

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOEL SILVERMAN, individually)	
and on behalf of all others similarly)	
situated,)	CIVIL ACTION FILE NO.
)	FILE NO. _____
Plaintiffs,)	
)	
v.)	
)	
VOLKSWAGEN AG, AUDI AG,)	COMPLAINT - CLASS ACTION
and VOLKSWAGEN GROUP OF,)	
AMERICA, INC.,)	
)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff Joel Silverman (“Plaintiff” or “Mr. Silverman”), individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to himself and on information and belief as to all other matters, against Defendants Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (collectively, the “Defendants”):

I. BACKGROUND

1. Plaintiff, individually and on behalf of all others similarly situated, (the “Class Members” as defined below) brings this action against the Defendants for their use of unfair, unlawful, and fraudulent business practices in violation of Georgia and federal law.

2. Since 2009, Defendants have manufactured and marketed certain vehicles containing 2.0 liter diesel engines which, according to the United States Environmental Protection Agency (“EPA”), contained a defeat device (the “Class Vehicles”). Defendants falsely represented to the purchasers of the Class Vehicles that the vehicles would both attain the excellent fuel economy associated with diesel engines while also being environmentally friendly and compliant with all applicable Georgia and federal environmental laws and regulations.

3. Defendants’ representations proved to be false. On September 18, 2015, the EPA sent Defendants a Notice of Violation (“NOV”).¹ The NOV states that Defendants “manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines.” (Ex. A.) It further stated that “[t]hese defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control system that exist to comply with [Clean Air Act] emission standards.” (*Id.*) Thus, while these vehicles will meet emissions standards in testing situations, during “normal vehicle operation” they will emit nitrogen oxides (“NOx”) up to 40 times above EPA compliant levels, depending on the type of drive cycle. (*Id.*)

4. Defendants have admitted to this fraudulent scheme in multiple recent press releases and Defendants have caused all unsold vehicles equipped with the

¹ A true and correct copy of this NOV is attached hereto as Exhibit “A.”

defeat devices to be taken off the market and are in the process of removing those vehicles from dealerships.

5. Defendants sold approximately 500,000 Class Vehicles in the United States through this fraudulent scheme. Volkswagen has admitted that the worldwide number of Class Vehicles sold is close to 11 million. Due to Defendants' misrepresentations, the value of the Class Vehicles is greatly diminished (if they have any value remaining at all), as evidenced by the fact that Defendants have ceased all sales of the Class Vehicles.

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in the Court pursuant to 28 U.S.C. § 1332(d)(2) because there are more than 100 Class Members and the aggregate amount in controversy exceeds \$5 million exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

7. This Court has personal jurisdiction over Defendants because Defendants conduct substantial business within the state of Georgia, such that Defendants have significant, continuous, and pervasive contacts with the state of Georgia.

8. Venue lies in the Northern District of Georgia under 28 U.S.C. § 1391 because Defendants conduct business in this district, and a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this district.

III. PARTIES

9. Plaintiff Joel Silverman is an individual and a resident of the state of Georgia. Plaintiff currently owns a model year 2009 Jetta Sportwagen TDI, which he purchased new in 2009. His car is equipped with one of the 2.0 liter TDI diesel engines in which Defendants placed defeat devices.

10. Defendant Volkswagen Group of America, Inc. (hereinafter referred to collectively with Defendant Volkswagen AG as “Volkswagen”) is a corporation created and existing pursuant to the laws of the state of New Jersey with a principal place of business in the state of Virginia. Volkswagen Group of America, Inc. is registered to do business in the state of Georgia and regularly and systematically conducts business within the state of Georgia. Volkswagen Group of America, Inc. is a wholly-owned subsidiary of Volkswagen AG. Volkswagen Group of America, Inc. also does business as Audi of America, Inc. Volkswagen may be served with process by delivering a copy of this Complaint along with a Summons to its registered agent at Corporation Service Company, 40 Technology Parkway South, #300, Norcross, GA 30092. Volkswagen and/or its agents designed, manufactured, and installed the 2.0 liter diesel engines in the Class Vehicles. Volkswagen and/or its agents installed the defeat devices on these vehicles. Volkswagen and/or its agents also developed and disseminated the owner’s manuals and warranty

booklets, advertisements, and other promotional materials relating to the Class Vehicles.

11. Defendant Volkswagen AG (hereinafter referred to collectively with Defendant Volkswagen Group of America, Inc. as “Volkswagen”) is a corporation created and existing pursuant to the laws of the nation of Germany. Volkswagen AG regularly and systematically conducts business within the state of Georgia. Volkswagen AG may be served pursuant to the Hague Convention at Volkswagen AG, Berliner Ring 2, 38436 Wolfsburg, Germany. Volkswagen and/or its agents designed, manufactured, and installed the 2.0 liter diesel engines in the Class Vehicles. Volkswagen and/or its agents installed the defeat devices on these vehicles. Volkswagen and/or its agents also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Class Vehicles.

12. Defendant Audi AG is a corporation created and existing pursuant to the laws of the nation of Germany. Audi AG regularly and systematically conducts business within the state of Georgia. Audi AG may be served pursuant to the Hague Convention at Auto-Union-Str. 1 D-85045 Ingolstadt, Germany. Audi AG is a related entity to Volkswagen. Along with Volkswagen, Audi AG and/or its agents designed, manufactured, and installed the 2.0 liter diesel engines in certain of the Class Vehicles and installed the defeat devices on these vehicles. Audi AG

and/or its agents also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Class Vehicles

IV. FACTUAL ALLEGATIONS

A. *Defendants Market "Clean-Diesel" Vehicles to Georgia Consumers*

13. Since 2009, Defendants have marketed the Class Vehicles vehicles to Georgia consumers.

14. The Class Vehicles include the following models:

2009 to 2015 Volkswagen Jetta TDI Clean Diesel;
2009 to 2015 Volkswagen Beetle TDI Clean Diesel;
2009 to 2015 Volkswagen Golf TDI Clean Diesel;
2014 to 2015 Volkswagen Passat TDI Clean Diesel; and,
2009 to 2015 Audi A3 TDI Clean Diesel.

Discovery may reveal additional affected models.

15. Defendants marketed the Class Vehicles as "Clean Diesel" cars.

16. Defendants represented that the diesel engines in the Class Vehicles were environmentally friendly and fuel efficient, while still maintaining a high level of performance. For example, Defendants' advertisements boasted:

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.²

² VOLKSWAGEN - TDI CLEAN DIESEL FEATURES, www.vw.com/features/clean-diesel/section/highlights (Last Visited Sept. 21, 2015.).

* * *

The all-new 2015 Golf TDI combines class-leading fuel economy, more power, advanced technology, reduced emissions, all while offering a tremendous value starting \$3,000 less than the outgoing model,” said Mark McNabb, Chief Operations Officer, Volkswagen of America. “This Northwest Green Vehicle of the Year honor validates the benefits of the Golf TDI and highlights the leadership position the Pacific Northwest has taken in embracing alternative fuel technologies like TDI® Clean Diesel.³

* * *

Volkswagen of America is pleased to announce today that Green Car Reports, a leading online consumer resource for eco-friendly and fuel-efficient vehicles, has named the 2015 Volkswagen Golf range as its “Best Car to Buy 2015.” . . . Volkswagen’s Golf TDI® Clean Diesel models achieve an estimated EPA fuel economy rating of 30 mpg city and 45 mpg highway when equipped with the six-speed manual transmission and 31/43 mpg with the six-speed DSG® dual-clutch automatic.⁴

* * *

Audi pioneered TDI® (Turbo Direct Injection) engines to deliver more torque, lower fuel consumption and reductions in carbon-dioxide emissions. Earning its reputation for reliability and power in grueling motorsports endurance competition, TDI has become a major attraction across the Audi vehicle lineup and remains the best-selling clean-diesel option for premium car buyers.⁵

* * *

³ VOLKSWAGEN MEDIA NEWSROOM - JULY 21, 2015, <http://media.vw.com/release/802/> (last visited Sept. 22, 2015).

⁴ VOLKSWAGEN MEDIA NEWSROOM - NOV. 20, 2014, <http://media.vw.com/release/876/> (last visited Sept. 22, 2015).

⁵ AUDI - TDI CLEAN DIESEL, <http://www.audiusa.com/newsroom/topics/2014/t-di-clean-diesel> (last visited Sept. 22, 2015).

Audi has now answered with two sportback options, the A3 e-tron PHEV and the newly announced A3 TDI. When these two models reach the market next year Audi will have a compelling green narrative in the versatile sportback packaging.⁶

17. Advertisements similar to the foregoing were transmitted over a variety of different mediums, including but not limited to: television commercials, web pages, print and online press releases, newspaper advertisements, billboards, direct United States Mail marketing, direct email marketing, and oral representations by Defendants' agents.

18. Defendants used the foregoing advertisements to generate revenue through the sale of the Class Vehicles based on the false statements contained therein. This behavior constituted repeated acts of both mail and wire fraud.

19. In 2009 the Volkswagen Jetta TDI was named the Green Car of the year, and in 2010, the Audi A3 TDI was named the Green Car of the Year.

20. From 2009 through 2015, Defendants sold approximately 500,000 of Class Vehicles in the United States and approximately 11 million worldwide, based in large part on their promise that the "Clean Diesel" cars were both extremely fuel efficient and environmentally friendly.

⁶ AUDI PRESS RELEASE - APRIL 14, 2014, <http://www.audiusa.com/newsroom/news/press-releases/2014/04/audi-introduces-all-new-audi-a3-tdi-sportback> (last visited Sept. 22, 2015).

21. Defendants charged, and Class Members paid, substantial premiums for these “Clean Diesel” vehicles based upon the representation that the vehicles were fuel efficient and environmentally friendly while still maintaining a high performance level.

22. These vehicles made up a significant portion of Defendants’ overall sales. For example, in 2014, Volkswagen’s TDI Clean Diesel models accounted for approximately 21 percent of their overall sales in the United States, and, as a result of Defendants’ “Clean Diesel” campaign, Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

B. *The Relevant Regulatory Framework*

23. The Clean Air Act⁷ (“CAA”) and the regulations promulgated thereunder are designed to reduce emissions of NOx and other pollutants from motor vehicles such as the Class Vehicles.

24. Under the CAA, in order to sell passenger vehicles in the United States, a car manufacturer, such as Defendants, must apply for and receive a certificate of conformity (“COC”) for the vehicle model it wishes to sell. Without first obtaining a COC, car manufacturers are barred from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or

⁷ Codified at 42 U.S.C. §§ 7401-7671q.

importing passenger vehicles in the United States. Car manufacturers are also barred from causing any of the foregoing acts to take place.

25. As a result, the CAA required Defendants to receive a COC for each model of the Class Vehicles prior to their sale to the Class Members.

26. A defeat device is an auxiliary emission control device (“AECD”) that “reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01.

27. Motor vehicles with defeat devices cannot be granted a certificate of conformity. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972).

28. Moreover, in a COC application, car manufactures must list all AECD on the vehicle models in question and provide a justification for any AECD. The COC then applies only to those cars that are as described in the application. For example, the COC issued to Defendants “covers only those new motor vehicles or vehicle engines which conform in all material respects, to the design specifications” as described in Defendants’ application. (Ex. A at 3.)

C. Defendants Install “Defeat Devices” and Deceive State and Federal Regulators and Defraud the Class Members

29. Upon information and belief, beginning in 2009, Defendants knew that the Class Vehicles could not achieve the fuel economy and performance levels which Defendants desired while also remaining compliant with applicable laws and regulations, such as the CAA and corresponding regulations.

30. As a work around for this failure, Defendants installed defeat devices in the Class Vehicles. Specifically, Defendants “manufactured and installed software in the electronic control module (ECM) of [the Class Vehicles] that sensed when the vehicle was being tested for compliance with EPA emission standards.” (Ex. A at 3.) When the vehicle was being tested, “the vehicle’s ECM ran software which produced compliant emissions results.” (*Id.* at 4.)

31. However, during “normal vehicle operation,” the Class Vehicles “ran a separate ‘road calibration’ which reduced the effectiveness of the emission control system. . . . As a result, emissions of NO_x increased by a factor of 10 to 40 times above EPA compliant levels, depending on the type of drive cycle.” (*Id.*)

32. According to the EPA’s NOV, due to the existence of these defeat devices, the Class 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.” (Ex. A.) Thus, Defendants violated federal law by

“selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.” (*Id.*)

33. In May 2014, after publication of a study commissioned by the International Council on Clean Transportation which found significantly higher in-use emissions, the EPA and the California Air Resources Board (“CARB”) launched an investigation into the increased emissions.

34. Throughout the course of this investigation, Defendants continued to deny installing defeat devices in the Class Vehicles. Rather than admitting to wrongdoing, Defendants lied to government officials with the EPA and CARB, stating that the higher emissions “could be attributed to various technical issues and unexpected in-use conditions.” (Ex. A at 4.)

35. However, when the EPA and CARB made clear that they would not approve COCs for Defendants’ 2016 model year vehicles without receiving an adequate explanation for the problems with the Class Vehicles, Defendants admitted that they had designed and installed the defeat devices.

36. Up until this 2015 admission of wrongdoing, despite numerous communications with the EPA and filing numerous COCs, Defendants never disclosed the existence of the defeat devices in the Class Vehicles.

37. According to the EPA, Defendants “knew or should have known that its [defeat devices] bypass, defeat, or render inoperative elements of the vehicle design related to compliance with the CAA emissions standards.” (Ex. A at 4.)

38. Defendants have recently admitted to the fraudulent scheme described herein through the press. For example, Volkswagen Chief Executive Officer Martin Winterkorn released a statement that he was “personally and deeply sorry that we have broken the trust of our customers and the public” and that Volkswagen was launching an investigation in to the issue.⁸ Defendants further admitted to “irregularities that have been found in our Group's diesel engines”⁹ and that “[a] noticeable deviation between bench test results and actual road use was established” for the Class Vehicles.¹⁰

⁸ VOLKSWAGEN PRESS RELEASE - SEPTEMBER 20, 2015, https://www.volkswagen-media-services.com/en/detailpage/-/detail/Statement-of-Prof-Dr-Martin-Winterkorn-CEO-of-Volkswagen-AG/view/2709406/7a5bbec13158edd433c6630f5ac445da?p_p_auth=gxe7XIIHK (last visited Sept. 22, 2015).

⁹ VOLKSWAGEN PRESS RELEASE - SEPTEMBER 22, 2015, https://www.volkswagen-media-services.com/en/detailpage/-/detail/Text-video-statement-of-the-CEO-of-Volkswagen-AG/view/2718956/7a5bbec13158edd433c6630f5ac445da?p_p_auth=gxe7XIIHK (last visited Sept. 22, 2015).

¹⁰ Volkswagen Press Release - September 22, 2015, https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-AG-has-issued-the-following-information/view/2715181/7a5bbec13158edd433c6630f5ac445da?p_p_auth=gxe7XIIHK (last visited Sept. 22, 2015).

39. By way of further example, the President and CEO of Volkswagen Group of America, Inc., Mr. Michael Horn, was recently quoted by one news outlet as stating the following: “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.”¹¹ (emphasis added)

40. Defendants have since ceased all United States sales of vehicles with the 2.0 liter “Clean Diesel” engines and are in the process of removing those vehicles from dealerships.

D. *The Class Members Purchase of Class Vehicles and the Ensuing Harm*

41. Plaintiff and the other Class Members purchased the Class Vehicles in reliance on Defendants’ promises, described in part above, that the Class Vehicles would be fuel efficient, maintain high performance levels, be environmentally friendly, and be compliant with all applicable federal and state laws and regulations.

42. Plaintiff and the other Class Members not only relied on the foregoing representations in purchasing the Class Vehicles, they relied on those representations in paying a significant premium for the Class Vehicles over their gas powered counterparts.

¹¹ ROANOKE TIMES, *VW CEO: ‘I am endlessly sorry’ brand is tarnished*, http://www.roanoke.com/news/wire_headlines/vw-ceo-i-am-endlessly-sorry-brand-is-tarnished/article_2fbb72b1-fcd5-5e25-93fd-f919dc11deed.html (last visited Sept. 22, 2015).

43. Because Defendants' promises, including the promises regarding compliance with applicable laws and regulations and environmental friendliness were false, deceptive, and untrue, the value of the Class Vehicles has been greatly reduced, if not eviscerated completely.

44. As evidence of this reduction in value, Defendants are in the process of removing all unsold vehicles containing the affected 2.0 liter "Clean Diesel" engines from car lots, and Defendants are no longer offering those cars for sale.

45. Additionally, even if Defendants undertook to alter the Class Vehicle's engines to meet the required emissions standards, it is likely that the vehicles fuel economy, performance, and overall longevity would be dramatically reduced.

46. Consequently, the Class Members are left with Class Vehicles that are currently unsellable, and, in a best case scenario, will be worth significantly less than the Class Members previously believed following the time and expense of seeking and obtaining repair from Defendants.

VI. TOLLING AND ESTOPPEL

47. As described herein, Defendants' fraud went undetected by anyone, including state and federal regulators for approximately five years after Defendants began to market the Class Vehicles.

48. It was not until May 2014 when university scientists, after performing extensive laboratory and on-road testing, discovered unusually high on-road emissions created by the Class Vehicles.

49. Moreover, even after state and federal regulators confronted Defendants with the data reflecting unusually high emissions created by the Class Vehicles, Defendants denied having installed the defeat devices and the widespread nature of the problem. Defendants instead lied to these regulators and characterized the issues as isolated technical malfunctions.

50. As a result of Defendants' behavior, Plaintiff and the other Class Members had no ability to discover the facts supporting the allegations contained herein. This inability to discover the problems with the Class Vehicles was due exclusively to the fraudulent concealment of the facts by Defendants.

51. As a result of the foregoing, any applicable statutes of limitation have been tolled and/or Defendants are estopped from relying on any statutes of limitation in defense of this action.

V. CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to the provisions of Rules 23(a), (b)(1), and (b)(3) of the Federal Rules of Civil Procedure.

53. The Class is defined as follows:

All persons or entities in the State of Georgia who are current owners or lessees of model year 2009 through 2015 light duty vehicles equipped with 2.0 liter diesel engines manufactured by Defendants.

54. Excluded from the Class are Defendants and their subsidiaries, parents, and affiliates; all persons who make a timely election to be excluded from the Class; all claims for wrongful death, survivorship, and/or personal injury by Class Members; governmental entities; and the Judge to whom this case is assigned and his or her immediate family. Plaintiff reserves the right to revise the Class definition based on information learned through discovery.

55. Certification of Plaintiff's claims for class-wide treatment is appropriate because Class Members can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

56. *Federal Rule of Civil Procedure 23(a)(1) - The class is so numerous that joinder of all members is impracticable.* Tens of thousands of the Class Vehicles were sold in Georgia to the Class Members. The precise number of Class Members and their addresses is presently unknown, but may be obtained from Defendants' books and records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, and online or printed notice.

57. *Federal Rule of Civil Procedure 23(a)(2) - There are questions of law or fact common to the class.* Numerous common questions of law and fact exist as to Plaintiff and the other Class Members, including but not limited to:

- a. Whether Defendants engaged in the conduct described in this Complaint;
- b. Whether Defendants acted knowingly, intentionally or recklessly in engaging in the conduct described in this Complaint;
- c. Whether Defendants profited from the conduct described in this Complaint;
- d. Whether Defendants placed the Class Vehicles into the stream of commerce in the state of Georgia;
- e. Whether Defendants' conduct as described in this Complaint violated any Georgia or federal law;
- f. Whether Plaintiff and the other Class Members are entitled to equitable relief; and
- g. Whether Plaintiff and the other Class Members are entitled to damages and monetary relief.

58. *Federal Rule of Civil Procedure 23(a)(3) - The Claims or defenses of the representative parties are typical of the claims or defenses of the class.* The representative Plaintiff's vehicle was manufactured by Defendants and contains the

same or a substantially similar engine to the other Class Member's vehicles, which were also manufactured by Defendants. The representative Plaintiff's vehicle and all other Class Members' vehicles also contain the same or a substantially similar defeat device installed by Defendants. The advertising issued by Defendants and relied upon by the representative Plaintiff was the same or substantially similar to the advertising transmitted to all class members. Along with the other Class Members, the representative Plaintiff purchased a Class Vehicle based on Defendants' representations that it would be high performing, efficient, environmentally friendly, and compliant with all applicable laws and regulations. However, due to Defendants' fraud, the representative Plaintiff's vehicle, as well as all other Class Members' vehicles, emit an amount of NOx that is up to 40 times greater than what is allowed under the CAA. The value of the representative Plaintiff's vehicle and all other Class Members' vehicles are now a fraction of what they should have been had Defendants' representations been true. The representative Plaintiff's claims and defenses are therefore typical and representative of all Class Members.

59. *Federal Rule of Civil Procedure 23(a)(4) - The representative parties will fairly and adequately protect the interests of the class.* The interests of the representative Plaintiff does not conflict with the interests of the other Class members he seeks to represent and he has retained counsel competent and

experienced in complex commercial and class action litigation who will prosecute this action to the fullest extent of the law.

60. *Federal Rule of Civil Procedure 23(b)(1)(A) - Prosecuting each separate actions by each individual Class Member would create a risk of inconsistent or varying adjudications.* The primary issue in this litigation is whether Defendants violated the law by falsely marketing the Class Vehicles by installing defeat devices in thousands of vehicles it sold from 2009 to 2015. These vehicles were mass produced and identical in many respects. If each Class Member brought an action against Defendants separately it is highly likely that Courts and/or juries would reach different results as to Defendants' liability in different Class Members' actions despite the facts of each Class Member's situation are essentially identical. This result would be unfair and justifies class action certification.

61. *Federal Rule of Civil Procedure 23(b)(3) - Questions of law or fact common to class members predominate over any questions affecting only individual members, and that class action is therefore superior to other available methods for fairly and efficiently adjudicating the controversy.* As described herein, this is a lawsuit over a fraudulent scheme to sell mass produced vehicles at an inflated price by lying to the consumers of those vehicles about their capabilities and compliance with applicable laws and regulations. Defendants produced and

sold thousands of the Class Vehicles throughout the state of Georgia. While Plaintiff and the other Class Members contend that the damages from that fraud are significant, it is not cost effective or practical for each individual to bring suit on their own. Moreover, it would be extremely burdensome for the court system to handle the thousands of individual cases that likely would be brought. Instead, a class action presents the most efficient, economical, and beneficial means for this dispute to be litigated.

VII. CLAIMS FOR RELIEF

Count I - Georgia RICO

62. Plaintiff incorporates by express reference paragraphs 1 through 61 of the Complaint as if fully set forth herein.

63. The activities of Defendants constitute a violation of the Georgia RICO Act, O.C.G.A. § 16-14-1, et seq.

64. Defendants are legal entities which constitute an enterprise and/or enterprises pursuant to the provisions of the Georgia RICO Act.

65. Defendants have committed multiple predicate acts of “racketeering activity,” as defined in the Georgia RICO Act, including but not limited to the following:

- a. Wire fraud;
- b. Mail fraud;

- c. Theft by deception;
- d. Lying to government officials; and,
- e. Violation of the Clean Air Act as well as other state and federal laws and regulations.

66. Defendants racketeering activities are ongoing and constitute a pattern of racketeering activity.

67. Defendants have, through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in or control of an enterprise, real property, or personal property through the activities alleged above.

68. Defendants have conspired with each other to commit the wrongful acts alleged herein and have committed overt acts in furtherance of this conspiracy and have received a benefit from them. Each Defendant is jointly and severally liable for compensatory, punitive, and treble damages.

69. Defendants' predicate acts were aimed at Plaintiff and the other Class Members.

70. Defendants' violations of the Georgia RICO Act have directly or indirectly damaged and continue to damage Plaintiff and the other Class Members. Plaintiff and the other Class Members are therefore entitled to recover treble damages and other relief authorized by the Georgia RICO Act from Defendants.

Count II - Fraud By Concealment

71. Plaintiff incorporates by express reference paragraphs 1 through 70 of the Complaint as if fully set forth herein.

72. Defendants, through the use of online, television, and print media, as well as direct oral representations through their agents, made multiple false representations to Plaintiff and the other Class Members from as early as 2008 through 2015. Specifically, Defendants represented that:

- a. The Class Vehicles were environmentally friendly;
- b. The Class Vehicles were compliant with all applicable laws and regulations;
- c. The Class Vehicles were capable of maintaining excellent fuel economy and high performance levels while remaining environmentally friendly;
- d. That Defendants were environmentally conscious companies that complied with applicable laws and regulations.

73. Throughout the time period in which Defendants made the above representations, Defendants knew that they were false and that the Class Vehicles in fact emitted up to 40 times the amount of NO_x allowed by applicable laws and regulations.

74. The knowledge of the falsity of these representations was exclusive to Defendants throughout the time period in which they were made.

75. Even as late as 2014, Defendants repeatedly lied to the EPA about the existence of defeat devices while nonetheless continuing to market the Class Vehicles.

76. Moreover, Defendants went to great lengths to conceal the fact that the above representations were false by installing defeat devices on the Class Vehicles which masked the amount of the vehicle's emissions during emissions testing, but allowed for the significant, non-compliant emissions during on-road use. These defeat devices were installed on approximately 500,000 vehicles sold in the United States and approximately 11 million vehicles worldwide. Tens of thousands of the vehicles were sold to Class Members in Georgia.

77. Now, in September 2015, Defendants' executives admit that they were dishonest to Plaintiff and the other Class Members about the defeat devices Defendants' installed in the Class Vehicles.

78. Plaintiff and the other Class Members justifiably believed and relied on the above representations in purchasing the Class Vehicles and in paying a significant premium for the class Vehicles over the comparable gas power models.

79. As a result of the fraud and reliance, Plaintiff and the other Class Members have been damaged through the lost value of the Class Vehicles.

Count III - Unjust Enrichment

80. Plaintiff incorporates by express reference paragraphs 1 through 79 of the Complaint as if fully set forth herein.

81. As a result of the fraudulent scheme described herein, Defendants sold over 11 million vehicles with defeat devices, approximately 500,000 of which were in the United States, and tens of thousands of which were sold to the Class Members.

82. Defendants received substantial revenues and made substantial profit from the sale of the Class Vehicles. This profit also included the premium which Plaintiff and other Class Members paid to have “Clean Diesel” engines in their cars, as opposed to similar gas powered models.

83. Defendants were aware of the immense value being bestowed on them by their fraudulent and illegal conduct, but did nothing to stop this conduct or the flow of money they received.

84. Defendants’ fraudulent and illegal conduct was specifically designed to bring about this flow of money.

85. Defendants have made no payment or remuneration of the profit it wrongfully received by virtue of its fraudulent conduct.

Count IV - Breach of the Implied Warranty of Merchantability

86. Plaintiff incorporates by express reference paragraphs 1 through 85 of the Complaint as if fully set forth herein.

87. Georgia law states that “[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” O.C.G.A. § 11-2-314.

88. Defendants are merchants with respect to the goods which they sold to Plaintiff and the other Class Members. Specifically, Defendants are merchants of light-duty passenger vehicles.

89. The goods which Defendants provided to the Class Members were unmerchantable. Specifically, the Class Vehicles were not compliant with applicable laws and regulations and therefore could not be sold in the United States or the state of Georgia.

90. Defendants’ failure to provide vehicles that were compliant with applicable laws and regulations was a breach of the implied warranty of merchantability, and Plaintiff and the other Class Members were damaged by the breach in the amount of the diminished value of the Class Vehicles.

Prayer for Relief

Wherefore, Plaintiff, individually and on behalf of the other Class members, respectfully request that the Court enter judgment in their favor and against Defendants as follows:

- a. Certification of the proposed Class, including appointment of Plaintiff as Class Representative and his counsel and Class Counsel;
- b. Actual damages, including treble and/or punitive damages where allowable;
- c. Costs of suit and attorneys' fees;
- d. Pre and post judgment interest on any damages awarded;
- e. All other remedies authorized by the Georgia RICO statute;
- f. All other remedies authorized by each of the other counts alleged above; and
- g. Such other or further relief as may be appropriate.

* * *

Plaintiff requests a jury trial on all claims so triable.

* * *

This 22nd day of September, 2015.

/s/ Richard L. Robbins
Richard L. Robbins
Georgia Bar No. 608030

rrobins@robbinsfirm.com
Lisa L. Heller
Georgia Bar No. 344109
lheller@robbinsfirm.com
Craig G. Kunkes
Georgia Bar No. 963594
ckunkes@robbinsfirm.com
J. Matthew Brigman
Georgia Bar No. 254905
mbrigman@robbinsfirm.com

ROBBINS ROSS ALLOY BELINFANTE
LITTLEFIELD LLC
999 Peachtree Street, N.E.
Suite 1120
Atlanta, Georgia 30309
(678) 701-9381
(404) 856-3250 - Fax