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10 Attorneys for Plaintiff
Federal Trade Commission

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 IN RE: VOLKSWAGEN “CLEAN DIESEL”
15 MARKETING, SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

MDL 2672 CRB (JSC)

**AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

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17 This document relates to:

The Honorable Charles R. Breyer

18 *FTC v. Volkswagen Group of America, Inc.*,
19 No. 3:16-cv-1534

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1 Plaintiff, the Federal Trade Commission (“FTC”), for its Amended Complaint alleges:

2 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
3 Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission, restitution,
4 the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for
5 Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in
6 connection with Defendants’ marketing and distribution to consumers of diesel-engine vehicles
7 containing illegal defeat device software designed to enable the vehicles to cheat emissions tests.
8 This Court has already entered an Order against Defendant Volkswagen Group of America, Inc.

9 (“Volkswagen USA”) as to the FTC’s claims. In 2012, the Court entered an Order against the FTC, Jurisdints 0 12 4
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1 appropriate in each case, including rescission or reformation of contracts, restitution, the refund
2 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

3 **DEFENDANTS**

4 7. Defendant Volkswagen USA is a New Jersey corporation with its principal place
5 of business located at 2200 Ferdinand Porsche Drive, Herndon, VA 20171. Volkswagen USA
6 transacts or has transacted business in this district and throughout the United States.

7 8. Volkswagen USA also transacts or has transacted business in this district and
8 throughout the United States as Volkswagen of America, Inc. and Audi of America, Inc.,
9 fictitious business names registered in Ohio.

10 9. Volkswagen USA is a subsidiary of Volkswagen AG, with headquarters in
11 Wolfsburg, Germany.

12 10. Defendant Porsche Cars North America, Inc. ("Porsche NA") is a Delaware
13 corporation with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia
14 30354. Porsche NA transacts or has transacted business in this district and throughout the United
15 States.

16 11. Porsche NA is a subsidiary of Porsche AG, a German corporation that is wholly-
17 owned by Volkswagen AG.

18 12. At all times material to this Amended Complaint, acting alone or in concert with
19 others, Defendants have advertised, marketed, offered for sale, sold, offered for lease, leased, and
20 distributed diesel-engine motor vehicles to consumers throughout the United States, including
21 various makes and models marketed as "Clean Diesel" (collectively, "Defeat Device Vehicles,"
22 or "DDVs"). Each of these vehicles contains a defeat device, illegal software designed to enable
23 the vehicle to cheat emissions tests. The defeat device operates when emissions testing occurs
24 and calibrates the emission control system to reduce NOx emissions to legally compliant levels
25 for the duration of the test. After testing, the software resumes its default mode: calibrating the
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1 emission control system to allow NOx emissions above the legal limit, which enables more
2 powerful and durable engine performance. Without sophisticated testing equipment, there is no
3 way to know whether a vehicle contains such a defeat device.

4 **COMMERCE**

5 13. At all times material to this Amended Complaint, Defendants have maintained a
6 substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of
7 the FTC Act, 15 U.S.C. § 44.

8 **DEFENDANTS’ BUSINESS ACTIVITIES**

9 14. Defendant Volkswagen USA sells Volkswagen and Audi vehicles through
10 approximately 1,000 dealers and independent distributors throughout the United States.

11 15. From late 2008 to late 2015, Defendant Volkswagen USA advertised, marketed,
12 offered for sale, sold, offered for lease, leased, and distributed more than 550,000 Volkswagen-
13 branded and Audi-branded Defeat Device Vehicles to consumers throughout the United States.

14 16. Volkswagen USA represented that Volkswagen-branded and Audi-branded DDVs
15 had low emissions, complied with government emissions standards, were environmentally
16 friendly, and retained a high resale value. During this time, Volkswagen USA became and retained
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1 OTAQ performed confirmatory testing on the TDI Jetta, it passed solely because it contained
2 illegal software designed to defeat EPA’s testing procedures (*i.e.*, a “defeat device”).

3 23. Volkswagen USA began distributing its first Defeat Device Vehicle, the “Clean
4 Diesel” TDI Jetta, in late 2008. According to Volkswagen USA, its introduction of its new
5 “Clean Diesel” technology in the U.S. market was “proof of [Volkswagen] Group’s commitment
6 to provide customers an alternative in their purchase of fuel efficient, clean emissions vehicles
7 that are also fun to drive.”

8 24. Over the next seven years, Volkswagen USA sold, leased, or distributed more
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- H. An Audi print ad with the tagline “Diesel. It’s no longer a dirty word,” describes the TDI engine as having “20% fewer emissions than gasoline engines.”
 - I. In the “coffee filter test” video featured on one of Volkswagen USA’s online media campaigns at TDITruthandDare.com, two testers compare a “Clean Diesel” Volkswagen Touareg with a “traditional diesel” by placing clean white coffee filters on the tailpipes “to see which one is cleaner after 10 minutes.” After the “test,” the Touareg filter is still clean white, but the “traditional diesel” filter had a “s anT
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1 C. Volkswagen USA presents the “50-state compliant clean diesel Volkswagen Jetta
2 TDI sedan and SportWagen TDI.”

3 D. The “Touareg V6 TDI meet[s] the most stringent emission requirements of the
4 world [with] its advanced DeNOx system.”

5 E. “To achieve its 50-state-legal emissions qualification, a deNOx catalytic
6 converter, augmented by a special injection system that sprays [diesel exhaust
7 fluid (“DEF”)] into the exhaust, helps reduce NOx emissions by up to 90 per cent.
8 This lets the engine meet the Tier 2, Bin 5/ULEV II standards imposed across all
9 50 U.S. states.”

10 F. “Certified for use in all 50 states.”

11 **Volkswagen USA Claimed that Its Defeat Device Vehicles Were Environmentally Friendly.**

12 34. Volkswagen USA’s advertisements, promotional materials, and public statements
13 represented that its Defeat Device Vehicles were environmentally friendly, including that they
14 were “environmentally-conscious,” “eco-conscious,” or “green.” For example:

15 A. In a television advertisement broadcast during the 2010 Super Bowl, the “Green
16 Police” arrest consumers who use plastic bags or bottles, throw away batteries,
17 fail to compost orange rinds, install incandescent light bulbs, soak in overheated
18 Jacuzzi water, and drink from Styrofoam cups. When an Audi driver encounters
19 an “Eco Check” roadblock, a Green Police officer asks the driver: “You got a TDI
20 here?” The TDI driver responds: “Clean Diesel.” An officer replies: “You’re
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- 1 B. A press release states that the 2011 Audi Q7 “provides premium SUV buyers with
2 a new level of environmental conscientiousness with its efficient 3.0 TDI clean
3 diesel engine.”
- 4 C. A page titled “Our environment” in a 2014 Volkswagen Jetta brochure pictures a
5 pristine river winding through lush green forest and states: “Building cars comes
6 with responsibilities—not just to you, but to the environment.” Under the caption
7 “Our commitment to the environment,” the brochure lists items such as
8 “[e]ncouraging eco-conscious behavior.”
- 9 D. A press release for the launch of the 2009 Touareg TDI “Clean Diesel” states that
10 the Touareg TDI “reinforces Volkswagen’s commitment to clean diesel
11 technology as the most sensible alternative fuel vehicle available today.”
- 12 E. A 2013 brochure calls a TDI “Clean Diesel” vehicle “[g]ood, clean fun,”
13 compares it to a hybrid, and explains its “Think Blue” logo as: “The sky’s the
14 limit. The color blue symbolizes our commitment to building environmentally
15 conscious cars . . . [a]nd setting a good example for eco-conscious behavior,
16 everywhere, and every day.” It concludes: “Think Blue is the Volkswagen way
17 to drive progress by creating and producing cars that are more efficient, eco-
18 conscious, and fun to drive.”
- 19 F. A mailer to Volkswagen customers promotes the 2009 Jetta TDI with the heading,
20 “Hybrids? They’re so last year . . .” It further states: “Now going green doesn’t
21 have to *feel* like you’re going green.”
- 22 G. Stickers on new “Clean Diesel” cars that disclose price, fuel economy, and other
23 features contain a Volkswagen USA motto: “The People Want Good Clean
24 Diesel Fun.” According to Volkswagen USA’s internal marketing materials, this
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1 motto is “meant to convey that VW has the people, processes, [and] products to
2 provide sustainable solutions.”

3 **Volkswagen USA Claimed Its Defeat Device Vehicles Would Retain a High Resale Value.**

4 35. Through its advertising, public statements, and selling and leasing of cars,
5 Volkswagen USA also represented to consumers that its Defeat Device Vehicles were durable,
6 well-engineered vehicles that would retain a high resale value. For example:

- 7 A. Volkswagen USA promoted DDVs as a good investment that likely retains a high
8 resale value. For example, in response to a hypothetical customer’s desire for “a
9 return on my investment,” a 2015 Audi brochure states: “TDI[®] clean diesel
10 models typically have a higher resale value versus comparable gasoline vehicles.”
11 Press releases and vehicle launches in 2009 cite “better resale value projections”
12 for the Audi Q7 and “phenomenal resale value” for the Volkswagen Touareg.
- 13 B. In marketing the benefits of DDVs, Volkswagen USA often used its tagline:
14 “That’s the power of German engineering,” and referred to its “unparalleled” and
15 “superior” engineering.
- 16 C. Volkswagen USA frequently described DDVs as “long-lasting.” As one brochure
17 states: “Whether you’re . . . driving mile after mile in any of our long-lasting TDI
18 models, Volkswagen is all about performa
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2 result in substantially higher resale than comparable in sub91titiwaf7T/TT2C5odels with
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1 reduce the “Clean Diesel” vehicles’ illegal NOx emissions. The discrepancy between the Defeat
2 Device Vehicles’ laboratory performance and their real-world performance remained.

3 41. Volkswagen USA attempted to explain the discrepancy in various ways that
4 CARB and EPA found increasingly implausible. Nonetheless, during this period, Volkswagen
5 USA continued to market “Clean Diesel” vehicles as producing low emissions, complying with
6 emissions standards, being environmentally friendly, and having a high resale value.

7 42. In August 2015, EPA and CARB informed Volkswagen USA that it would not
8 receive COCs for 2016 model year 2.0L “Clean Diesel” vehicles until the issue was resolved.

9 43. At this point, Volkswagen USA admitted that its 2.0L diesel vehicles contained
10 defeat devices. On September 18, 2015, EPA issued Volkswagen USA a Notice of Violation
11 (“NOV”) covering approximately 480,000 2.0L Defeat Device Vehicles.

12 44. However, Volkswagen USA continued selling 3.0L “Clean Diesel” vehicles with
13 TDI engines that also contained defeat devices.

14 45. On November 2, 2015, EPA issued a second NOV covering 3.0L “Clean Diesel”
15 vehicles. EPA’s second NOV explains that the 3.0L vehicles also contain defeat devices that
16 operate when testing occurs, and reduce NOx emissions to compliant levels only during the test.
17 Defendants admitted that these vehicles contain undisclosed software similar to the defeat
18 devices in the 2.0L vehicles.
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20 **VIOLATIONS OF THE FTC ACT**

21 46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts
22 or practices in or affecting commerce.”

23 47. Misrepresentations or deceptive omissions of material fact constitute deceptive
24 acts or practices prohibited by Section 5(a) of the FTC Act.

25 48. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are
26 likely to cause substantial injury to consumers that consumers cannot reasonably avoid
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1 themselves and that is not outweighed by countervailing benefits to consumers or competition.

2 15 U.S.C. § 45(n).

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1 B. Volkswagen-branded and Audi-branded Defeat Device Vehicles do not
2 meet basic emissions standards, including federal and state standards for emissions compliance;

3 C. Volkswagen-branded and Audi-branded Defeat Device Vehicles are not
4 environmentally friendly, not “environmentally-conscious,” not “eco-conscious,” and not
5 “green”; and

6 D. Volkswagen-branded and Audi-branded Defeat Device Vehicles will
7 suffer a significant reduction in their resale value compared with similar vehicles because they
8 contain defeat devices.

9 51. Therefore, Defendant Volkswagen USA’s representations as set forth in
10 Paragraph 49 of this Complaint are false and misleading and constitute a deceptive act or
11 practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 **Count II: Deceptive Failure to Disclose (Volkswagen USA)**

13 52. In numerous instances in connection with the advertising, marketing, offering for
14 sale, sale, offering for lease, lease, and distribution of Volkswagen-branded and Audi-branded
15 Defeat Device Vehicles, Defendant Volkswagen USA represented, directly or indirectly,
16 expressly or by implication, that Volkswagen-branded and Audi-branded DDVs were durable,
17 well-engineered vehicles.

18 53. In numerous instances in which Volkswagen USA has made the representations
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1 55. Volkswagen USA's failure to disclose the material information described in
2 Paragraph 53, in light of the representations in Paragraph 51, constitutes a deceptive act or
3 practice in violation of Section 5 of the FTC Act, 15 U.S.C. 45(a).

4 **Count III: Means and Instrumentalities (Volkswagen USA)**

5 56. Defendant Volkswagen USA has distributed advertisements and promotional
6 materials, including but not limited to videos, webpages, brochures, posters, stickers, and point
7 of sale materials containing the representations described in Paragraph 49 to dealers and
8 independent distributors that sold, leased, and distributed Volkswagen-branded and Audi-
9 branded Defeat Device Vehicles. In doing so, Volkswagen USA provided dealers and
10 distributors with the means and instrumentalities for the commission of deceptive acts or
11 practices.

12 57. Volkswagen USA's practices as set forth in Paragraph 56 of this Complaint
13 constitute a deceptive act or practice, in or affecting commerce in violation of Section 5(a) of the
14 FTC Act, 15 U.S.C. § 45(a).

15 **Count IV: Unfairness (Volkswagen USA & Porsche NA)**

16 58. As described in Paragraphs 22 of this Complaint, Defendant Volkswagen USA's
17 Defeat Device Vehicles contained defeat devices. Volkswagen USA then advertised, marketed,
18 offered for sale, sold, offered for lease, leased, and distributed these vehicles to consumers, as
19 described in Paragraphs 28-455 of this Complaint.

20 59. As described in Paragraphs 225-247 of this Complaint, Defendant Porsche NA's
21 Defeat Device Vehicles contained defeat devices. Porsche NA then distributed these vehicles to
22 consumers, as described in Paragraph 27 of this Complaint.

23 60. Defendants' actions caused or are likely to cause substantial injury to consumers,
24 including that consumers unknowingly purchased or leased vehicles that, when driven on roads,
25 exceed legal emission standards, emit high levels of NOx and, as a result, have a substantially
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1 reduced value. Because of Defendants' actions, consumers purchased or leased substantially
2 different vehicles than the ones they thought they purchased and did not receive the benefit of
3 their bargain. Collectively, these consumers suffered billions of dollars in injury.

4 61. Consumers could not have reasonably avoided this substantial injury because they
5 could not reasonably have known the Defeat Device Vehicles contained defeat devices before
6 they purchased or leased the vehicles.

7 62. The substantial injury suffered by consumers is not outweighed by countervailing
8 benefits to consumers or competition. Because defeat devices are illegal, they produce no legally
9 cognizable benefit to consumers. Additionally, any alleged benefit the defeat devices delivered
10 to consumers is vastly outweighed by the billions in injury consumers suffered. Furthermore, the
11 use of a defeat device disadvantaged auto manufacturers that did not employ illegal software.

12 63. Therefore, Defendants' practices as described in Paragraphs 58-59 of this
13 Complaint constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.
14 §§ 45(a) and 45(n).

15 **CONSUMER INJURY**

16 64. Consumers have suffered and will continue to suffer substantial injury as a result
17 of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched
18 as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants
19 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

20 **THIS COURT'S POWER TO GRANT RELIEF**

21 65. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
22 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
23 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
24 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
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1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
2 remedy any violation of any provision of law enforced by the FTC.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
5 and the Court's own equitable powers, requests that the Court:

6 A. Enter a permanent injunction to prevent future violations of the FTC Act by
7 Defendant;

8 B. Award such additional relief as the Court finds necessary to redress injury to
9 consumers resulting from Defendants' violations of the FTC Act, including but not limited to,
10 rescission or reformation of contracts, restitution, the refund of monies paid, and the
11 disgorgement of ill-gotten monies;

12 C. Award Plaintiff the costs of bringing this action, as well as such other and
13 additional relief as the Court may determine to be just and proper.

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16 Respectfully submitted,

17 DAVID C. SHONKA
18 Acting General Counsel

19 Dated: January 31, 2017

20 /s/ Jonathan Cohen
21 JONATHAN COHEN
22 MICHELLE L. SCHAEFER
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