Court File No.: CV-15-537029-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

CHRIS ARVANITELIS, JOSEPH SISSINONS CHIROPRACTIC P.C., ANDREW JAMES BOWDEN, GREG COOPER, and CHRISTINA LYN VICKERY

Plaintiffs

and

VOLKSWAGEN GROUP CANADA, INC.,
VOLKSWAGEN AKTIENGESELLSCHAFT,
VOLKSWAGEN GROUP OF AMERICA, INC., AUDI CANADA, INC.,
AUDI AKTIENGESELLSCHAFT, AUDI OF AMERICA INC. and
VW CREDIT CANADA, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

Notices of Action issued on September 23, 2015 (Toronto), September 22, 2015 (Windsor) and September 29, 2015 (Toronto)

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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

a) "**Arvanitelis**" means Chris Arvanitelis;

b) **"Audi AG"** means Audi Aktiengesellschaft;

c) **"Audi Canada"** means Audi Canada, Inc.;

d) **"Audi of America"** means Audi of America, Inc.;

e) "**Auxiliary Emissions Control Device**" or "**AECD**" means any element of design in a vehicle that 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 an emissions control system;

f) "**Bowden**" means Andrew James Bowden;

g) "***CEPA***" means the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, as amended;

h) "***CFR***" means the *Code of Federal Regulations of the United States*, as amended;

i) "***CJA***" means the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

j) "**Class**" or "**Class Members**" means all persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the **3.0L Vehicles** in Canada or elsewhere and all persons in Canada who own, owned, lease or leased one of the **2.0L Vehicles** outside of Canada, provided the Vehicle was registered in Canada at any point on or after September 18, 2015;

k) "***Competition Act***" means the *Competition Act*, R.S.C. 1985, c. C-34;

l) "***Consumer Protection Act***" means the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A;

m) "**Cooper**" means Greg Cooper;

n) "***CPA***" means the *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended;

o) "**Defeat Device**" means an **AECD** that reduces the effectiveness of the emissions control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, unless:

i. those conditions are substantially included in the emissions test procedures of the United States or Canadian governments;
ii. it is needed to protect the vehicle against damage or accident; and
iii. its use does not go beyond the requirements of engine starting;

p) "**Defendants**" means **Volkswagen Canada**, **Volkswagen USA**, **Volkswagen AG**, **Audi Canada, Audi AG**, **Audi of America and VW Credit Canada, Inc.**;

q) "**Emissions Standards**" means the regulations on vehicle and engine emissions set out in Title 40, chapter I, subchapter C, part 86, of the ***CFR*** and made under ***CEPA*** in the On-Road Vehicle and Engine Emission Regulations, SOR/2003-2, as amended;

r) **"EPA"** means the United States Environmental Protection Agency;

s) **"*E.P. Act*"** means the *Environmental Protection Act*, R.S.O. 1990, c. E.19 as amended including ON Reg 361/98;

t) **"EPA Certificate"** means a certificate of conformity to U.S. federal standards issued by the **EPA** under Title 40, chapter I, subchapter C, part 86, of the ***CFR***;

u) **"Equivalent Consumer Protection Statutes"** means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Consumer Protection Act*, S.S. 1996, c. C-30.1, the *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2, the *Business Practices Act*, C.C.S.M., c. B120, the *Consumer Protection Act*, C.Q.L.R., c. P-40.1, the *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, the Consumer Protection Act, RSNS 1989, c. 92 and the *Business Practices Act*, RSPEI 1988, c B-7, as amended;

v) "**Excluded Persons**" means:

i. the **Defendants** and their officers and directors;
ii. the authorized motor vehicle dealers of the **Defendants** and the officers and directors of those dealers; and,
iii. the heirs, successors and assigns of the persons described in subparagraphs (i) and (ii);

w) "**Joseph**" means Joseph Sissinons Chiropractic P.C.;

x) "**NOV**" means a Notice of Violation of the *United States Clean Air Act*, 42 U.S.C. s. 7401 et seq. (1970);

y) **"NOx"** means nitrogen oxides;

z) "**Plaintiffs**" means Arvanitelis, Bowden, Cooper, Joseph, and Vickery;

aa) "**Representations**" means the representations and omissions made by the **Defendants** described in paragraphs 63-65, 76 and 77(b);

bb) "**SCR**" means selective catalytic reduction;

cc) "**Software**" means the entire system in the Vehicles that was designed, manufactured and installed to detect when the Vehicles were undergoing emissions testing and, at all other times, reduced the effectiveness of the emissions control system;

dd) "**TDI**" means Turbocharged Direct Injection;

ee) "**VCCI**" means VW Credit Canada, Inc., also known as Volkswagen Finance and Audi Finance;

ff) "**Vehicles**" means 2.0L Vehicles and 3.0L Vehicles:

"**2.0L Vehicles**" means the following diesel powered vehicles:

(a) on September 18, 2015:

MODEL	MODEL YEARS: INCLUSIVE
Volkswagen Jetta	2009 - 2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010 – 2013, 2015
Volkswagen Passat	2012 - 2015
Volkswagen Beetle	2013 - 2015
Volkswagen Golf Wagon	2010 - 2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010 – 2013, 2015

and,

"**3.0L Vehicles**" means the following diesel powered vehicles:

(a) on November 2, 2015:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6, A7, A8, A8L, Q5, Q7	2009-2016
VW Touareg	2009-2016

gg) "**Vickery**" means Christina Lyn Vickery;

hh) "**Volkswagen AG**" means Volkswagen Aktiengesellschaft;

ii) "**Volkswagen Canada**" means Volkswagen Group Canada, Inc.; and

jj) **"Volkswagen USA"** means Volkswagen Group of America, Inc;

RELIEF SOUGHT

2. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:

a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;

b) a declaration that each of the Defendants misrepresented the characteristics of the Vehicles intentionally or negligently;

c) a declaration that the Defendants engaged in a conspiracy to install the Software, violate the Emissions Standards and import the Vehicles into Canada and sell them unlawfully in Canada;

d) a declaration that the Defendants breached the express and implied warranties in relation to the Vehicles;

e) a declaration that the Defendants violated CEPA by importing the Vehicles into Canada;

f) a declaration that the Defendants violated Part VI of the Competition Act;

g) a declaration that the Defendants engaged in unfair practices contrary to Part III of the Consumer Protection Act and the equivalent provisions in the Equivalent Consumer Protection Statutes;

h) declarations that it is not in the interests of justice to require notice be given pursuant to s. 18(15) of the Consumer Protection Act (and any equivalent provisions of the Equivalent Consumer Protection Statutes) and waiving any such notice provisions;

i) an order for the rescission of the purchase of the Vehicles as well as the rescission of any financing, lease or other agreements related to the Vehicles;

j) statutory damages pursuant to CEPA, the Competition Act, the Consumer Protection Act and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;

k) a declaration that each of the Defendants engaged in the tort of deceit against the Class Members;

l) a declaration that each of the Defendants were negligent in the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Vehicles;

m) general damages and special damages in the amount of $1,000,000,000;

n) punitive damages and/or aggregated damages in the amount of $20,000,000;

o) a reference to decide any issues not decided at the trial of the common issues;

p) prejudgment interest compounded and postjudgment interest pursuant to the CJA;

q) costs of the prosecution of this proceeding pursuant to s. 40 of CEPA;

r) costs of the investigation and prosecution of this proceeding pursuant to s. 36 of the Competition Act;

s) costs of this action pursuant to the CPA, alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to s. 26(9) of the CPA plus applicable taxes; and

t) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. As a result of the admissions by Volkswagen AG and Volkswagen USA that they had manufactured and installed Defeat Devices in certain diesel vehicles to render inoperative elements of their emissions control system, on September 18, 2015, the EPA announced that

it was issuing a Notice of Violation of the Clean Air Act ("NOV") for the following 2.0L Vehicles sold in Canada:

MODEL	MODEL YEARS: INCLUSIVE
Volkswagen Jetta	2009 - 2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010 – 2013, 2015
Volkswagen Passat	2012 - 2015
Volkswagen Beetle	2013 - 2015
Volkswagen Golf Wagon	2010 - 2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010 – 2013, 2015

4. On November 2, 2015, the EPA issued a second NOV for the following 3.0L vehicles sold in Canada:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6,, A7, A8, A8L and Q5	2016
Porsche Cayenne	2015
Volkswagen Touareg	2014

5. On November 19, 2015, Volkswagen informed the EPA that the defeat device existed on all of its U.S. 3.0 liter diesel models since 2009. Volkswagen Canada has since advised that the following models in Canada are affected:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6, A7, A8, Q5, Q7	2009-2016
Porsche Cayenne	2013-2016
VW Touareg	2009-2016

6. The Defeat Device detected when the Vehicles underwent emissions testing and activated equipment that produced compliant emissions results. When not undergoing emissions testing,

the Software reduced the effectiveness of the emissions control system, thereby increasing emissions, including NOx, which causes asthma, emphysema, bronchitis and other respiratory diseases. The Defeat Device made the Vehicles also unlawful to import into Canada under CEPA.

7. The Defendants manufactured and/or distributed the Vehicles with the Software and the Defendants marketed the Vehicles as having superior performance, fuel efficiency and as being better for the environment than gasoline-powered vehicles.

8. On December 15, 2016, the Defendants entered into an agreement (the "2.0L Settlement Agreement") to settle certain claims asserted by the Settlement Class related to Volkswagen and Audi-brand 2.0L Vehicles which were sold in Canada, or leased through VW Canada, Inc., as of September 18, 2015.

9. The 2.0L Settlement Agreement does not resolve claims in this action relating to the 3.0L Vehicles, or any Vehicles that were not originally sold, or leased from VCCI, in Canada.

A. The Plaintiffs

10. Arvanitelis resides in Scarborough, Ontario. As of September 18, 2015, Arvanitelis owned one of the 2.0L Vehicles, namely, a VW Jetta, model year 2011. The vehicle was not originally sold, or leased from VCCI, in Canada, however, the Vehicle was registered in Canada on or after September 18, 2015.

11. Bowden and Vickery reside in Windsor, Ontario. As of September 18, 2015, Bowden and Vickery co-owned and held joint title of one of the 3.0L Vehicles, namely, a VW Touareg 2 Comfortline 3.0, model year 2010.

12. Cooper resides in Brampon, Ontario. As of September 18, 2015, Cooper owned one of the 2.0L Vehicles, namely, a VW Jetta, model year 2012. The vehicle was not originally sold, or leased from VCCI, in Canada, however, the Vehicle was registered in Canada on or after September 18, 2015.

13. Joseph resides in Windsor, Ontario. As of September 18, 2015, it leased one of the 3.0L Vehicles, namely, an Audi Q7 TDI, model year 2014.

14. Each of the Plaintiffs and the Class Members paid a premium of several thousand dollars for their diesel powered Vehicles over similarly equipped gasoline-powered models. The Plaintiffs also suffered the damages particularized below.

B. The Defendants

15. Volkswagen AG is a German car manufacturer headquartered in Wolfsburg, Lower Saxony, Germany. It is the second largest automaker in the world. Volkswagen AG and its wholly owned subsidiaries are responsible for the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Vehicles.

16. Volkswagen Canada is a Canadian federally incorporated company, directly or indirectly owned and controlled by Volkswagen AG, with its head office in Ajax, Ontario. Volkswagen Canada is the sole distributor of the Volkswagen-branded Vehicles in Canada. Volkswagen Canada does not manufacture any automobiles in Canada, but is involved with, has

responsibilities for and provides directions for the engineering, design, development, research, regulatory compliance, marketing and distribution of the Vehicles in or for Canada. Volkswagen Canada is a wholly-owned indirect subsidiary of Volkswagen AG.

17. Volkswagen USA is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Herndon, Virginia. It is involved with, has responsibilities for and provides direction for the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Vehicles in North America and is also directly responsible for the manufacture of some of the Vehicles sold in North America. Volkswagen USA is a wholly-owned subsidiary of Volkswagen AG.

18. Audi AG is a German car manufacturer headquartered in Ingolstadt, Lower Saxony, Germany. It is the parent company of the Audi Group. Audi AG and its wholly owned subsidiaries are responsible for the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Vehicles. Approximately 99.55% of Audi AG's shares are owned or controlled by Volkswagen AG. The Chairman of Audi AG's Board of Management is a member of Volkswagen AG's Board of Management.

19. Audi of America is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Herndon, Virginia. It does not manufacture any automobiles in the United States, but it is involved with, has responsibilities for and provides direction for the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Audi brand Vehicles in North America. Audi of America is a wholly-owned indirect subsidiary of Volkswagen AG.

20. Audi Canada is a Canadian federally incorporated company with its head office in Ajax, Ontario. Audi Canada is the distributor of the Audi-branded Vehicles in Canada. It does not manufacture any automobiles in Canada, but it is involved with, has responsibilities for and provides directions for the engineering, design, development, research, regulatory compliance, marketing and distribution of the Audi-branded Vehicles in Canada. Audi Canada is a wholly-owned indirect subsidiary of Volkswagen AG.

21. VW Credit Canada Inc. is a Canadian federally incorporated company with its head office in St. Laurent, Quebec. It offers retail financing and customer lease financing for the Vehicles in Canada. VW Credit Canada Inc. is a wholly-owned indirect subsidiary of Volkswagen AG.

22. Each of the Defendants knew or should have known of the use of the Defeat Device in the engines of the Vehicles and the misconduct set out herein, and failed to disclose the existence and use of the Defeat Device.

23. The Plaintiffs plead that the Defendant VW AG exercised control over the other Defendants. The incorporation and use of the Defeat Devices in the Engines of the Vehicles and the representations regarding the Vehicles as set out herein were authorized, approved, directed and controlled by VW AG. VW AG is responsible in law and in fact for the liability of the other Defendants herein.

C. The Class

24. The Class is comprised of all persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the 3.0L Vehicles in Canada or elsewhere and all persons in Canada who own, owned, lease or leased one of the 2.0L Vehicles outside of Canada,

provided the Vehicle was registered in Canada at any point on or after September 18, 2015, or such other definition that the court finds favourable.

D. Volkswagen Bets On Diesel

25. Over the past decade, consumer tastes and tightening regulations have created a strong demand in the consumer automotive market for cars that offer superior performance, fuel-efficiency and are better for the environment.

26. Many automakers responded to these trends by producing vehicles that run partially or entirely on electric motors. Other automakers, including the Defendants, took a different approach. They responded through the widespread production of cars with purportedly fuel-efficient diesel engines.

27. While the use of diesel in passenger cars was not uncommon in Europe, the trend had never caught on in North America, where diesel engines were mostly limited to trucks and other heavy vehicles. In large part, this was due to the different emissions standards applicable in the European Union and in the North American markets.

28. The Vehicles use internal combustion engines that produce power by burning diesel fuel. Diesel engines differ from gasoline powered engines in that they use highly compressed hot air to ignite the fuel rather than using a spark plug.

29. These Vehicles produce diesel exhaust. Diesel exhaust is materially different from the exhaust produced by gasoline engines. Among other things, the lean-burning nature of diesel engines and the high temperatures and pressures of the combustion process result in vastly increased levels of NOx and other pollutants in diesel exhaust as compared to gasoline engine

exhaust. NOx emissions are dangerous air pollutants that are harmful to humans and the environment. The release of NOx emissions contributes to, among other things, the formation of acid rain and ground level ozone. Exposure to NOx causes or contributes to, among other health issues, serious forms of respiratory illness and poses a particular threat to the elderly, children, and people with asthma.

30. Diesel vehicle manufacturers are required to comply with the government emissions standards as further set out herein. In order to comply with regulatory emissions standards, diesel vehicle manufacturers employ a number of systems (including engine control software and emissions hardware systems) in order to reduce NOx emissions.

31. Many diesel vehicle manufacturers (including the Defendants under the brand name "AdBlue") will install a urea injection system into vehicles to trap NOx particles before they are released into the atmosphere. Installing a urea injection system will generally increase the cost of a vehicle. In order to, among other things, increase their profits on the Vehicles, the Defendants made the decision to not install a urea injection system in the Vehicles and to otherwise improperly deal with the diesel regulatory emissions issues other than to insert the Defeat Device into the Vehicles.

E. Canadian Emission Laws, Regulations & Policies

32. The Vehicles and their engines are required to meet the Emissions Standards in order to be sold, used or licensed. The Emissions Standards are closely aligned with those of the United States of America to ensure that common, safe environmental outcomes are achieved.

33. At all material times, the Defendants were required to comply with, and knew or should have known that the Vehicles were required to comply with Canadian law, regulations and

policy in respect of Emissions Standards, including those imposed pursuant to CEPA and the regulations thereto, and to Provincial and Territorial emissions legislation and regulations.

34. All persons, including the Defendants, are prohibited from assembling, manufacturing, importing and/or selling into Canada vehicles, engines or equipment unless the Emissions Standards are met.

35. The vehicles and/or engines that have been issued an EPA Certificate certifying that they meet Emissions Standards are eligible for sale and use in Canada as set out in the regulations under CEPA.

36. Canadian and U.S. emissions regulations prohibit equipping a vehicle or engine with a Defeat Device subject to limited exceptions that are not applicable to this proceeding such as in relation to emergency response vehicles.

37. Pursuant to the Emissions Standards, the following terms mean:

a) "defeat device" means an auxiliary emission control device that reduces the effectiveness of the emission control systems under conditions that may reasonably be expected to be encountered in normal vehicle operation and use.

b) "auxiliary emission control device" means any element of design that 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 an emission control system.

c) "element of design" means, in respect of a vehicle or engine,

i. any control system, including computer software, electronic control systems and computer logic;

ii. any control system calibrations;

iii. the results of systems interaction; or

iv. any hardware items.

d) "emission control system" means a unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design used to control exhaust emissions from a vehicle.

38. The Defendants knowingly, intentionally or negligently incorporated into the Vehicles an Auxiliary Emissions Control Device that was, or amounted to, a Defeat Device. Alternatively, the Defendants sold and distributed the Vehicles when they knew or should have known of the use of the Defeat Device in the Vehicles. The purpose of the Defeat Device was to evade Emissions Standards and other U.S., Canadian Federal, Provincial and Territorial laws, regulations and policies related to emissions standards and to mislead regulators and consumers about the performance of the Vehicles.

39. As referred to above, the Defeat Device allows the Vehicles to meet the Emissions Standards during emissions tests, while permitting far higher emissions during the normal operation of the Vehicles. The Defeat Device in the Vehicles worked (through the use of the Software) by switching on the full emissions control systems only when the engines of the Vehicles were undergoing emissions testing. These emissions control systems were not used or applied under normal vehicle driving operation. As a result, the Vehicles produce far greater levels of emissions and pollutants during actual road operation (up to 40 times above standards-compliant levels).

40. As a result of the acts of the Defendants, each owner or lessor of a Vehicle is or may be in violation of Federal, Provincial and Territorial environmental laws, regulations and policies, including the E.P. Act and its regulations.

41. The emissions from the Vehicles during normal driving conditions exceed the aforesaid laws and regulations, and allow emissions (including NOx) and pollution at dangerous levels,

which affects health and safety. Among other things, the Defendants failed to warn the Class Members of the foregoing notwithstanding that the Defendants knew or ought to have known that the Defeat Device did not comply with the Emissions Standards and defeated the common, safe environmental outcomes referred to above.

42. The fact that the Vehicles do not satisfy the Emissions Standards subjects the Class Members to potential penalties, sanctions and the denial of the right to use the Vehicles.

F. Volkswagen Continues To Conceal Defeat Device

43. In or around May 2014, researchers from West Virginia University, working for a public interest group in the U.S., tested the emissions produced by a number of the Vehicles and found that they exceeded U.S. NOx emissions standards by between 5 to 35 times. In response to those findings, air quality regulators in California and the EPA opened an investigation into Volkswagen AG and its subsidiary, Volkswagen USA.

44. Volkswagen AG and Volkswagen USA initially denied any wrongdoing and concealed the use of the Defeat Device from the U.S. regulators and the public. Discussions between Volkswagen AG, Volkswagen USA and the U.S. regulators went on for several months. As part of those discussions Volkswagen AG and Volkswagen USA attempted to replicate the West Virginia University researchers' results.

45. Volkswagen AG and Volkswagen USA subsequently advised the U.S. regulators that they had identified the reasons for the higher emissions and proposed to remedy any deficiencies with a software patch. Nearly 500,000 vehicles in the U.S. were recalled in December 2014 for implementation of the software patch.

46. The Defendants failed to raise the emissions issue with, among others, Canadian regulators or the Class Members who then owned or leased the Vehicles.

47. Tests conducted by the U.S. regulators confirmed that the December 2014 recall failed to reduce the Vehicles' NOx emissions to acceptable or lawful levels or at all.

48. In or around the same time, the U.S. regulators were considering whether they would certify Volkswagen AG and Volkswagen USA's 2016 models for sale. The U.S. regulators advised that they would not approve Volkswagen's 2016 models for sale unless questions about the discrepancies between laboratory and real-world emissions testing were resolved.

49. Faced with the threat of being unable to sell any of its vehicles in the U.S., on or about September 3, 2015, Volkswagen AG and Volkswagen USA admitted that they had designed and installed the Defeat Devices in the Software in the Vehicles.

50. On September 18, 2015, the EPA announced that it was issuing the NOV. The NOV alleged that four-cylinder Volkswagen and Audi diesel Vehicles from model years 2009-2015 included Software that circumvented EPA emissions standards for certain air pollutants.

51. Volkswagen AG and Volkswagen Canada have also violated the corresponding Emissions Standards, including the regulations respecting the import of the Vehicles, engines and equipment into Canada.

52. On or about September 21, 2015, the Defendants issued a stop sale order, suspending the sale of the Vehicles in Canada.

53. The Defendants have admitted and otherwise publicly acknowledged their misconduct or negligence relating to the incorporation and use of the Defeat Devices in a number of public statements including, but not limited to:

a) A Volkswagen AG media release dated September 19, 2015 that stated, in part, that Volkswagen AG would do everything necessary in order to reverse the damage it had caused;

b) A Volkswagen AG media release dated September 22, 2015 that recognized the irregularities concerning the Software, that referred to a noticeable deviation between bench test results and actual road use for the Vehicles, and that otherwise stated, in part, that:

i. Volkswagen AG had set aside a provision of some 6.5 billion EUR to address the issue; and,

ii. it was the top priority of the Board of Management of Volkswagen AG to win back lost trust;

c) A statement by the CEO of Volkswagen AG, Prof. Dr. Martin Winterkorn, dated September 23, 2015 announcing his resignation and stating, among other things, that he was "stunned that misconduct on such a scale was possible in the Volkswagen Group";

d) A media release by the Executive Committee of Volkswagen AG's Supervisory Board dated September 23, 2015, specifically referring to the manipulation of emissions data of Volkswagen Group diesel engines and stating, in part, that the Executive Committee:

i. recognized the economic damage caused and the loss of trust among its customers worldwide;

ii. agreed that the mistakes needed to be corrected; and

iii. considered that criminal proceedings may be relevant due to the irregularities;

e) A statement at a public event for the launch of the 2016 Volkswagen Passat on September 21, 2015, in which Michael Horn, Volkswagen USA's CEO, stated that Volkswagen had "totally screwed up" and that "our company was dishonest with the EPA, and the California Air Resources Board and with all of you";

f) A media release by the Supervisory Board of Volkswagen AG dated September 25, 2015, specifically referring to the manipulations that deeply shocked Volkswagen, the disaster of the test manipulations, and the unlawful behaviour of engineers and technicians involved in engine development; and

g) An undated open letter from Maria Stenström, President and CEO of Volkswagen Canada, apologizing for the emissions compliance issues "on behalf of the Volkswagen corporation".

54. In addition to the above-listed statements from the Defendants, in or around September, 2015, Volkswagen USA created the website vwdieselinfo.com, which includes, among other things, answers to frequently asked questions about the Vehicles and the Defeat Devices. The following answer is in response to the question, "Are the news reports of this "defeat device" true?":

> "Government regulations limit the use of engine software that reduces the effectiveness of a vehicle's emissions control systems. Those are the "defeat device" regulations, and regrettably, VW violated those regulations. We take full responsibility – and deeply regret that this happened."

55. In addition to the above-listed statements from the Defendants, in or around September, 2015, Volkswagen Canada created the website vwemissionsinfo.ca which includes, among other things, the following questions and answers under the heading "Emissions: Your Questions":

a) In response to the question, "Are there no processes in place to prevent something like this happening?", is the following answer:

> "The discrepancies resulted from software installed at the time of manufacture…Volkswagen has commissioned an external investigation to determine how these discrepancies occurred and will take action based on the findings to ensure they do not occur again."

b) In response to the question, "What are the precise causes of the deviations?", is the following answer:

> "Software installed at the time permitted deviations in emissions performance depending on whether the vehicle was running during a regulatory compliance-related test cycle or running outside the test cycle during normal road use. We will have to await the outcome of the ongoing investigations before we can provide further information on this."

c) In response to the question, "Was there deliberate cheating to obtain approval?", is the following answer:

> "Volkswagen has admitted the existence of the test recognition software to the US EPA. This issue is the subject of the ongoing regulatory investigations in the United States and elsewhere. Volkswagen is also conducting its own internal and external investigations to determine how and why this occurred. Volkswagen will continue to co-operate fully with regulators and, in the meantime, is working at full speed to develop and implement the technical remedy that will rectify these discrepancies."

56. In addition, Volkswagen Canada posted to its website (vwemissionsinfo.ca) the transcript of the testimony of Michael Horn, President and CEO of Volkswagen USA, to the United States' House of Representatives Committee on Energy and Commerce on October 8, 2015. Mr. Horn testified among other things, that:

> "On behalf of our company, and my colleagues in Germany, I would like to offer a sincere apology for Volkswagen's use of a software program that served to defeat the regular emissions testing regime.
>
> […]
>
> On September 3, 2015, Volkswagen AG disclosed at a meeting with the California Air Resources Board ("CARB") and the U.S. Environmental Protection Agency ("EPA") that emissions software 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 operated 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.
>
> […]
>
> These events are deeply troubling. I did not think that something like this was possible at the Volkswagen Group. We have broken the trust of our customers, dealerships, and employees, as well as the public and regulators. Let me be clear, we at Volkswagen take full responsibility for our actions and we are working with all relevant authorities in a cooperative way.
>
> […]
>
> We are determined to make things right. This includes accepting the consequences of our acts, providing a remedy, and beginning to restore the trust of our customers, dealerships, employees, the regulators, and the American public.
>
> […]
>
> In closing, I again apologize on behalf of everyone at Volkswagen. We will fully cooperate with all responsible authorities. We will find remedies for our customers, and we will work to ensure that this will never happen again."

57. On or about October 12, 2015, Class Members who then owned or leased the Audi Vehicles received a letter from Audi Canada's President and CEO admitting that Audi Canada's Vehicles "contained software aimed at producing better emissions results in testing, and that these vehicles do not comply with emissions standards."

58. On or about October 15, 2015, Class Members who then owned or leased the affected Volkswagen Vehicles received a letter from Volkswagen Canada's President and CEO admitting that Volkswagen Canada had "violated your trust" and that the Vehicles "may not comply with government emissions standards."

59. On November 2, 2015, the EPA announced that it was issuing the November 2, 2015 Notice of Violation. This Notice of Violation alleged that six-cylinder Volkswagen, Audi and Porsche diesel Vehicles from model years 2014-2016 also included Software that circumvented EPA emissions standards for certain air pollutants.

G. Representations

60. The Defendants made, approved or authorized a number of consistent, common and uniform Representations in, among other things, their written warranties, vehicle manuals, television and radio, media releases, internet, social media and print media advertising, website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Vehicles.

61. As used in this Statement of Claim, the term "Representations" includes the following common and consistent representations made by the Defendants (whether expressly or by omission) to the effect that:

a) the Engines and Vehicles met or exceeded all relevant Federal, Provincial and Territorial emissions regulations;

b) the Vehicles were an environmentally friendly, clean or "green" purchasing option that would be beneficial to the environment due to their low fuel consumption and low emissions; and,

c) the Vehicles provided superior performance.

62. The Representations were made by the Defendants to the Plaintiffs and the Class Members.

H. Deceit/Fraud

63. The Defendants knew or were reckless as to whether the Representations were false when the Representations were made to the Plaintiffs and the Class Members.

64. The Defendants made the Representations with the intention of deceiving the Plaintiffs and the Class Members.

65. The Plaintiffs and Class Members were materially induced by the Representations to purchase the Vehicles and pay the higher price for the diesel engine as set out above. Reliance on the inducement can be inferred on a class-wide basis from the purchase of the Vehicles. Had the Representations not been made, the Vehicles would not have been permitted for import into and sale in Canada and the Class Members would either not have made the purchase or would have made the purchase at a significantly lower price. In addition, a reasonable person would have been materially induced by the Representation to purchase the Vehicles and to pay a higher price for the Vehicles.

66. The Plaintiffs and the Class Members suffered damages and loss as a result of being induced by the Representations to purchase the Vehicles. The Defendants are liable to pay damages to the Class Members.

I. Conspiracy

67. The Defendants and others, including their officers, directors and agents and co-conspirators that are known to the Defendants but unknown to the Plaintiffs, conspired from 2009 to 2015 in Germany, the U.S.A., and Canada, to intentionally create or make use of the Software to defeat or suppress the true nature of dangerous emissions and pollutants for diesel engines in the Vehicles when being examined for emissions standards. They concealed from the EPA, Canadian authorities and others the existence of the Defeat Device and any other AECD. They represented to the Canadian government that the Vehicles were covered by EPA Certificates when the importation of the Vehicles violated CEPA and was unlawful.

68. While acknowledging the incorporation and use of the Defeat Device in the Vehicles by, among others things, the admissions listed above and by publicly announcing the suspension of several high-ranking executives, the Defendants have not, however, identified or disclosed details of the specific individuals who designed, incorporated or otherwise agreed to or authorized the Defeat Device and who were otherwise part of or party to the agreement and decisions to incorporate the Defeat Device and conceal its use, including continuing to conceal its use after the investigations began in the US in the first half of 2014.

69. The Defendants had as their preponderant motivation and purpose a desire to increase their profits by misleading the Class Members and the regulators and by causing the Class

Members to purchase or lease the Vehicles, which were unlawfully imported, unfit for use and harmful to the environment and human health and safety. The Defendants intended to cause harm to the Plaintiffs and the Class Members and to thereby enrich themselves.

70. To carry out the conspiracy, the Defendants acted in concert with one another and each directed their own and each other's agents, servants and employees to knowingly or unknowingly carry out unlawful and wrongful acts including:

a) the Defendants all formed one group of companies with consolidated financial reporting and coordinated design, manufacturing, engineering, marketing, distribution and regulatory compliance for their various brands across the globe;

b) the Defendants and their agents, servants and employees coordinated their efforts. Senior employees of the Defendants corresponded through telephone conversations, emails, reports, and in personal meetings in Canada, the United States, Germany and elsewhere to design the Software and the Vehicles, have the Vehicles certified by the EPA, and import the Vehicles unlawfully into Canada;

c) the Defendants coordinated a marketing strategy to mislead the Class about the health, environmental effects and regulatory compliance of the Vehicles;

d) the Defendants coordinated a regulatory compliance strategy that involved deliberately misleading the EPA and Environment Canada about the Vehicles in order to unlawfully import the Vehicles into Canada; and

e) the Defendants coordinated a strategy not to disclose the incorporation and use of the Defeat Device and not to warn the Class Members or the public of the use of the Defeat Device even after the investigations began in the US in the first half of 2014.

71. The Defendants knew that the Class Members would not pay the selling price of the Vehicles if the Class Members were aware of the Vehicles' high emissions and illegal importation. The purpose and result of the conspiracy was to deceive the Plaintiffs and Class Members into purchasing the Vehicles at an inflated price and to thereby increase the Defendants' profits at the expense of the Class Members. The Defendants knew or ought to have known that the Class Members would be injured by the conspiracy.

J. Breach Of Express And Implied Warranties

72. The Defendants expressly or impliedly warranted to the Plaintiffs and the Class Members that the Vehicles would be reasonably fit for the purposes of driving on roads in Canada, that the Vehicles were of merchantable quality, that the Vehicles were free from defects and/or that the Vehicles were of acceptable quality.

73. Volkswagen Canada and Audi Canada provided the purchasers of the Vehicles with a uniform written warranty that provides and represents, among other things, that each Vehicle:

> Was designed, built and equipped so as to conform at the time of sale with all applicable regulations of Environment Canada, and applicable Provincial requirements.

74. The uniform written warranty also:

a) Covered any repair connected to a manufacturer's defect in material or workmanship;

b) Warranted that the Vehicles' emission control systems were free from defects in materials and workmanship that would cause the Vehicles to fail to conform with relevant Federal, Provincial and Territorial emissions requirements or otherwise;

c) Specifically noted that any failure of a warranted regulated emissions part could cause a Vehicle to fail to conform with Federal, Provincial or Territorial emissions requirements; and,

d) Warranted (to original purchasers and lessees as well as subsequent purchasers) that the Defendants would remedy any "non-conformity" that resulted in a Vehicle failing a Federal, Provincial, or Territorial emissions control test.

75. Despite and contrary to the foregoing warranties and representations, the Vehicles were sold or leased when they were intentionally or negligently manufactured, designed, tested, assembled, built and equipped not to comply with Federal, Provincial, and Territorial regulatory requirements, and the Defendants concealed or failed to disclose that non-compliance from Class Members and government regulators.

76. The Defeat Device in question is a warranted part. The Vehicles are defective under the terms of the warranty and any similar or related extended warranties.

77. As a result of the installation of the Defeat Device and the high NOx emissions and other pollutants from the Vehicles, they are not reasonably fit, of a merchantable quality or of a reasonably acceptable quality for the purposes of driving on roads in Canada and contain defects.

78. The Defendants have breached their warranties to the Class Members, and as a result the Class Members have suffered damages.

NEGLIGENT MISREPRESENTATION

79. The Defendants were in a proximate and special relationship with the Plaintiffs and the Class Members by virtue of, among other things:

a) Their design and manufacture of the diesel engines and Vehicles in question;
b) Their skill, experience and expertise in the design and manufacturing of automotive diesel engines and vehicles generally;
c) The fact that Class Members had no means of knowing or investigating the existence or use of the Defeat Device;
d) The need for Class Members to rely on the Representations and integrity of the Defendants in respect of the Vehicles and attributes.

80. The Defendants owed a duty of care to the Plaintiffs and the Class Members. It was intended by the Defendants and reasonably foreseeable that the Class Members would reasonably rely upon the Representations when purchasing the Vehicles and would suffer the damages described below as a result.

81. The Representations were false and were made intentionally or negligently.

82. The Plaintiffs and Class Members reasonably relied on the Representations in deciding whether to purchase the Vehicles. Their reliance can be inferred on a class-wide basis from the purchase of the Vehicles. Had the Representations not been made, the Vehicles would not have been permitted for sale in Canada, the Class Members could not have made the purchases and would not have paid the higher price for the diesel engines as set out at above.

83. The Plaintiffs and the Class Members suffered damages as a result of relying on the Representations in purchasing the Vehicles. The Defendants are liable to pay damages to the Class Members.

A. Negligence

84. The Defendants owed a duty of care to the Plaintiffs and the Class Members to ensure that the Vehicles were engineered, designed, developed, tested and manufactured free of dangerous defects and without the Software as a Defeat Device, that the Vehicles were in compliance with the Emissions Standards, and that the Vehicles were lawfully imported into Canada. Moreover, the Defendants owed the Class Members a duty to warn that the Vehicles incorporated and used a Defeat Device.

85. The Defendants knew and it was reasonably foreseeable that the Class Members would trust and rely on the Defendants' skill and integrity in purchasing the Vehicles. The Defendants also knew and it was reasonably foreseeable that, if the Vehicles contained dangerous defects or were non-compliant with the Emissions Standards, the value of the Vehicles would diminish and the Vehicles could be subject to recalls, both of which would cause damages to the Class Members.

86. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of engineering, designing, developing, testing, and manufacturing the Vehicles and having them certified, imported, marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care and similarly failed to warn the Class Members.

87. The negligence of the Defendants resulted in damage to the Plaintiffs and the other Class Members. Had the Defendants complied with the required standard of care, the Vehicles would have been sold without the Software as a Defeat Device and would not have been imported into Canada at all, or, alternatively, they would have been offered and/or acquired at prices that represented their true value.

88. As a result of the disclosures on September 18, 2015 and November 2, 2015 that the Vehicles contained the Software as a Defeat Device and that the Vehicles had been illegally imported, the Plaintiffs and the Class Members suffered damages.

B. Unjust Enrichment

89. The Defendants caused the Plaintiffs and the Class Members to pay money for a dangerous and illegal product that they should not have paid for or, in the alternative, for which they should have paid less than they did.

90. As a result, the Defendants were enriched by the payment or overpayment.

91. The Plaintiffs and Class Members suffered a deprivation corresponding to the Defendants' enrichment.

92. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendants' unjust enrichment.

STATUTORY CAUSES OF ACTION

A. CEPA

93. The Defendants imported the Vehicles into Canada in violation of CEPA and the Emissions Standards. Had the Defendants not violated CEPA and the Emissions Standards, the Class Members either would not have bought the Vehicles or the Vehicles would have been free from defects that caused a diminution of their value. The Class Members have therefore suffered loss or damage as a result of the Defendants' contravention of CEPA and the Emissions Standards.

94. Pursuant to s. 40 of CEPA, the Class Members have suffered loss and damage as a result of the Defendants' contraventions of CEPA and as such, the Defendants are liable to pay the Class Members an amount equal to their loss or damage arising from those contraventions.

B. Competition Act

95. The Defendants made the Representations to the public and in so doing breached s. 52 of the Competition Act because the Representations:

a) were made for the purpose of promoting the supply or use of the Vehicles for the business interests of the Defendants;
b) were made to the public; and
c) were false and misleading in a material respect.

96. Pursuant to s. 36 of the Competition Act, the Defendants are liable to pay the damages resulting from their breach of s. 52 thereof.

C. *Consumer Protection Act* and Equivalent Consumer Protection Statutes

97. The Plaintiffs and Defendants are located in Ontario for the purposes of the Consumer Protection Act. The Plaintiffs are consumers for the purposes of the Consumer Protection Act.

98. The Plaintiffs state that other Class Members in Ontario who purchased or leased the Vehicles for personal, family or household purposes are consumers for the purposes of the Consumer Protection Act.

99. The Plaintiffs state that Class Members resident in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island and Newfoundland and Labrador, who purchased or leased the Vehicles for personal, family or household purposes and/or not for resale or for the purpose of carrying on business (as those concepts apply in the various Provinces), are consumers located in those provinces for the purposes of the Equivalent Consumer Protection Statutes. The Defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.

100. The Plaintiffs state that the Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the Consumer Protection Act and Equivalent Consumer Protection Statutes, given that, among other things, the Defendants knew, or ought to have known, that:

a) the Representations were false, misleading and deceptive;
b) the Vehicles did not have the performance characteristics, uses, benefits or qualities as set out in the Representations;
c) the Vehicles were not of the particular standard, quality or grade as set out in the Representations;

d) the Vehicles did not provide the specific price advantage as set out in the Representations;

e) the Representations used exaggeration, innuendo and/or ambiguity as to a material fact and failed to state a material fact in respect of the Vehicles;

f) the price for the Vehicles grossly exceeded the price at which similar goods or services were readily available to like consumers;

g) the Class Members were unable to receive all expected benefits from the Vehicles;

h) the consumer transactions were excessively one-sided in favour of the Defendants;

i) the terms of the consumer transactions were so adverse to the Class Members as to be inequitable; and/or

j) because of such further conduct concealed by the Defendants and unknown to the Plaintiffs.

101. The Plaintiffs also state that the Representations were made on or before the Plaintiffs and other Class Members entered into the agreements to purchase the Vehicles.

102. The Plaintiffs are entitled to rescission of the purchase, lease or other related agreements as well as damages pursuant to s. 18 of the Consumer Protection Act and equivalent provisions of the Equivalent Consumer Protection Statutes.

103. The Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the Consumer Protection Act or of the Equivalent Consumer Protection Statutes, particularly as the Defendants have concealed the actual state of affairs from the Class Members.

GENERAL AND SPECIAL DAMAGES

104. As a result of the dangerous and harmful defects in the Vehicles, the failure by the Defendants to disclose the existence of the Software as a Defeat Device, the extent of the Vehicles' emissions and pollutants, including NOx, and the September 18, 2015 and November 2, 2015 disclosures, the Class has suffered damages. The Defendants have decided to withdraw the Vehicles from the marketplace in Canada and the United States. The value of each of the Vehicles is reduced. The Class Members must expend the time to have their Vehicles repaired and be without their Vehicles. The Defendants should compensate each Class Member for their losses and inconvenience.

105. The Class Members cannot get their Vehicles repaired immediately because there is no fix available for the Vehicles. The Plaintiffs and many of the other Class Members live in Provinces and Territories that require emissions testing when vehicles are sold or their permits renewed. As such, the Class Members face the loss of use or the denial of the right to use the Vehicles under local, Provincial, Territorial or Federal laws or regulations, and the costs associated with the use of other automobiles or other expenses as a result thereof.

106. The Class Members face the loss of the right or ability to sell, or exercise lease purchase options for, the Vehicles.

107. The Class Members have or will have lost time, lost income, and suffered inconvenience and special damages arising from any necessary repair to the Vehicles, loss of use of the Vehicles during any such repair periods, and the cost associated with the use of other automobiles or other expenses during such periods.

108. Because the emissions testing regime in the Provinces relies on the integrity of vehicles' EPA testing and EPA Certificates as a baseline, the Class Members face the prospect that Canada's Provinces and Territories may change their testing regulations so that the Vehicles will fail unless the on-road emissions are once again brought back into compliance with the Emissions Standards. This uncertainty further depresses the resale market for the Vehicles.

109. In order for the Vehicles to be brought in line with the Emissions Standards, the Vehicles' performance standards and fuel efficiency will have to be lowered and reduced. As a result, and among other things, the value of each of the Vehicles will be irreparably diminished.

110. The Plaintiffs plead that the Class Members' damages were sustained in Ontario and in the rest of Canada.

PUNITIVE DAMAGES

111. The Defendants' conduct described above was deliberate, unlawful, arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights and interests of the Class Members and the public. Moreover, the Defendants took additional and extraordinary measures to conceal the conduct in question, the Defeat Device, and the actual emissions made by the Vehicles from the Class Members and government regulators. The Defendants are liable to pay punitive and aggravated damages.

WAIVER OF TORT

112. In the alternative to damages, the Plaintiffs plead that they are entitled to claim "waiver of tort" and thereby to claim an accounting or other such restitutionary remedy for disgorgement

of the revenues generated by the Defendants as a result of the sale of the Vehicles, due to the failure of the Defendants to disclose the Defeat Device, the Vehicles' noncompliance with the Emissions Standards and their unlawful import into Canada under CEPA to the regulators and to the Class Members.

113. The Plaintiffs claim that their entitlement to such an election is appropriate for, among other things, the following reasons:

a) Revenue was acquired in a manner in which the Defendants cannot in good conscience retain;
b) The integrity of the marketplace would be undermined if an accounting was not required;
c) Absent the Defendants' tortious conduct the Vehicles could not have been marketed nor would the Defendants have received any revenue in Canada for them; and
d) The Defendants engaged in wrongful conduct by putting into the marketplace the vehicles whose value would diminish, and which could be subject to recalls, both of which would or may cause loss or damage to the Class Members.

THE RELEVANT STATUTES

114. The Plaintiffs plead and rely upon the following statutes:

a) *Class Proceedings Act*, 1992 S.O. 1992, c. 6, as amended;
b) *Competition Act*, R.S. 1985, c. C-34, as amended, and the regulations thereto, sections 36(1) and 52(1);
c) *Consumer Protection Act* 2002, S.O. 2002, c. 30, as amended, and the regulations thereto, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19;
d) The Equivalent Consumer Protection Statues;
e) *Sale of Goods Act*, RSO 1990, c. S.1, as amended;

f) *Sale of Goods Act*, RSBC 1996, c 410, as amended;

g) *Sale of Goods Act*, RSS 1978, c. S-1, as amended;

h) *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, as amended, and the regulations thereto;

i) *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and the regulations thereto, sections 21, 22, and 23;

j) *Climate Change and Emissions Management Act*, S.A 2003, c. C-16.7, as amended, and the regulations thereto, section 60;

k) *Motor Vehicle Act*, R.S.B.C 1996, c. 318, as amended, and the regulations thereto, sections 47, 48, 49, and 50;

l) *The Climate Change and Emissions Reductions Act*, C.C.S.M, c C135, as amended, and the regulations thereto, sections 13 and 14;

m) *The Environmental Management and Protection Act*, S.S 2010, c E-10.22, as amended, and the regulations thereto, sections 51, 52, 53, and 54;

n) *Environmental Quality Act*, C.Q.L.R c. Q-2, as amended, and the regulations thereto, sections 51, 52, and 53;

o) *Clean Air Act*, S.N.B 1997, c. C-5.2, as amended, and the regulations thereto, section 46;

p) *Environment Act*, S.N.S 1994-95, c. 1, as amended, and the regulations thereto, sections 111 and 112;

q) *Environmental Protection Act*, R.S.P.E.I 1988, c. E-9, as amended, and the regulations thereto, section 25;

r) *Environmental Protection Act*, S.N.L 2002, c. E-14.2, as amended, and the regulations thereto, section 22;

s) *Environmental Protection Act*, R.S.N.W.T 1988, c. E-7, as amended, and the regulations thereto, section 34;

t) *Environment Act*, R.S.Y 2002, c. 76, as amended, and the regulations thereto, section 145;

u) *Environmental Protection Act*, R.S.N.W.T (Nu) 1988, c. E-7, as amended, and the regulations thereto, section 34; and

v) *Negligence Act*, R.S.O. 1990, c. N.1, as amended and the equivalent Provincial and Territorial legislation.

PLACE OF TRIAL

115. The Plaintiffs propose that this action be tried in the City of Toronto.

SERVICE

116. This originating process may be served without court order outside Ontario in that the claim is:

a) in respect of real or personal property in Ontario (*Rule* 17.02(a));
b) in respect of the interpretation or enforcement of a deed, will, contract or other instrument in respect of real or personal property in Ontario *(Rule* 17.02(c));
c) in respect of a contract where the contract was made in Ontario, the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario, and a breach of contract has been committed in Ontario (*Rule* 17.02(f));
d) in respect of a tort committed in Ontario *(Rule* 17.02(g));
e) authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario (*Rule* 17.02(n)) and,
f) brought against a person ordinarily resident or carrying on business in Ontario (*Rule* 17.02 (p)).

March ●, 2017

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MATTHEW ROBERT QUENNEVILLE et. al. Plaintiffs	and	VOLKSWAGEN GROUP CANADA, INC. et al. Defendants	Court File No.: CV-15-537029-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Windsor and
Consolidated and Transferred to Toronto

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6

SECOND FREASH AS AMENDED STATEMENT OF CLAIM

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