

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

LISA KAY WEST, on behalf of herself)
and all others similarly situated,)

Plaintiff,)

v.)

Civil Action No. 3:15-cv-93

VOLKSWAGEN GROUP OF AMERICA,)
INC.,)

Defendant.)

CLASS ACTION COMPLAINT

NOW COMES Plaintiff Lisa Kay West (“Plaintiff”), individually and on behalf of all other similarly situated (“the Class”), and alleges the following:

I. FACTUAL ALLEGATIONS

1.

This case arises out of Defendant Volkswagen Group of America, Inc.’s (“Volkswagen”) intentional and fraudulent conduct aimed at skirting the laws of the United States of America related to emissions from certain vehicles manufactured by Volkswagen during the years 2009-2015. Specifically, the automobiles at issue are as follows: Model Year 2009-2015 Volkswagen Jetta and Jetta Sportwagen with 2.0 Liter Diesel engines; 2010-2015 Volkswagen Golf with 2.0 Liter Diesel engines; 2010-2015 Audi A3 with 2.0 Liter Diesel Engines; 2012-2015 Volkswagen Beetle and Beetle Convertible with 2.0 Liter Diesel engines; and 2012-2015 Volkswagen Passat with 2.0 Liter Diesel engines (the “Illegal Vehicles”).

2.

On September 18, 2015, the United States Environmental Protection Agency (“EPA”) issued a Notice of Violation to Volkswagen detailing Volkswagen’s fraudulent conduct. In an effort to feign compliance with the Clean Air Act, Volkswagen installed a “defeat device” on the Illegal Vehicles such that sophisticated software detects when an automobile is undergoing official emissions testing and switches on emissions controls during the testing in order to pass the official emissions test. However, during normal usage of the automobiles, the emissions controls are suppressed such that the Illegal Vehicles emit nitrogen oxide (NOx) at levels up to 40 times the standard allowed under United States laws and regulations.

3.

Controlling the emission of NOx from vehicles is necessary for the protection of the public health and welfare. As stated in the EPA’s Notice of Violation, “The CAA [Clean Air Act] and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.”

4.

The Clean Air Act has strict emissions standards for light-duty vehicles such as those at issue in this case, and, prior to being sold, each vehicle must be granted a Certificate of

Conformity (COC) from the EPA. Manufacturers of vehicles must submit a COC Application to the EPA setting out, among other things, a list of all auxiliary emission control devices (AECDs) installed on vehicles. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. 86.1803-01. A “defeat device” is an AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles....” 40 C.F.R. 86.1803-01.

5.

Volkswagen did not disclose to the EPA in its COC application that it had installed the illegal defeat devices on the Illegal Vehicles. As stated by the EPA, “Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified.” 9/18/2015 EPA Notice of Violation to Volkswagen. Through the use of such a defeat device which allows higher levels of emissions during normal driving than those certified by the EPA, Volkswagen violated the Clean Air Act and defrauded its customers.

6.

Volkswagen marketed the Illegal Vehicles as “Clean Diesel” vehicles, touted the environmental benefits of these “green” automobiles, and charged a premium for the Illegal

Vehicles compared to the non-“Clean Diesel” vehicles. The table below sets forth the current price premium for each base, mid-level and top-line trim for certain of the Illegal Vehicles:

Clean Diesel Price Premiums

Model	Base	Mid-Level	Top-line
VW Jetta	\$2,860	\$4,300	\$6,315
VW Beetle	\$4,635	n/a	\$2,640
VW Beetle Convertible	\$4,080	\$3,130	n/a
VW Golf	\$2,950	\$1,000	\$1,000
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3	\$2,805	\$3,095	\$2,925

7.

In the wake of this scandal, Volkswagen’s CEO Michael Horn stated, “So let’s be clear about this. Our company was dishonest with the EPA and the California Air Resources Board and with all of you and in my German words, we have totally screwed up.”

<http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-rigging.html>

8.

Volkswagen installed the defeat devices so that the Illegal Vehicles would have better power and gas mileage during normal usage with the result being that Plaintiff, and all others similarly situated, and the EPA would not know that during normal usage the Illegal Vehicles emit up to 40 times the legal limit of NOx. Thus, through Volkswagen’s surreptitious installation of the defeat device, the EPA was defrauded into certifying Illegal Vehicles that it

believed would pass federal emission standards during normal usage, and Plaintiff and all others similarly situated were defrauded into buying Illegal Vehicles they believed had great power, gas mileage, and were good for the environment.

9.

Even if Volkswagen is able to remove the defeat device such that the Illegal Vehicles' emission control systems will work during normal usage, Plaintiff and all other similarly situated will suffer actual harm and damages because the Illegal Vehicles will no longer perform as they did when purchased and advertised. This will result in a diminution in value of every Illegal Vehicle and will cause owners of Illegal Vehicles to pay more for fuel if they continue to use the Illegal Vehicles.

10.

As a consequence of Volkswagen's illegal and fraudulent conduct and its failure to disclose that under normal usage the Illegal Vehicles emit up to 40 times the legal limits of NOx, Plaintiff and all other similarly situated have suffered losses in money and/or property. Had Plaintiff and all others similarly situated known of the defeat device and the fact that they were buying a car that was illegal under Federal emission standards, they would not have purchased or leased the Illegal Vehicles. Furthermore, if Volkswagen recalls the Illegal Vehicles and removes the defeat device such that the Illegal Vehicles will meet federal emission standards, the Illegal Vehicles will be downgraded in performance and efficiency such that the Illegal Vehicles will no longer be the automobile Plaintiff and all others similarly situated believed they were purchasing, and Plaintiff and all others similarly situated will be forced to spend additional money on fuel and own a vehicle that has diminished in value as a result of Volkswagen's fraudulent conduct.

11.

Plaintiff brings this action individually and on behalf of all other current and former owners or lessees of Illegal Vehicles. Plaintiff seeks damages, injunctive relief, and equitable relief for Volkswagen's illegal and fraudulent conduct related to the defeat device as set forth in this Complaint.

II. JURISDICTION

12.

This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. 1367.

III. VENUE

13.

Venue is proper in this District and Division under 28 U.S.C. 1391 as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District and Division. Plaintiff resides in this District and Division, purchased her Illegal Vehicle in this District and Division, and Volkswagen has marketed, advertised, and delivered vehicles to this District and Division to be sold and leased within this District and Division.

IV. PARTIES

A. Plaintiff

14.

Plaintiff Lisa Kay West is an individual residing in Hull, Madison County, Georgia. On May 31, 2014, Plaintiff purchased a new 2014 Volkswagen Golf TDI Clean Diesel with a 2.0 Liter Diesel Engine from Volkswagen of Athens located at 4735 Atlanta Hwy, Bogart, Georgia 30622. Plaintiff purchased and still owns this vehicle. Unbeknownst to Plaintiff, at the time she purchased her Illegal Vehicle, it had an illegal defeat device installed which caused Plaintiff's Illegal Vehicle to fraudulently pass EPA emissions tests while emitting up to 40 times the legal limit of NOx during normal usage. Volkswagen knew about and purposefully used the defeat device but did not disclose to Plaintiff the existence of the defeat device or its effects. Plaintiff purchased her Illegal Vehicle on the reasonable, but incorrect, belief that her Illegal Vehicle complied with Federal emissions standards, was properly certified by the EPA, and would operate as advertised by Volkswagen.

15.

Plaintiff purchased her vehicle, in part, based upon Volkswagen's representations that the Illegal Vehicle contained a "Clean Diesel" system and was environmentally friendly while providing great performance and gas mileage. At no time during Plaintiff's purchase of the vehicle did Volkswagen ever disclose the existence of the defeat device, the manner in which Volkswagen fraudulently obtained a certification from the EPA, or that Plaintiff's Illegal Vehicle would emit up to 40 times the permitted levels of NOx. If Volkswagen had disclosed that Plaintiff's vehicle had illegally been certified and that it actually emitted up to 40 times the permitted levels of NOx, Plaintiff would not have purchased her Illegal Vehicle.

16.

Plaintiff has suffered a loss as a result of Volkswagen's fraudulent omissions and fraudulent misrepresentations in that Plaintiff would never have spent money to purchase her Illegal Vehicle had she been aware that the vehicle, through Volkswagen's fraudulent activity, was illegally certified by the EPA and emitted up to 40 times the legal limits of NOx. In the alternative, Plaintiff has suffered a loss as a result of Volkswagen's fraudulent omissions and fraudulent misrepresentations including out-of-pocket loss and future attempted repairs to correct Volkswagen's illegal actions, future additional fuel costs, and diminished value of her vehicle.

17.

Neither Volkswagen nor any of its agents, dealers, or other representatives informed Plaintiff of the existence of the defeat device or defective design of her Illegal Vehicle prior to purchase.

B. Defendant

18.

Volkswagen is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen is registered to do business in the state of Georgia. At all times relevant to this action, Volkswagen manufactured, warranted, and distributed Illegal Vehicles in the state of Georgia and across the nation to be sold and leased to Georgia residents under the brand names of Volkswagen and Audi. Volkswagen and its agents designed, manufactured, and installed the "Clean Diesel" engine systems and the defeat devices in the Illegal Vehicles. Volkswagen also developed and

disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Illegal Vehicles.

V. TOLLING OF THE STATUTE OF LIMITATIONS

19.

Pursuant to O.C.G.A. 9-3-96, any applicable statute of limitations has been tolled due to Volkswagen's fraudulent actions which have only recently been discovered and made public on September 18, 2015 through the EPA's Notice of Violation sent to Volkswagen.

20.

Plaintiff could not have reasonably discovered Volkswagen's fraud due to the sophisticated nature of Volkswagen's scheme. In fact, Volkswagen's scheme was created precisely to avoid discovery of its fraud by installing a defeat device that would make the Illegal Vehicles pass emission standards during routine emission testing. The discovery of the fraud did not occur until after approximately a year and a half long investigation conducted by the EPA and California Air Resources Board ("CARB"). After being confronted by EPA and CARB in May of 2014, Volkswagen continued to hide its installation of these defeat devices from the EPA and CARB and blame the emissions issues on "various technical issues and unexpected in-use conditions." 9/18/2015 EPA Notice of Violation. CARB and EPA were not satisfied with Volkswagen's explanations and informed Volkswagen that the agencies would not certify Volkswagen's 2016 models until they received adequate explanations regarding the emissions issues and proof that such issues would not be present on the 2016 models. "Only then did VW admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing." This is precisely the type of conduct that merits the tolling of any statute of limitations.

VI. CLASS ALLEGATIONS

21.

Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and b(3) of the Federal Rules of Civil Procedure on behalf of the following class (“the Class”):

All persons or entities in Georgia who are current or former owners and/or lessees of an “Illegal Vehicle.” Illegal Vehicles include, without limitations: Model Year 2009-2015 Volkswagen Jetta and Jetta Sportwagen with 2.0 Liter Diesel engines; 2010-2015 Volkswagen Golf with 2.0 Liter Diesel engines; 2010-2015 Audi A3 with 2.0 Liter Diesel Engines; 2012-2015 Volkswagen Beetle and Beetle Convertible with 2.0 Liter Diesel engines; and 2012-2015 Volkswagen Passat with 2.0 Liter Diesel engines.

22.

Excluded from the Class are individuals who have personal injury claims resulting from the defeat device in the Illegal Vehicles. Also excluded from the Class are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

23.

Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff 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.

24.

This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

25.

Numerosity: The members of the Class are so numerous and dispersed throughout the state of Georgia such that individual joinder of all Class members is impracticable. Reports indicate that Volkswagen sold over 480,000 Illegal Vehicles in the United States. While the exact number of Class members (i.e., Georgia residents) is not known at this time, it reasonable to believe that the Class would consist of thousands of members. The precise number of Class members may be ascertained from Volkswagen's books and records, and Class members could be notified of the pendency of this action by recognized, Court-approved dissemination methods.

26.

Commonality and Predominance: This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- (1) Whether Volkswagen engaged in the conduct alleged herein;
- (2) Whether Volkswagen designed, advertised, marketed, and distributed for sale or lease Illegal Vehicles in the state of Georgia;
- (3) Whether the Illegal Vehicles contain a defect in that they do not comply with Federal emission laws;
- (4) Whether the Illegal Vehicles can be made to comply with Federal emission laws without altering the original performance of the Illegal Vehicles as advertised at the time of sale to Class members;
- (5) Whether Volkswagen knew about the defeat device and for how long;
- (6) Whether Volkswagen designed, manufactured, marketed and distributed Illegal Vehicles with a defeat device;

- (7) Whether Volkswagen's conduct constitutes fraud;
- (8) Whether Volkswagen's conduct violates consumer protection statutes, warranty laws, and other laws as set forth herein;
- (9) Whether the Class is entitled to rescission of their purchase of Illegal Vehicles and return of all monies paid for the Illegal Vehicles;
- (10) Whether the Class overpaid for the Illegal Vehicles based on Volkswagen's conduct;
- (11) Whether the Class is entitled to equitable relief, including, but not limited to, restitution, disgorgement or injunctive relief; and
- (12) Whether the Class is entitled to damages and other monetary relief and, if so, in what amount.

27.

Typicality: Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the same fraudulent and wrongful conduct of Volkswagen.

28.

Adequacy: Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other members of the Class she seeks to represent; Plaintiff has retained competent counsel that is experienced in complex litigation and class action litigation; and Plaintiff intends to vigorously prosecute this action on behalf of the entire Class. The Class's interests will be fairly and adequately protected by Plaintiff and her counsel.

29.

Declaratory and Injunctive Relief: Volkswagen has acted or refused to act on grounds generally applicable to Plaintiff and other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

30.

Superiority: A class action is superior to any other available means for the fair and efficient adjudication of this action, and no unusual difficulties are likely to be encountered in the management of this class action. Compared to the burden and expense that would be required to individually litigate each person's claims, the damage or detriment suffered by Plaintiff and each Class member is relatively small such that it would be impracticable for each Class member to individually seek redress for Volkswagen's fraudulent and wrongful conduct. Considering the number of potential Class members, individual litigation would create a significant burden for the Courts and increase the delay and expense to all parties. A class action presents fewer management difficulties and provides a more efficient resolution of this matter.

VII. CLASS CLAIMS

COUNT I—FRAUD

31.

Plaintiff incorporates by reference paragraphs 1-30 as if fully stated herein.

32.

Volkswagen intentionally concealed and suppressed material facts regarding the defeat devices installed on the Illegal Vehicles in an effort to have these Illegal Vehicles illegally certified by the EPA and be able to sell these Illegal Vehicles to Plaintiff and Class members while at the same time advertising and marketing the Illegal Vehicles as "Clean Diesel" and

environmentally friendly. Volkswagen specifically represented to Plaintiff and Class members that the Illegal Vehicles complied with Federal emission laws knowing that during normal usage the Illegal Vehicles emitted pollutants in excess of Federal requirements. Despite its representations to the contrary, Volkswagen knew that the Illegal Vehicles were not environmentally friendly, were not “Clean Diesel”, and would not pass Federal emission standards when operated normally by Plaintiff and other Class members. Because it knew such representations were false with respect to the Illegal Vehicles, Volkswagen deliberately installed a defeat device to recognize when the Illegal Vehicles were being tested for emissions standards and in turn switch on the emission control system in the Illegal Vehicles in order to pass the emissions testing. Such emission control system would then disable during normal usage resulting in emissions in excess of Federal requirements.

33.

Plaintiff and Class members reasonably relied upon Volkswagen’s false representations, and they had no way of knowing that such representations were false and misleading. Volkswagen’s sophisticated scheme deceived regulators versed in emission requirements for years, and Plaintiff and Class members could not have discovered Volkswagen’s fraud on its own.

34.

Volkswagen’s false representations were material to Plaintiff and Class members as they concerned compliance with Federal laws, the quality of the Illegal Vehicles, and the value of the Illegal Vehicles. As Volkswagen knew and relied upon in its advertising and promotion of these Illegal Vehicles, Plaintiff and Class members desired an environmentally friendly vehicle with

superior performance and efficiency, and Plaintiff and Class members paid a premium for such attributes.

35.

Volkswagen had a duty to disclose to Plaintiff and Class members that such Illegal Vehicles did not legally pass Federal emission standards and that defeat devices had been surreptitiously installed on the Illegal Vehicles. Volkswagen had a duty to disclose to Plaintiff and Class members that the only means of the Illegal Vehicles achieving the advertised performance and efficiency was to have emissions significantly higher than those allowed by Federal law. Such information was peculiarly within the knowledge of Volkswagen and not ascertainable by any reasonable method or means to be employed by Plaintiff and Class members due to the fact that Volkswagen had specifically installed a defeat device to prevent detection of the emissions issues during emissions testing.

36.

Volkswagen actively concealed and suppressed such material facts to increase and protect its profits and avoid anyone discovering the truth that Volkswagen could not make a vehicle with superior performance and efficiency that met Federal emission standards and was “Clean Diesel.”

37.

Plaintiff and Class members were unaware of the concealed material facts discussed above, and they would not have purchased the Illegal Vehicles had they known they were illegally certified by the EPA and emitting pollutants at up to 40 times the legal limits.

38.

Due to Volkswagen's fraudulent actions and omissions, Plaintiff and Class members should have the right to rescind their purchase of the Illegal Vehicles and have been damaged in the amount of money they have spent to purchase these Illegal Vehicles that in reality were not as represented. Alternatively, Plaintiff and Class members have been damaged by the diminished value of these vehicles as a result of Volkswagen's fraudulent actions and omissions and the increased costs that Plaintiff and Class members will incur as a result of diminished performance and efficiency in an effort to bring these Illegal Vehicles into compliance with Federal emissions standards.

39.

Volkswagen is liable to Plaintiff and Class members for damages in an amount to be proven at trial.

40.

Volkswagen's actions of installing a defeat device to deceive the EPA and Plaintiff and Class members into believing they were buying an environmentally friendly automobile that complied with Federal emission standards while having superior performance and efficiency show willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which raises the presumption of indifference to consequences such that an award of punitive damages is warranted against Volkswagen. Further, it is clear that Volkswagen acted with the specific intent to harm Plaintiff and Class members through its fraudulent actions such that there should be no cap on the amount of punitive damages pursuant to O.C.G.A. 51-12-5.1(f).

COUNT II—BREACH OF WARRANTY

41.

Plaintiff incorporates by reference paragraphs 1-40 as if fully stated herein.

42.

Volkswagen expressly and impliedly warranted that the Illegal Vehicles complied with Federal emission standards which was false at the time that the Illegal Vehicles were sold to Plaintiff and Class members.

43.

Plaintiff and Class Members' Warranty Manuals provided with the Illegal Vehicles specifically states that the Illegal Vehicle "was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA)."

44.

Volkswagen's failure to deliver vehicles to Plaintiff and Class members that complied with Federal emission standards at the time of sale breached Volkswagen's express and implied warranty of merchantability.

45.

As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiff and Class members have been damaged in an amount to be proven at trial.

COUNT III—ATTORNEY'S FEES

46.

Plaintiff incorporates by reference paragraphs 1-45 as if fully stated herein.

Volkswagen's fraudulent actions through the use of its defeat device and selling Illegal Vehicles to Plaintiff and Class Members constitutes bad faith, stubborn litigiousness, and has caused Plaintiff and Class Members unnecessary trouble and expense entitling Plaintiff and Class Members to recover expenses of litigation including attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Class, respectfully requests that the Court enter judgment in their favor against Volkswagen, as follows:

- a. Certification of the proposed Class, including appointment of Plaintiff's counsel as Class Counsel;
- b. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful and fraudulent conduct alleged in this Complaint;
- c. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- d. An order imposing both pre- and post-judgment interest on any amounts awarded;
- e. An award of costs and attorneys' fees; and
- f. Such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims.

This 23rd day of September, 2015.

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