when these Unlawful Vehicles are operating normally on the road.

86. As a result, the 3.0-liter Unlawful Vehicles' NO_x emissions are 9 times higher than EPA- or CARB-compliant levels, depending on model type and the type of drive cycle (e.g., city or highway driving).

87. At all relevant times, Defendants have known that the defeat devices installed in the 2.0 and 3.0-liter Unlawful Vehicles they manufactured and sold caused the vehicles to emit up to 40 times the allowed NO_x during normal operation in violation of applicable laws and regulations, including the laws and regulations of Pennsylvania, promulgated to protect human health and the environment from mobile sources of air pollution.

88. The excess NO_x emitted by the Unlawful Vehicles combines in the atmosphere with volatile organic compounds (“VOCs”) in a complicated reaction in the presence of heat and sunlight to form ozone, a major component of urban smog that harms the public health and damages the environment.

89. Ozone causes and contributes to many human respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation and increased susceptibility to respiratory infections, such as asthma, and disproportionately affects vulnerable members of society, particularly children and the elderly.

90. Ozone also causes considerable damage to natural resources, including vegetation, animal life, and water quality.

91. NO_x emissions also cause eutrophication of, and excess nutrient loading in, coastal and other waters, reduce the diversity of fish and other life in these waters, and, along with sulfur dioxide found in the atmosphere from other sources, contribute to the creation of fine nitrate and sulfate particles.

92. Like ozone, fine particulates affect the Commonwealth’s residents, including humans and animals, by causing respiratory distress, cardiovascular disease, and even premature mortality.

93. Fine nitrate and sulfate particles are also toxic to aquatic life and vegetation.

94. As a result of Defendants' failure to disclose that under normal operating conditions the Unlawful Vehicles emit up to 40 times the allowed levels of NO_x pollution, the Unlawful Vehicles have illegally emitted at least 45,000 additional tons of NO_x emissions, often into economically disadvantaged communities adjoining highways whose residents are prone to asthma and other respiratory diseases that NO_x emissions exacerbate.

95. Defendants exercise complete control over, and manage and direct, their own policies with respect to environmental compliance and with respect to submitting applications to CARB.

96. At all material times, Defendants have been aware of the requirements of Pennsylvania's environmental statutes and regulations more particularly described herein.

97. For example, the Pennsylvania Clean Vehicles Program regulations require, at 25 Pa. Code § 126.412(b), that manufacturers of motor vehicles demonstrate to DEP compliance with the nonmethane organic gases ("NMOG") and NMOG+NO_x fleetwide average in CAL. CODE REGS. Tit. 13, § 1961 based on the number of new light-duty vehicles delivered for sale in this Commonwealth.

98. Beginning with model year 2008, and each subsequent model year, Defendants have submitted annual NMOG and NMOG+NO_x fleetwide average reports to the Department documenting the total deliveries for sale of the Unlawful

Vehicles in each test group, for each model year, in Pennsylvania, to demonstrate compliance with the Pennsylvania Clean Vehicles Program under 25 Pa. Code § 126.432.

99. Defendants' certifications and submissions to environmental regulators concerning the Unlawful Vehicles, which purported compliance with the applicable laws, were intentionally false and misleading.

100. Additionally, Defendants' use of the defeat device rendered all CARB Executive Orders obtained for the Unlawful Vehicles invalid as the actual emissions were considerably higher than listed in Defendants' applications for those Orders.

101. Further, Defendants' use of the defeat device rendered all the emissions control labels on the Unlawful Vehicles invalid as the actual emissions were considerably higher than stated on the labels.

102. As a result of Defendants' failure to disclose that under normal operating conditions the Unlawful Vehicles emitted up to 40 times the allowable levels of NO_x pollution under Pennsylvania law, the environment and air quality has been harmed and dangerous effects to the health and well-being of humans, animals, aquatic life, and vegetation have occurred in Pennsylvania.

D. Defendants Continued to Deny the Existence of the Defeat Devices and Mised Regulators even After Initial Evidence of their Existence Surfaced.

103. In or about May of 2014, EPA and CARB were alerted to emissions problems with Defendants' diesel vehicles when West Virginia University's ("WVU") Center for Alternative Fuels, Engines & Emissions ("CAFEE") completed a study commissioned by the International Council on Clean Transportation ("ICCT") and prepared a report (the "WVU Report") that found on-the-road emissions from two Volkswagen light duty diesel vehicles, a 2012 Jetta and a 2013 Passat, were between five and thirty-five times higher than the legal emissions limits.

104. Following the publication of the WVU Report, EPA and CARB undertook further investigation.

105. Defendants represented to regulators that it could address the excess NO_x emissions in the 2.0-liter models through a voluntary recall to optimize the vehicles' software.

106. Defendants issued the promised recalls for certain 2.0-liter Unlawful Vehicles in December 2014 and March 2015.

107. Follow-up laboratory and normal road operation testing conducted by CARB and EPA showed the software recalls' benefit was limited.

108. CARB continued to press Defendants through the spring of 2015 to account for the Unlawful Vehicles' elevated on-the-road emissions.

109. None of the explanations offered by Defendants during that time period explained the elevated emissions consistently confirmed during CARB's testing.

110. Only when CARB and the EPA made it clear to Defendants that the agencies could not certify Defendants' 2016 model year diesel vehicles for sale until the anomalies were adequately explained did Defendants finally admit they had designed and installed defeat devices in 2.0-liter Unlawful Vehicles in the form of a sophisticated software algorithm to falsify emission test results.

111. Throughout its discussions with regulators in 2014 and 2015, Defendants knew or should have known that the defeat devices in the Unlawful Vehicles disabled, changed, or altered or rendered inoperative elements of the Unlawful Vehicles' design related to compliance with applicable emission standards, including Pennsylvania's, and that installing these defeat devices constituted tampering that was illegal and ultimately caused substantial environmental harm and dangerous effects to the health and well-being of humans, animals, aquatic life, and vegetation as a result of being delivered for sale, sold, imported, purchased or leased in Pennsylvania.

E. After Sixteen Months of Obfuscation and Concealment, Defendants Admitted Their Deception To Regulators.

112. On September 3, 2015, Defendants admitted to CARB and EPA staff that the 2.0-liter Unlawful Vehicles were designed and manufactured with a defeat

device to disable, change, alter or render inoperative elements of those vehicles' emission control systems.

113. Thereafter, on September 18, 2015, EPA issued to Defendants a Notice of Violation ("September 2015 NOV") reflecting its determination that:

"VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0-liter engines. These defeat devices disable, change, alter or render inoperative elements of the vehicles' emissions control system that exists to comply with CAA emission standards. Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them."

114. The same day, CARB sent an "In-Use Compliance" letter to Defendants describing CARB's investigation of the "reasons behind these high NO_x emissions observed on their 2.0-liter diesel vehicles over real world driving conditions[]" and its related discussions with Defendants.

115. According to CARB, those discussions "culminated in VW's [September 3, 2015] admission [to CARB and EPA staff] that it has, since model year 2009, employed a defeat device to circumvent CARB and the EPA emission test procedures."

116. In a second round of notices issued on November 2, 2015, the EPA and CARB extended their determinations to “certain model year 2014-2016 diesel light-duty vehicles equipped with 3.0-liter engines.”

117. On November 20, 2015, CARB issued a press release reporting that in a November 19, 2015 meeting with EPA and CARB, VW and Audi officials “told EPA and CARB that the issues raised in the In-Use Compliance letter extend to all 3.0-liter diesel engines from model years 2009 through 2016.”

118. Thereafter, in an In-Use Compliance Letter dated November 25, 2015, CARB confirmed its determination “that all 3.0-liter model years 2009-2016 test groups of the [Audi AG, Porsche AG, Porsche Cars North America, Volkswagen AG, and Volkswagen Group of America, Inc.] are in noncompliance with CARB standards[.]”

119. In addition to its admissions to regulators, Defendants have also made numerous public admissions to legislators and investors.

120. For example, in prepared testimony before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations dated October 8, 2015, Michael Horn, President and CEO of Volkswagen Group of America, Inc. confirmed Defendants’ September 3, 2015 admission to CARB and the EPA:

“that emissions in four cylinder diesel vehicles from model years 2009-2015 contained a ‘defeat device’ in the form of hidden software

that could recognize whether a vehicle was being operating in a test laboratory or on the road. The software made those emit higher levels of nitrogen oxides when the vehicles were driven in actual road use than during laboratory testing.”

121. During the same October 8, 2015 hearing, in response to questioning from Rep. Diana DeGette, Horn admitted Volkswagen made false representations to the EPA and CARB when, in response to questions raised by the WVU study, it claimed the increased NO_x emissions were due to technical issues and unexpected in-use conditions.

122. Reports to investors contain the following “key statement” and “key fact,” respectively: “[t]he software in our EA 189 engines was designed to optimize NO_x emissions during dynamometer runs[,]” and “Volkswagen Group admits irregularities in the software used for certain diesel engines[.]”

123. Defendants continued with business as usual by marketing the Unlawful Vehicles in Pennsylvania even though Defendants had been previously caught illegally manipulating and altering motor vehicle emissions control systems.

124. Defendants’ persistence in their efforts to conceal the defeat devices from regulators’ scrutiny for more than sixteen months increased the amount of environmental harm caused by their violations.

V. STATUTORY AND REGULATORY BACKGROUND

A. Pennsylvania's Environmental Laws Require Passenger Cars and Light-Duty Trucks to Meet Certain Emissions Standards in Order to Restrict Air Pollution under the Air Pollution Control Act and Environmental Regulations

125. On December 4, 1998, Pennsylvania adopted Subchapter D of 25 Pa. Code Ch. 126 Sections 126.401 – 126.441, establishing the Pennsylvania Clean Vehicles Program.

126. The Pennsylvania Clean Vehicles Program is defined in 25 Pa. Code § 121.1 as a low emissions vehicle program established under section 177 of the Clean Air Act, 42 U.S.C. § 7507, which implements the low emission standards for new motor vehicles and motor vehicle engines adopted by California under a waiver obtained from the Administrator of EPA under Section 209(b) of the Clean Air Act, 42 U.S.C. § 7543(b).

127. The Pennsylvania Clean Vehicles Program automatically updates and incorporates by reference changes to California's regulations, in accordance with the Pennsylvania Statutory Construction Act.

128. The Unlawful Vehicles described in this Complaint are considered passenger cars, light duty vehicles and motor vehicles, as those terms are defined in 25 Pa. Code § 121.1.

129. Each of the Defendants is a “motor vehicle manufacturer” within the meaning of 25 Pa. Code § 121.1 and CAL. CODE REGS. Tit. 13, § 1969, adopted and incorporated by reference into 25 Pa. Code § 126.411(b).

130. The Pennsylvania Clean Vehicles Program requirements apply to all new passenger cars and light-duty trucks sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, titled or registered in this Commonwealth starting with the 2008 model year and each model year thereafter. 25 Pa. Code § 126.411(a).

131. Under the Pennsylvania Clean Vehicles Program, a person may not sell, import, deliver, purchase, lease, rent, acquire, receive, title or register a new light-duty vehicle, subject to the Pennsylvania Clean Vehicles Program requirements, in this Commonwealth that has not received a CARB Executive Order for all applicable requirements of CAL. CODE REGS. Tit. 13, incorporated herein by reference. 25 Pa. Code § 126.412(a).

132. Under the Pennsylvania Clean Vehicles Program, compliance with the NMOG and NMOG+NO_x fleetwide average in CAL. CODE REGS. Tit. 13, § 1961 must be demonstrated for each motor vehicle manufacturer based on the number of new light-duty vehicles delivered for sale in this Commonwealth. 25 Pa. Code § 126.412(b).

133. New motor vehicles subject to the Pennsylvania Clean Vehicles Program must possess a valid emissions control label that meets the requirements of CAL. CODE REGS. Tit. 13, Division 3, Chapter 1. 25 Pa. Code § 126.412(e).

134. Prior to being offered for sale or lease in this Commonwealth, new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements must be certified as meeting the motor vehicle requirements of CAL. CODE REGS. Tit. 13, § 1961, as determined by new motor vehicle certification testing in accordance with CAL. CODE REGS. Tit. 13, Division 3, Chapter 2 and new motor vehicle compliance testing, conducted in accordance with CAL. CODE REGS. Tit. 13, Division 3, Chapter 2. 25 Pa. Code §§ 126.421 and 126.422.

135. Each manufacturer of new motor vehicles subject to the Pennsylvania Clean Vehicles Program requirements, certified by CARB and sold or leased in this Commonwealth, must conduct inspection testing in accordance with CAL. CODE REGS. Tit. 13, Division 3, Chapter 2. 25 Pa. Code § 126.423.

136. For the purposes of determining compliance with the Pennsylvania Clean Vehicles Program, a manufacturer must submit annually to DEP, within 60 days of the end of each model year, a report documenting the total deliveries for sale of vehicles in each test group over that model year in this Commonwealth. 25 Pa. Code § 126.432(a).

137. For purposes of determining compliance with the Pennsylvania Clean Vehicles Program, a motor vehicle manufacturer must submit annually to the Department by March 1 of the calendar year following the close of the completed model year, a report of the fleet average NMOG or NMOG+NOx emissions of its total deliveries for sale of light-duty vehicles in each test group for Pennsylvania for that particular model year.

138. The fleet average report, calculating compliance with the fleetwide NMOG or NMOG+NOx exhaust emission average, must be prepared according to the procedures in CAL. CODE REGS. Tit. 13, Division 3, Chapter 1.

139. Fleet average reports must, at a minimum, identify the total number of vehicles, including offset vehicles, sold in each test group delivered for sale in Pennsylvania, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in Pennsylvania in relation to total fleet sales. 25 Pa. Code § 126.432(b) and (c).

140. Volkswagen submitted final annual NMOG or NMOG+NOx fleet average reports to DEP for model years 2009–2015, which include the total number of light-duty vehicles in each test group delivered for sale in Pennsylvania under 25 Pa. Code § 126.432(b).

141. These annual NMOG and NMOG+NOx fleet average reports included Unlawful Vehicles and invalid certifications.

142. Volkswagen is required by 25 Pa. Code § 126.431(a) to warrant to each owner of a vehicle that each vehicle will comply with the requirements of CAL. CODE REGS. Tit. 13, Div. 3, Ch. 1, §§ 2035-2038, 2040 and 2041.

143. Section 2307(b)(1) of CAL. CODE REGS. Tit. 13 requires Volkswagen to warrant to each purchaser of a vehicle that the vehicle or engine is “designed, built, and equipped so as to conform with all applicable regulations adopted by the Air Resources Board.”

144. Every warranty Defendants gave to owners of an Unlawful Vehicle was inaccurate because the existence of the defeat device meant the vehicle did not meet all applicable requirements.

145. Each of the Defendants is a “person” within the meaning of 35 P.S. § 4003.

146. The Pennsylvania Air Pollution Control Act in Section 4, 35 P.S. § 4004, authorizes DEP to bring an action to compel compliance with the Air Pollution Control Act or any regulation promulgated under the Air Pollution Control Act.

147. Defendants’ conduct amounts to unlawful conduct, under Section 8 of the Air Pollution Control Act, 35 P.S. § 4008, which provides that it shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of the Air Pollution Control Act or the regulations adopted under the

Air Pollution Control Act, to cause air pollution, soil or water pollution resulting from an air pollution incident, or to violate the provisions of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, in regard to papers required to be submitted under the act.

148. Section 4(10) of the Air Pollution Control Act, 35 P.S. § 4004(10), authorizes DEP to institute, in a court of competent jurisdiction, proceedings to compel compliance with this act and any rule or regulation promulgated under this act.

149. Section 13.6 of the Air Pollution Control Act, 35 P.S. § 4013.6, authorizes DEP to file a suit in Commonwealth Court and authorizes this Court to “levy civil penalties in the same manner as the department in accordance with section 9.1.”

150. Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1, authorizes DEP to assess a civil penalty of up to \$25,000 per day for each violation of the act or any regulation promulgated under the act.

151. Section 9.2 of the Air Pollution Control Act, 35 P.S. § 4009.2, states that all fines, civil penalties and fees collected under the Air Pollution Control Act shall be paid into the Treasury of the Commonwealth of Pennsylvania in a special fund known as the Clean Air Fund, established by the Air Pollution Control Act and administered by the Department for use in the elimination of air pollution.

152. Under Section 9.3 of the Air Pollution Control Act, 35 P.S. § 4009.3, each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order shall constitute a separate offense and violation.

153. Under Section 13 of the Air Pollution Control Act, 35 P.S. § 4013, a violation of the Air Pollution Control Act or of any rule or regulation promulgated under the Air Pollution Control Act shall constitute a public nuisance.

B. Pennsylvania's Vehicle Code Prohibits the Disabling, Changing, or Altering of the Emission Control System in a Vehicle.

154. Pennsylvania's Vehicle Code prohibits any person, broadly defined as any natural person, firm, co-partnership, association or corporation, from disabling, changing, or altering the emission control system of a vehicle. 75 Pa. C.S. § 4531(b).

155. Additionally, no person shall knowingly sell a vehicle whose emission control system has been disabled, changed, or altered from its original design specifications. 75 Pa. C.S. § 4531(c).

156. It is unlawful for any person to sell, offer for sale, lease, install or replace, either separately or as part of the equipment of a vehicle, any items of vehicle equipment affecting the operation of the vehicle which does not comply with the Vehicle Code or regulations promulgated thereunder, or which does not

comply with an applicable Federal motor vehicle safety standard adopted by regulation by PennDOT. 75 Pa.C.S. § 4107(a)(1).

157. Section 4107(a)(2) of the Vehicle Code provides for civil penalties of \$100 per violation of Section 4107(a)(1), with each violation constituting a separate violation with respect to each motor vehicle or item of motor vehicle equipment, except that the maximum civil penalty shall not exceed \$10,000 for any related series of violations.

158. It is unlawful for any person to “willfully or intentionally remove, other than for purposes of repair and replacement, or render inoperative, in whole or in part, any item of vehicle equipment which was required to be installed at the time of manufacture or thereafter upon any vehicle, by any law, rule, regulation or requirement of any officer or agency of the United States or of the Commonwealth, if it is intended that the vehicle be operated upon the highways of this Commonwealth unless the removal or alteration is specifically permitted by this title or by regulations promulgated by” PennDOT. 75 Pa.C.S. § 4107(b)(1).

159. It is unlawful for any person to “cause or permit another person to operate, on any highway in this Commonwealth any vehicle or combination which is not equipped as required under this part [IV of the Vehicle Code]” 75 Pa.C.S. § 4107(b)(2).

160. It is unlawful for any person to do any act forbidden by Part IV of the Vehicle Code or fail to perform any act required thereunder. 75 Pa.C.S. § 4107(b)(3).

161. Section 1904(a) of the Vehicle Code, 75 Pa C.S. § 1904(a), states that all fines, civil penalties and fees collected in connection with the administration of the Vehicle Code shall be paid into the Treasury of the Commonwealth of Pennsylvania for deposit into the Motor License Fund.

VI. CAUSES OF ACTION

Count I: Violation of the Vehicle Code – Anti-Tampering. 75 Pa.C.S. §§ 4107 and 4531.

162. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

163. As stated above, it is a violation of Section 4531(b) of the Vehicle Code for any person to disable, change or alter the emission control system of a vehicle.

164. As stated above, it is a violation of Section 4531 (c) of the Vehicle Code for any person to knowingly sell a vehicle with a disabled emission control system.

165. As stated above, it is a violation of Section 4107 (a) of the Vehicle Code for any person to sell, offer for sale, lease, install or replace, either separately

or as part of the equipment of a vehicle, any items of vehicle equipment affecting the operation of the vehicle which does not comply with the Vehicle Code or regulations promulgated thereunder.

166. As stated above, it is a violation of Section 4107 (b) (1) for any person to willfully or intentionally remove, other than for purposes of repair and replacement, or render inoperative, in whole or in part, any item of vehicle equipment which was required to be installed at the time of manufacture or thereafter upon any vehicle, by any law, rule, regulation or requirement of any officer or agency of the United States or of the Commonwealth, if it is intended that the vehicle be operated upon the highways of this Commonwealth unless the removal or alteration is specifically permitted by the Vehicle Code or PennDOT regulations.

167. As stated above, it is a violation of Section 4107 (b) (2) for any person to cause or permit another person to operate, on any highway in this Commonwealth any vehicle which is not equipped as required under part IV of the Vehicle Code.

168. As stated above, it is a violation of Section 4107 (b) (3) for any person to do any act forbidden by Part IV of the Vehicle Code or fail to perform any act required thereunder.

169. By disabling, changing, or altering the emission control system of the Unlawful Vehicles, Defendant violated Sections 4107 and 4531 of the Vehicle Code. 75 Pa.C.S. §§ 4107 and 4531.

170. Said conduct is willful and is unlawful.

Count II: Violation of the Pennsylvania Clean Vehicles Program Regulations - Misrepresentation and Invalid Certification. 25 Pa. Code §§ 126.421, 126.422 and 126.423.

171. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

172. As stated above, Defendants offered for sale or lease Unlawful Vehicles in Pennsylvania for model years 2009-2016 that Defendants misrepresented met the CARB motor vehicle requirements of CAL. CODE REGS. Tit. 13 adopted and incorporated by reference by the Pennsylvania Environmental Quality Board under 25 Pa. Code §§ 126.401 – 126.451 by way of authority under the Air Pollution Control Act, 35 P.S. § 4005.

173. By misrepresenting that the Unlawful Vehicles met the motor vehicle requirements of CAL. CODE REGS. Tit. 13, § 1961, as determined by new motor vehicle certification testing and new motor vehicle compliance testing conducted in accordance with CAL. CODE REGS. Tit. 13, Division 3, Chapters 1 and 2, Defendants violated 25 Pa. Code §§ 126.421 and 126.422.

174. By misrepresenting that the Unlawful Vehicles met the inspection

testing requirements of CAL. CODE REGS. Tit. 13, Div.3, Ch. 2, as determined by assembly line testing conducted in accordance with CAL. CODE REGS. Tit. 13, Div. 3, Ch. 2, Defendants violated 25 Pa. Code § 126.423.

175. Each violation of 25 Pa. Code §§ 126.421, 126.422 and 126.423 constitutes a separate offense with respect to each Unlawful Vehicle in Pennsylvania.

176. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution Control Act, including 25 Pa. Code §§ 126.421, 126.422 and 126.423, shall constitute a separate offense and violation. 35 P.S. § 4009.3.

177. Defendants' Unlawful Vehicles with invalid certifications that do not meet California standards continue to be driven in the Commonwealth and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

Count III: Violation of the Pennsylvania Clean Vehicles Program Regulations – Failure to obtain or receive a valid CARB Executive Order. 25 Pa. Code § 126.412(a).

178. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

179. As stated above, by installing defeat devices on the Unlawful

Vehicles, Defendants sold, imported, delivered or leased new light-duty vehicles in Pennsylvania that are subject to the Pennsylvania Clean Vehicles Program requirements under 25 Pa. Code §§ 126.401- 126.451 and that did not have a valid CARB Executive Order that met the applicable requirements of CAL. CODE REGS. Tit. 13 adopted and incorporated into DEP's regulations by reference.

180. Defendants did not obtain a valid CARB Executive Order for the Unlawful Vehicles because the vehicles contained defeat device technology, which was not disclosed or revealed by Defendants when seeking to obtain the CARB Executive Order.

181. Defendants' sale, importation, delivery or leasing of new light-duty vehicles in Pennsylvania subject to the Pennsylvania Clean Vehicles Program requirements that did not have a validly obtained CARB Executive Order for all applicable requirements of CAL. CODE REGS. Tit. 13 adopted and incorporated into the Department's regulations by reference, constitutes a violation of 25 Pa. Code § 126.412(a).

182. Each violation of 25 Pa. Code § 126.412(a) constitutes a separate offense with respect to each Unlawful Vehicle in Pennsylvania.

183. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution

Control Act, including 25 Pa. Code §126.412(a), shall constitute a separate offense and violation. 35 P.S. § 4009.3.

184. Defendants' Unlawful Vehicles with invalidly obtained CARB Executive Orders continue to be driven in the Commonwealth and as a result of being delivered, imported, sold, or leased have caused, and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

Count IV: Violation of the Pennsylvania Clean Vehicles Program Regulations - Failure to Demonstrate Compliance with NMOG and NMOG+NO_x Fleetwide Average. 25 Pa. Code § 126.412(b).

185. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

186. As stated above, Defendants failed to accurately demonstrate compliance with the NMOG and NMOG+NO_x fleetwide average in CAL. CODE REGS. Tit. 13, § 1961 based on the number of new light-duty vehicles delivered for sale in Pennsylvania.

187. By failing to accurately demonstrate compliance with the NMOG and NMOG+NO_x fleetwide average in CAL. CODE REGS. Tit. 13, § 1961, Defendants violated 25 Pa. Code § 126.412(b)

188. Each violation of 25 Pa. Code § 126.412(b) constitutes a separate offense with respect to each inaccurate NMOG and NMOG+NO_x fleetwide

average for Pennsylvania.

189. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution Control Act, including 25 Pa. Code § 126.412(a), shall constitute a separate offense and violation. 35 P.S. § 4009.3.

190. Defendants' Unlawful Vehicles with invalidly obtained CARB Executive Orders continue to remain in the Commonwealth and as a result of being delivered, imported, sold, or leased has caused, and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

Count V: Violation of the Pennsylvania Clean Vehicles Program Regulations - Failure to Possess a Valid Emissions Control Label. 25 Pa. Code § 126.412(e).

191. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

192. As stated above, Defendants sold, imported, delivered or leased new motor vehicles in Pennsylvania that did not possess a valid emissions control label that meets the requirements of CAL. CODE REGS. Tit. 13, Division 3, Chapter 1, as a result of their installation of defeat devices on the Unlawful Vehicles and as a result of the invalidly obtained certifications.

193. By selling, importing, delivering or leasing new motor vehicles in Pennsylvania that did not possess a valid emissions control label that met the requirements of CAL. CODE REGS. Tit. 13, Divisions 3, Chapter 1, Defendants violated 25 Pa. Code § 126.412(e).

194. Each violation of 25 Pa. Code § 126.412(e) constitutes a separate offense with respect to each new motor vehicle.

195. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution Control Act, including 25 Pa. Code § 126.412(e), shall constitute a separate offense and violation. 35 P.S. § 4009.3.

196. Defendants' Unlawful Vehicles with invalid emissions control labels continue to remain in the Commonwealth and as a result of being delivered, imported, sold, or leased has caused, and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

Count VI: Violation of the Pennsylvania Clean Vehicles Program Regulations - Failure to Accurately Report the NMOG and NMOG+NOx Fleetwide Average. 25 Pa. Code § 126.432(b) and (c).

197. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

198. As stated above, Defendants failed to accurately report the fleetwide average NMOG and NMOG+NOx emissions of its total deliveries for sale of Light Duty Vehicles in each test group for Pennsylvania for model years 2009 through 2015.

199. By failing to accurately report the fleetwide average NMOG and NMOG+NOx emissions of its total deliveries for sale of Light Duty Vehicles in each test group for Pennsylvania for model years 2009 through 2015 and the corresponding certification standards, Defendants violated 25 Pa. Code § 126.432(b) and (c).

200. Each violation of 25 Pa. Code § 126.432(b) or (c) constitutes a separate offense with respect to each report.

Count VII: Violation of the Pennsylvania Clean Vehicles Program Regulations – Failure to Accurately Warrant that the Vehicles met all Applicable Regulations. 25 Pa. Code § 126.431(a).

201. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

202. As stated above, Defendants failed to accurately warrant that each of the Unlawful Vehicles conformed with all applicable regulations.

203. By failing to accurately warrant that each of the Unlawful Vehicles conformed with all applicable regulations as required by CAL. CODE REGS. Tit. 13, § 2037(b)(1), Defendants violated 25 Pa. Code § 126.431(a).

204. Each violation of 25 Pa. Code § 126.431(a) constitutes a separate offense with respect to each warranty.

**Count VIII: Violation of the Air Resources Regulations – Air Pollution.
25 Pa. Code § 121.7.**

205. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

206. As stated above, Defendants, by installing undisclosed defeat devices on the Unlawful Vehicles, caused excessive amounts of pollution to be emitted into the atmosphere in Pennsylvania, and the Unlawful Vehicles continue to emit excessive pollution into the atmosphere in Pennsylvania on a daily basis.

207. The excessive emissions of pollution in the atmosphere caused by Defendants' Unlawful Vehicles have caused, and continue to cause, substantial environmental harm and dangerous effects to the health, comfort and welfare of humans, animals and vegetation in Pennsylvania.

208. By causing excessive emissions of pollution in the atmosphere, Defendants violated 25 Pa. Code § 121.7.

209. Each violation of 25 Pa. Code § 121.7 constitutes a separate offense with respect to each Unlawful Vehicle.

210. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution

Control Act, including 25 Pa. Code § 121.7, shall constitute a separate offense and violation. 35 P.S. § 4009.3.

211. Defendants' Unlawful Vehicles continue to remain in the Commonwealth and as a result of being delivered, imported, sold, or leased have caused, and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

**Count IX: Violation of the Air Resources Regulations –
Circumvention. 25 Pa. Code § 121.9.**

205. The preceding paragraphs are incorporated herein by reference as if the same were fully set forth.

206. As stated above, Defendants, by installing defeat devices on the emissions control systems of the Unlawful Vehicles, used a device or technique which, without resulting in the reduction of the total amount of air contaminants emitted, concealed the emission of air contaminants from the Unlawful Vehicles, which would otherwise be in violation of the Pennsylvania Air Resources Regulations.

207. By installing defeat devices on the emissions control systems of the Unlawful Vehicles, and thereby using a device or technique which, without resulting in the reduction of the total amount of air contaminants emitted, concealed the emission of air contaminants from the Unlawful Vehicles that would otherwise be in violation of the Pennsylvania Air Resources Regulations,

Defendants violated 25 Pa. Code § 121.9.

208. Each violation of 25 Pa. Code § 121.9 constitutes a separate offense with respect to each new motor vehicle with defeat device technology.

209. Each day of continued violation and each violation of any provision of the Air Pollution Control Act, any rule or regulation adopted under the Air Pollution Control Act or any DEP order issued pursuant to the Air Pollution Control Act, including 25 Pa. Code § 121.9, shall constitute a separate offense and violation. 35 P.S. § 4009.3.

210. Defendants' Unlawful Vehicles that used defeat device technology continue to remain in the Commonwealth and as a result of being delivered, imported, sold, or leased have caused, and continue to cause, substantial environmental harm and dangerous effects to the health and well-being of humans, animals and vegetation.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court grant the following relief:

A. Enter an order requiring Defendants to pay all the financial benefit Defendants received as a consequence of their violations of the environmental regulations.

B. Enter an order permanently enjoining Defendants from:

- i. Selling, offering for sale, introducing into commerce, or delivering for introduction into commerce into the Commonwealth any new motor vehicle equipped with a defeat device or any new motor vehicle not eligible for sale pursuant to emissions and environmental standards in the Commonwealth;
- ii. Bypassing, defeating, or rendering inoperative any device or element of design installed on or in a new motor vehicle in compliance with emissions and environmental standards in the Commonwealth; and
- iii. Submitting or causing to be submitted false or misleading certifications or reports to DEP.

C. Require Defendants to submit to a third-party monitor overseen by the Court to ensure Defendants' future compliance with emissions and environmental standards in the Commonwealth.

D. Order Defendants to revise and submit all reports due to this Commonwealth under 25 Pa. Code § 126.432.

E. Order Defendants, individually, as well as, jointly and severally, to pay a civil penalty of up to \$25,000 per day per violation for violations of 25 Pa. Code §§ 121.9, 126.412(a), 126.412(b), 126.412(e), 126.421, 126.422, 126.423,

126.432(b) pursuant to Sections 9.1 and 13.6(b) of the Air Pollution Control Act, 35 P.S. §§ 4009.1 and 4013.6(b).

F. Order Defendants, individually, as well as, jointly and severally, to pay a civil penalty of \$100 per day for each violation of 75 Pa.C.S. 4107(a)(1) in accordance with 75 Pa.C.S. § 4107(a)(2) up to a maximum of \$10,000.

G. Require Defendants to pay the Commonwealth for attorney's fees and for the cost of investigation and prosecution of this action.

H. Permanently enjoin Defendants, their agents, successors, assigns and employees acting directly or through any corporate device, from engaging in the aforementioned acts, practices, methods of competition or any other practice in violation of the Air Pollution Control Act and the Vehicle Code.

I. Grant such other and further relief, as the Court deems just, proper, and equitable under the circumstances.

SIGNATURES ON NEXT PAGE

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

Bruce L. Castor, Jr.
First Deputy Attorney General

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

Date: 7/29/16

By: Nicole DiTomo

Nicole R. DiTomo
Deputy Attorney General
PA Attorney I.D. No. 315325
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Telephone: (717) 705-6559
Facsimile: (717) 705-3795
Email: nditomo@attorneygeneral.gov
*On behalf of the Department of
Environmental Protection and the
Department of Transportation*

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Alexandra Chiaruttini
Chief Counsel

Date: 7/29/16

By: *Douglas G. White*

Douglas G. White
Supervisory Counsel
Department of Environmental Protection
Attorney I.D. # 68066
Office of Chief Counsel
2 E. Main Street
Norristown, Pennsylvania 19401
Phone: 484-250-5864
Fax: 484-250-5931
Email: douwhite@pa.gov

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

William J. Cressler
Chief Counsel

Date: July 29, 2016

By:



Robert J. Shea
Senior Deputy Chief Counsel
Attorney I.D. 32314
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212
Phone: 717-787-5299
Fax: 717-772-2741
Email: rshea@pa.gov

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

:
:
: CIVIL ACTION
:
:

and

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,**

: Case No. _____
:
:

PLAINTIFFS

v.

**VOLKSWAGEN AKTIENGESELLSCHAFT
d/b/a VOLKSWAGEN AG; AUDI AG;
VOLKSWAGEN GROUP OF AMERICA, INC.;
DR. ING. H.C. F. PORSCHE AG d/b/a
PORSCHE AG; and PORSCHE CARS
NORTH AMERICA, INC.,**

DEFENDANTS

VERIFICATION

I, David C. Trostle, being duly sworn according to law, hereby state that I am in excess of eighteen (18) years of age and that I am the Mobile Sources Section Chief for the Pennsylvania Department of Environmental Protection and that I am authorized to make this verification and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

Date: 7/28/2016 By: David C. Trostle
David C. Trostle
Mobile Sources Section Chief
Department of Environmental Protection

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PORSCHE AG; and PORSCHE CARS
NORTH AMERICA, INC.,**

DEFENDANTS

VERIFICATION

I, Kurt J. Myers, being duly sworn according to law, hereby state that I am in excess of eighteen (18) years of age and that I am the Deputy Secretary for Driver and Vehicle Services for the Pennsylvania Department of Transportation and that I am authorized to make this verification and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

Date: 7/27/16 By: _____



Kurt J. Myers
Deputy Secretary for Driver & Vehicle Services
Pennsylvania Department of Transportation