

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK and the
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, by LETITIA
JAMES, Attorney General of the State of New York,

Plaintiffs,

v.

ROBERT BOSCH GmbH and ROBERT BOSCH LLC,

Defendants.

COMPLAINT

Index No. _____

Assigned to Justice:

I. INTRODUCTION

In the fall of 2015, the Volkswagen diesel scandal erupted, leading to criminal charges and Volkswagen's admissions that: it knew that more than 500,000 diesel-powered passenger vehicles it marketed and sold or leased in the United States did not meet U.S. emission standards; it cheated the U.S. emissions testing process by using illegal software strategies that made it appear as if the vehicles met U.S. emission standards when they did not; and it attempted to and did conceal these facts from U.S. regulators and customers.

In 2016, in the wake of the Volkswagen scandal, state and federal regulators found that Volkswagen was not alone. Another diesel car manufacturer, Fiat Chrysler, *also* was using undisclosed and illegal software strategies to cheat on U.S. emissions tests in more than 100,000 light-duty diesel vehicles it marketed and sold or leased in the United States.

In both cases, the relevant software was provided by Bosch, the global engineering firm known to many as the maker of household appliances and, more relevant here, a major supplier to the automotive industry around the world. Bosch enabled this cheating by programming the

emission control software it sold Volkswagen and Fiat Chrysler in circumstances where Bosch knew or should have known that its customers would use that software as part of the illegal strategies these automakers implemented to market and sell their vehicles in the U.S. market.

Laboratory and on-road testing confirm these illegal software strategies significantly reduced the effectiveness of these vehicles' emission controls during normal operation and use, causing them to emit multiples of the permitted levels of nitrogen oxides (NO_x) into the environment. NO_x is a pollutant that causes respiratory illness and premature death and that contributes to the formation of smog and particulate matter pollution.

By this action, the People of the State of New York and the New York State Department of Environmental Conservation (together, the State or the State of New York) seek to hold Bosch accountable for its deceptive and unlawful conduct.

II. PARTIES

1. Plaintiff State of New York is a sovereign entity that brings this action on behalf of its citizens and residents.
2. Plaintiff New York State Department of Environmental Conservation (DEC) is an executive agency of the State of New York, and is authorized to administer and enforce the Environmental Conservation Law (ECL) and regulations promulgated thereunder.
3. The New York Attorney General is the chief law enforcement officer of the State of New York and is authorized to bring this action pursuant to ECL §§ 71-2103 and 71-2107, General Business Law (GBL) §§ 349 and 350-d and Executive Law § 63(12).
4. Robert Bosch GmbH (Bosch GmbH) is a German multinational engineering and electronics company headquartered in Gerlingen, Germany. Bosch GmbH is the parent company of Robert Bosch LLC.

5. Robert Bosch LLC (Bosch LLC) is a Delaware limited liability company with its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Bosch LLC is a subsidiary of Bosch GmbH, which wholly owns and controls Bosch LLC. Bosch GmbH and Bosch LLC (collectively, Bosch or the Bosch Defendants) operate under the umbrella of the Bosch Group, which encompasses some 340 subsidiaries and companies. The Bosch Group is one of the leading automotive suppliers globally.

6. At all times material to this Complaint, each Bosch Defendant was, and still is, the agent of the others for purposes of the matters alleged herein, and each has acted, and is acting, for the common goals and profit of them all. All acts and knowledge ascribed to any one Defendant are properly imputed to the others.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants, and authority to grant the relief requested pursuant to ECL § 71-2103, ECL § 71-2107, CPLR § 301, GBL § 349(b), GBL § 350-d and Executive Law § 63(12).

8. At all relevant times, Defendants have purposefully availed themselves of this forum. Among other things, the Defendants designed, programmed, and delivered the electronic diesel control units, including emission control software, for sale in the U.S. market and inclusion in all of the Volkswagen and Fiat Chrysler diesel passenger vehicles that are the subject of this Complaint. Defendants also designed and calibrated the on-board diagnostics (OBD) systems in the Fiat vehicles, and prepared documents for submission by Fiat to regulators for certification of the Fiat vehicles' OBD systems. Defendants did so under the supervision of their customers, when Defendants knew or should have known that these vehicles, along with their control units,

including with the illegal software strategies described in this Complaint, would be marketed, distributed, warranted, sold, and leased throughout all 50 states, including in New York.

9. Accordingly, the exercise of specific jurisdiction over all Defendants is consistent with due process.

10. Venue lies in Albany County pursuant to CPLR § 503(a) because, *inter alia*, the State has offices in Albany and DEC's headquarters is in Albany.

VI. BACKGROUND AND FACTUAL ALLEGATIONS

11. Unless otherwise stated, the allegations set forth in this Complaint are based upon information obtained from the documents produced by Bosch, the testimony of Bosch's current and former employees, publicly available press reports, and information and documents obtained from other sources through the Attorney General's independent investigatory efforts.

A. The Volkswagen and Fiat Entities

12. This Complaint centers around conduct that Bosch carried out with and for several of its automotive customers over a number of years, namely:

- a. members of the Volkswagen Group (together, VW), led by Volkswagen AG, including Audi AG (Audi), Volkswagen Group of America, Inc., Dr. Ing. h.c. F. Porsche AG d/b/a Porsche AG, and Porsche Cars North America, Inc.; and
- b. Fiat Automobiles N.V. (Fiat N.V.) and a group of its subsidiaries and affiliates (together, FCA), including FCA US LLC, VM Motori S.p.A. (VM Italy); VM North America (VM America or, together with VM Italy, VM). VM designed, manufactured, calibrated, and delivered the engine system for inclusion in the FCA Diesel Vehicles, under the supervision of FCA.

13. Specifically, this Complaint focuses on Bosch's development and programming of Bosch electronic diesel control (EDC) units, known as the EDC17, for installation in more than 500,000 2.0- and 3.0-liter "Clean Diesel"-branded VW vehicles (VW Diesel Vehicles) and more than 100,000 3.0-liter "EcoDiesel"-branded FCA vehicles (FCA Diesel Vehicles) marketed and sold or leased in the United States. A list of the VW Diesel Vehicles and FCA Diesel Vehicles (collectively, the Diesel Vehicles) is attached hereto as Exhibit 1.

14. Bosch's EDC17 is a computer that controls emissions by periodically reading sensor values, evaluating control functions, and controlling actuators based on control signals. Based on sensor inputs, the EDC17 controls and influences the fuel combustion process including, in particular, fuel injection timing, which affects engine power, fuel consumption, and the composition of the exhaust gas or emissions.

15. Bosch's EDC17 consists of base emission control software, which Bosch programs to meet each client manufacturer's needs, in close coordination and consultation with the customer. Programming is the task of creating a source code that instructs a computer system, like the Bosch EDC17, to behave according to the programmed logic.

16. For its customers VW and FCA, Bosch programmed the EDC17 software to include software functionality that Bosch knew or should have known would be calibrated¹ to optimize the emission controls while the vehicles were undergoing standard U.S. emissions testing cycles on a dynamometer (on-cycle) and substantially reduce emission controls when the vehicles were being driven on the road under normal, real-world conditions (off-cycle) (known as "defeat devices" in the industry), resulting in NO_x emissions greatly exceeding U.S. standards.

¹ Calibration (or configuration) is the task of adjusting pre-existing values (commonly referred to as "labels" by Bosch and as "variables" by others in the computer sciences industry) to adjust the behavior of the programmed logic within the limits established by the program.

B. The U.S. Mobile Source Air Pollution Regulatory Framework Limits NO_x Emissions.

17. NO_x is a pollutant linked with serious health and environmental dangers. NO_x combines in the atmosphere with volatile organic compounds to form ozone, a major component of urban smog that harms the public health and damages the environment. Ozone contributes to many human respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections and illnesses, such as asthma, and disproportionately affects vulnerable members of society, particularly children and the elderly.
18. NO_x emissions also cause eutrophication of and excess nutrient loading in coastal and other waters, reduce the diversity of fish and other life in these waters and, along with sulfur dioxide found in the atmosphere from other sources, contribute to the creation of fine nitrate and sulfate particles. Like ozone, fine particulates affect New York residents by causing human respiratory distress, cardiovascular disease and even premature mortality. Fine nitrate and sulfate particles are also toxic to aquatic life and vegetation.
19. Because of the serious health and environmental impacts of NO_x emissions, state and federal emission standards impose not-to-exceed limits. Vehicle manufacturers must certify to the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) that their motor vehicles comply with those standards in order to obtain EPA-issued Certificates of Conformity (COCs) and CARB-issued Executive Orders (EOs). The same standards also mandate certain durability requirements for the engine and its components.
20. Of relevance to the Diesel Vehicles here, EPA's Tier 2, Bin 5 emission standard and California's LEV II emission standard (LEV II)—the standards applicable to the vast majority of the Diesel Vehicles—impose a NO_x emission limit of 0.05 grams per mile (g/mi) for up to

50,000 miles and 0.07 g/mi from 50,000 to 120,000 miles. The Tier 2/LEV III (LEV III) emission standard imposes a combined non-methane organic gas and NO_x limit of 0.125 g/mi for up to 150,000 miles. *See Ex. 1.* The amount of permissible NO_x emissions increases marginally as the vehicles accumulate more miles and their emission control systems age.

21. CARB also requires vehicles to be equipped with OBD systems that monitor emission control systems for the life of the vehicle, and that are able to detect malfunctions in those systems and notify the driver when emissions exceed certain designated levels.

22. Multiple states, including New York, enforce the State of California's Low Emission Vehicle Program Regulations (CA LEV Regulations) by adopting their own corresponding regulations, as expressly permitted by Congress in Section 177 of the Clean Air Act, 42 U.S.C. § 7507 (Section 177). Thus, in addition to meeting EPA requirements, in order to sell their vehicles nationwide, manufacturers must: (a) certify to CARB that their motor vehicles comply with CARB's emission and OBD certification requirements and test procedures; (b) obtain CARB-issued EOs for each model year and for each test group showing they are certified as meeting the emission requirements of the applicable CA LEV Regulations, and as meeting the OBD requirements of the applicable OBD regulations; (c) obtain valid "environmental performance labels" disclosing their smog and global warming scores in accordance with the CA LEV Regulations; (d) obtain valid "emission control labels" showing that they are certified for sale in California under the CA LEV Regulations; and (e) warranty that the vehicles shall comply over their warranty term with all requirements of the CA LEV regulations. *See generally* California Code of Regulations (CCR) Title 13, §§ 1900 *et seq.*

23. Although diesel engines generally are more fuel-efficient than gasoline engines, they also emit relatively high amounts of NO_x, a feature that must be controlled to meet emission

standards. Controlling NO_x emissions in diesel vehicles, however, involves various trade-offs: emission control technology that reduces NO_x emissions can adversely impact engine durability, maintenance, performance and efficiency. Diesel vehicle manufacturers must therefore balance the goal of implementing effective NO_x reduction controls and strategies against engineering and marketing objectives.

C. New York Law Requires Express Disclosure of All Emission Control Devices or Strategies and Prohibits Ones That Operate to Beat Formal U.S. Test Cycles.

24. State and federal emission regulations require vehicle manufacturers to make extensive written disclosures regarding the existence, impact of, and justification for any devices, including auxiliary emission control devices (AECs), which affect the operation of the emission control system.

25. An AEC is any element of design that senses temperature, vehicle speed, engine RPM, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system. An AEC that operates to thwart emission standards by reducing the effectiveness of an automobile's emission control system in everyday driving conditions is known in the industry as a "cycle-beater," and in U.S. legal terms as a "defeat device."

26. CARB's certification requirements and test procedures require, among other things, that vehicle manufacturers disclose in their certification applications all AECs used in their vehicles.

27. Undisclosed AECs and all defeat devices are expressly prohibited under federal, California and New York law. Vehicles equipped with undisclosed AECs or any defeat devices may not be certified for sale in the United States.

D. Bosch Assisted VW and FCA in Implementing and Concealing the Illegal Software Strategies They Used to Beat Formal U.S. Test Cycles.

28. Both VW and FCA sought to leverage the diesel expertise they developed in the European market to compete and profit in the U.S. diesel market. But U.S. federal and state limits on NO_x emissions are more stringent than European limits.
29. Rather than invest the time, resources and money necessary to develop emission controls that would satisfy U.S. emission limits for NO_x, VW and FCA paid Bosch to program the EDC17s to include functionalities that VW and FCA used as undisclosed AECDs and defeat device software to optimize emission controls on-cycle and reduce them off-cycle. Using these strategies enabled VW and FCA to pass formal U.S. emissions tests, but caused the Diesel Vehicles to emit significantly higher-than-permitted amounts of NO_x off-cycle, under normal driving conditions.
30. The VW Diesel Vehicles contained defeat devices that worked by turning up emission controls when the vehicle recognized it was being tested on a dynamometer (VW's "dyno mode") and turning them down off-cycle.
31. These defeat devices, which operated to reduce NO_x emissions to acceptable levels during dyno mode, led to off-cycle, normal mode NO_x emissions greatly in excess of the legal limit.
32. VW's decision to implement these defeat devices was the result of a willful and systematic scheme of cheating, which extended over nearly a decade beginning in or about 2006 and which was an open secret at VW.
33. At VW's instruction, Bosch programmed the software for VW, and expanded and refined its functionality over the years.

34. At all relevant times, Bosch understood that the software it provided to VW would likely be employed for illegal uses but adopted the position that as long as its client was responsible for the ultimate application or calibration, Bosch could not be held legally responsible.

35. Meanwhile, FCA partnered with Bosch to supply critical components, software, and services for the engines and emission control systems of the FCA Diesel Vehicles, including the EDC17 and its software, parts of the emission control system, OBD calibration, and the preparation of OBD documentation for submission by FCA to EPA and CARB for certification, among others.

36. As with VW, during development of the FCA Diesel Vehicles beginning in or around 2011, it became clear that complying with the U.S. emission requirements would require tradeoffs that would negatively affect the certifiability and marketability of the FCA Vehicles.

37. Rather than address these issues legally, FCA paid Bosch to program multiple functions into the Bosch EDC17 that FCA used to optimize emission controls on-cycle but decrease their usage off-cycle.

38. As deployed, these AECDs, acting alone or in combination, operated as defeat devices, and led to off-cycle, highway NO_x emissions greatly in excess of the EPA Tier 2, Bin 5 standard.

39. At all relevant times, Bosch understood that FCA intended to use these AECDs to optimize the FCA Vehicles' performance during formal testing and further that disclosure to regulators of these AECDs would raise serious concerns about cheating and pose a serious threat to certification.

40. Certain Bosch personnel raised concerns to colleagues and managers, as well as FCA and VM personnel, that multiple above-referenced functions in the FCA Diesel Vehicles were AECDs requiring disclosure and/or illegal defeat devices. Notwithstanding these concerns,

Bosch continued to supply FCA with software that Bosch knew or should have known would be used to implement these illegal and undisclosed software strategies. Bosch did so with the understanding that FCA would not disclose these strategies.

41. Notwithstanding the presence of these defeat devices, VW sought and obtained certification of the VW Diesel Vehicles under EPA's Tier 2, Bin 5 emission standard and California's LEV II and or LEV III emission standards by submitting certifications to those agencies; and FCA sought and obtained certification for the FCA Diesel Vehicles under EPA's Tier 2, Bin 5 emission standard and California's LEV II emission standard by submitting certification applications, including OBD documentation prepared by Bosch, to those agencies.

42. Further, to obtain COCs and EOs, VW and FCA warranted that the Diesel Vehicles were designed, built, and equipped to meet the emission standards in California and other states that have adopted California's standards.

43. In doing so, VW and FCA also made false or misleading submissions, directly and through CARB, to DEC concerning NO_x emissions from the Diesel Vehicles.

44. In addition, VW and FCA delivered the Diesel Vehicles for sale in New York with invalid "environmental performance labels" affixed to them.

45. Despite being aware that the defeat devices in the Diesel Vehicles were likely illegal in the United States, Bosch never alerted any regulatory authorities to their existence.

46. Bosch further facilitated VW's and FCA's frauds by helping them conceal the existence of the undisclosed AECs and illegal defeat devices, including by removing reference to them from Bosch's formal EDC software documentation for the VW Diesel Vehicles, and by acquiescing to FCA's scheme not to disclose relevant functions in FCA's certification documentation.

E. Bosch Facilitated the Deceptive Marketing of the Diesel Vehicles.

47. Bosch understood that in order to sell and lease the Diesel Vehicles in the United States, as well as in New York, VW and FCA would have to:

- a. market, represent and warrant to consumers that the they were compliant with Federal and State emission standards; and
- b. omit the fact that they were cheating on emission tests through the use of the defeat devices.

48. At all relevant times, Bosch knew or should have known that VW and FCA were using the hidden software functionality they had programmed into their VW and FCA EDC17s to cheat on emissions tests, and that by placing these vehicles on the market VW and FCA necessarily would misrepresent to consumers that the vehicles were compliant with federal and state emission standards and omit the fact that they were cheating.

49. Yet Bosch never came forward to warn consumers or regulators that VW and FCA were cheating. Nor did Bosch take any corrective action as VW and FCA deceptively emphasized the environmentally friendly, "clean," "green" nature of diesel and targeted their marketing to environmentally-conscious consumers.

50. On the contrary, Bosch collaborated with VW and FCA to promote and expand diesel technology into the U.S. market through advertising, lobbying and promotional campaigns, including by co-promoting the Diesel Vehicles, promoting Bosch's EDC17 software as "clean," "green" and compliant with emission standards, and even re-publishing some of VW's deceptive ads on its own Facebook page.

i. VW's Deceptive Marketing of the Diesel Vehicles.

51. From 2009 through 2015, VW spent hundreds of millions of dollars to develop and place, including in New York, internet, television, and print ads advertising the fuel efficiency, performance, and environmental hygiene of the VW Diesel Vehicles, to rebrand diesel as a clean-running, fuel-efficient, fun alternative to their gas and hybrid competitors, and to associate the VW and Audi brands with progressive ideals, environmental consciousness, and innovation.

52. In addition to its misleading advertising campaigns, VW subjected buyers and lessees to additional misrepresentations at the point of sale through window stickers affixed to each of the VW Diesel Vehicles that reflected inaccurate average "smog ratings" because, in fact, the vehicles' NO_x emissions—a major factor in smog ratings—actually exceeded applicable standards many times over.

53. Further, in California emissions warranties, VW expressly warranted to each "original retail purchaser or original lessee and any subsequent purchaser or lessee that every [Diesel Vehicle] imported by VW . . . was designed, built and equipped" to conform with applicable CARB requirements, and, therefore, ECL Article 19 and its implementing regulations.

54. VW disseminated the above advertisements, marketing materials and warranties to consumers throughout the United States, including in New York, even though they were categorically false in light of the installation of the defeat devices in the VW Diesel Vehicles.

55. Consumers purchased and leased the VW Diesel Vehicles based on VW's false and misleading representations that the vehicles would be environmentally friendly and clean, fuel-efficient, and compliant with all applicable emission standards and would provide superior performance, as well as based on VW's omission of the fact that the vehicles utilized illegal defeat devices. Consumers were willing to pay price premiums of thousands of dollars per car,

depending on the model and trim packages, for VW Diesel Vehicles as opposed to gasoline-fueled equivalents.

56. A significant portion of owners purchased or leased a VW Diesel Vehicle because of VW's "clean diesel" and environmentally friendly promotions. Many, if not most, would not have purchased or leased the vehicles had VW accurately disclosed that the VW Diesel Vehicles failed to meet state and federal emission standards or spewed NO_x into the air at levels well above regulatory limits.

ii. FCA's Deceptive Marketing of the Diesel Vehicles.

57. To dispel diesel's negative associations in the U.S. market, FCA worked with a marketing firm to study consumer perceptions and create the name "EcoDiesel," with an accompanying badge incorporating the image of a leaf, to create an environmentally friendly image for the FCA Diesel Vehicles.

58. From 2013 through 2016, FCA spent tens of millions of dollars to develop and place, including in New York, internet, television, and print ads advertising the fuel efficiency, performance, and environmental hygiene of the FCA Diesel Vehicles, to rebrand diesel as a clean-running, fuel-efficient, fun alternative to their gas and hybrid competitors, and to associate the FCA brands with progressive ideals, environmental consciousness, and innovation.

59. In addition to its misleading advertising campaigns, FCA subjected buyers and lessees to additional misrepresentations at the point of sale through window stickers affixed to each of the FCA Diesel Vehicles that reflected inaccurate average "smog ratings" because, in fact, the vehicles' NO_x emissions—a major factor in smog ratings—actually exceeded applicable standards many times over.

60. Further, in California emission warranties, FCA expressly warranted to each “original retail purchaser or original lessee and any subsequent purchaser or lessee that every [Diesel Vehicle] imported by FCA was designed, built and equipped” to conform with applicable CARB requirements, and, therefore, ECL Article 19 and its implementing regulations.

61. Consumers purchased and leased FCA Diesel Vehicles based on FCA’s false and misleading representations that the vehicles would be environmentally friendly and clean, fuel-efficient, and compliant with all applicable emission standards and would provide superior performance, as well as on FCA’s omission of the fact that the vehicles contained illegal defeat devices. Consumers were willing to pay price premiums of thousands of dollars, depending on the model and trim packages, for the FCA Diesel Vehicles over the gas-fueled equivalents.

62. A significant portion of owners purchased or leased a FCA Diesel Vehicle because of its “clean diesel” and environmentally friendly promotions. Many, if not most, would not have purchased or leased the vehicles had FCA accurately disclosed that the FCA Diesel Vehicles failed to meet state and federal emission standards.

iii. Bosch Deceptively Promoted Its EDC17 as the Brain of VW’s and FCA’s “Clean Diesels.”

63. Bosch was aware of and aided and abetted VW’s and FCA’s deceptive conduct towards regulators and consumers about the legal compliance and environmental suitability of the Diesel Vehicles while also engaging in its own misrepresentations and omissions with respect to its ECUs and the Diesel Vehicles.

64. Bosch’s collaboration with VW’s and FCA’s conduct went beyond the goal of satisfying its customers’ needs and ensuring continued access to their lucrative business. As it participated in VW’s and FCA’s conduct, one of Bosch’s chief objectives was to expand its “clean diesel” reputation and business into new markets, particularly in the United States.

65. Bosch paired its EDC17 with a proprietary diesel fuel injection system and claimed that the resulting “Common Rail System” produced enhanced performance, complied with applicable emission limits, and could be customized for any vehicle.

66. Moreover, Bosch made significant investments in developing and promoting its Common Rail System as the centerpiece of its “clean diesel” technology, the heart of which was the EDC17. During the times it was assisting VW and FCA in developing software to cheat on emissions tests, Bosch used a variety of means—ranging from appearing at trade shows and conferences to lobbying government officials to issuing press releases and authoring articles in the automotive press to making social media posts—to represent to regulators and other government officials, automakers, and even individual consumers, that the Common Rail System was the key to powerful yet quiet, fuel-efficient diesel passenger cars that also could be engineered to comply with increasingly stringent U.S. emission limits.

67. For example, Bosch worked closely with VW to promote the sale of the “clean diesel” VW Diesel Vehicles in the United States. The two companies developed a coordinated press strategy around the 2009 Jetta’s Green Car of the Year Award, in which VW reviewed, revised, and approved Bosch’s press releases, emphasizing the “emission reduction,” “low emissions” and “50-state compliant” “clean diesel” vehicles.

68. Similarly, in a January 24, 2013 press release, Bosch touted new platforms for its Common Rail System, namely the soon-to-be released FCA Diesel Vehicles. That release announced that FCA’s 2014 Jeep Grand Cherokee would be powered by 3.0 liter “Eco Diesel” engine incorporating Bosch’s “Clean Diesel” technology. In the release, Bosch’s North America division asserted that the Jeep Grand Cherokee’s “clean diesel” emission system complied “with the most stringent emission regulations in the world” and that a growing number of vehicle

manufacturers were adopting clean diesel technology, which provides fuel efficiency, performance, and reduced emissions.

69. Later, at an event jointly hosted by Ram, Jeep and Bosch in Traverse City, Michigan, the presenters also made a number of statements regarding the 3.0-liter Eco Diesel's performance, including that "Bosch emissions control system helps ensure that virtually no particulates and minimal oxides of nitrogen (NO_x) exit the tailpipe" and that the Jeep Grand Cherokee or Ram 1500 diesel engine provided fuel economy that was "30% better than a comparable gasoline engine."

70. Bosch continued its promotion of the Common Rail System well into 2015 by, *inter alia*, posting videos on YouTube and creating a "Bosch Clean Diesel" Facebook page devoted to "clean diesel." Among the numerous Bosch articles and videos promoting "clean diesel" technology, it posted on the Facebook page direct links to many, if not all, of VW's now infamous "old wives' tales" video advertisements, designed to make VW's diesels look modern, hip, and, especially, clean and environmentally friendly. Bosch also posted a video featuring a Ram 1500 EcoDiesel brandishing "Clean Diesel Power" and "Bosch" artwork, noting that while the truck was rated at 29 mpg on the highway, "we can typically get upwards of 33 miles per gallon, easily." Bosch promoted the video using the hashtags "#cleandiesel" and "#goodcleanfun."

71. Bosch engaged in this multi-year campaign to expand and increase sales and leases of diesel vehicles containing its Common Rail System "clean diesel" technology in the United States, including the Diesel Vehicles sold by VW and FCA, even though it had assisted VW and FCA in enabling those vehicles to cheat and illegally evade emission standards, and even though it knew or should have known VW and FCA were engaged in deceptive marketing of those

vehicles to consumers. It did so not only by declining to disclose to regulators and the public VW's and FCA's cheating and deception, but also through its own affirmative promotion and marketing of the faulty "clean diesel" technology and the vehicles containing it.

VI. REGULATORY SETTING

A. New York Environmental Laws Require Cars to Meet Strict Emission Standards and Mandate Substantial Penalties for Violations.

72. Pursuant to 42 U.S.C. § 7507, Section 177 of the Clean Air Act, New York has incorporated into state law and enforces under its sovereign powers automobile emission standards identical to those enacted in California, standards which are generally more stringent than those promulgated by EPA and enforced by the federal government in those states that have not chosen to incorporate and enforce California's standards. As a result, vehicles sold or registered in New York must meet these more stringent emission standards, and violations of these emission regulations are violations of New York law.

73. At all times relevant to the allegations in this Complaint, New York has incorporated the California automobile emission standards, which are found at CCR title 13, §§ 1900 *et seq.*, into New York's Emission Standards for Motor Vehicles and Motor Vehicle Engines regulations at 6 NYCRR §§ 200.9 and 218, promulgated under Article 19 of the Environmental Conservation Law. With ECL Article 19, its implementing regulations, and related provisions of law, New York has established a comprehensive regulatory scheme designed to prevent the release of pollution to the atmosphere by, among other things, controlling the amount of air contaminants, like NO_x, that are emitted from motor vehicles. Specifically, in relevant part:

- a. 6 NYCRR § 211.1 prohibits any person from "caus[ing] or allow[ing] emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or

- duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property.”
- b. 6 NYCRR § 218-2.2(a) required vehicle manufacturers to submit CARB Executive Orders to DEC through model year 2013 prior to selling new vehicles in New York. As part of a rulemaking revision to § 218-2.2(a) in late 2012, vehicle manufacturers were no longer required to submit Executive Orders for 2014 and subsequent model years. These documents were publicly available from CARB and vehicle manufacturers were only required to submit them to DEC upon request. Pursuant to Section 177 of the Clean Air Act, DEC necessarily relies upon vehicle manufacturers’ submissions to CARB in determining compliance with DEC regulations.
- c. 6 NYCRR § 200.3 prohibits any person from making a false statement in connection with applications, plans, specifications or reports submitted pursuant to New York’s air pollution regulations.
- d. 6 NYCRR § 218-6.2 makes it unlawful for any person to disconnect, modify, or alter any air contaminant emission control system for motor vehicles required by the New York air pollution regulations, except when necessary to repair the vehicle. Additionally, this section requires the air contaminant emission control system on all motor vehicles in New York to be correctly installed and maintained in operating condition.
- e. Pursuant to ECL § 19-0303 and New York Vehicle and Traffic Law § 301(a), motor vehicles in New York must be inspected annually for safety and at least biennially for air emissions compliance.

- f. Vehicle & Traffic Law § 375.28-a forbids any person from removing, dismantling, or otherwise causing to be inoperative any equipment or feature constituting an operational element of a motor vehicle's air pollution control system or mechanism required by state or federal law or by an rules or regulations promulgated pursuant thereto.
- g. Pursuant to Vehicle & Traffic Law Article 9, section 375.28-c, "[e]xcept where inconsistent with federal law, rules and regulations, every motor vehicle registered in the state and manufactured or assembled after June thirty, nineteen hundred sixty-seven and known as a nineteen hundred sixty-eight or subsequent model shall be equipped with an air contaminant emission control system of a type approved by the state commissioner of environmental conservation."
74. ECL §§ 71-2103 and 71-2107 authorize civil penalties and injunctive relief for violations of New York's air pollution regulations. Vehicle and Traffic Law § 1800(b) directs that violations of that statute's provisions constitute a traffic infraction with attendant fines and other penalties.
75. The Attorney General of New York is authorized to recover penalties or seek injunctive relief to remedy violations of ECL article 19 and implementing regulations. ECL §§ 71-2103(2), 71-2107.
76. The Attorney General is also authorized to seek penalties and injunctive relief to remedy repeated illegality in the conduct of business, including violations of the Environmental Conservation Law, its implementing regulations, and the Vehicles and Traffic Law, pursuant to Executive Law § 63(12).

B. General Business Law Article 22-A, §§ 349 and 350 Prohibit Deceptive Acts and Practices and False Advertising.

77. GBL § 349 prohibits deceptive acts and practices in the conduct of any business, trade, or commerce and authorizes the Attorney General to commence an action to enjoin further violations and to seek restitution and costs.
78. GBL § 350 prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York.
79. GBL § 350-a defines false advertising as advertising which is “misleading in a material respect.”
80. In determining whether advertising is misleading, GBL § 350-a provides that the court must take “into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary and usual.”
81. For both deceptive acts and practices under GBL § 349 and false advertising under GBL § 350, statements or omissions need not rise to the level of fraud, but need only be likely to mislead a reasonable consumer acting reasonably under the circumstances.
82. GBL § 350-d provides for the assessment of a civil penalty for each deceptive act or practice or false advertisement in violation of GBL §§ 349 or 350.
83. In any action or proceeding pursuant to GBL §§ 349 and 350, pursuant to CPLR § 8303(a)(6), the Attorney General is entitled also to recover \$2,000 against each defendant, whether or not other costs have been awarded.

C. New York's Executive Law § 63(12) Prohibits Repeated or Persistent Fraud or Illegality in the Transaction of Business.

84. Executive Law § 63(12) authorizes the Attorney General to bring a proceeding to enjoin repeated or persistent fraud or illegal conduct in the carrying on, conducting, or transaction of business.
85. Executive Law § 63(12) defines the terms "fraud" or "fraudulent" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."
86. Although fraud under § 63(12) includes common law fraud, it is not necessary to establish the traditional elements of common law fraud, such as intent to deceive or reliance. The test of fraudulent conduct under § 63(12) is whether the act or practice has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.
87. "Illegal" conduct under Executive Law § 63(12) includes the violation of any state, federal, or local law or regulation.
88. Under Executive Law § 63(12), "repeated" fraud or illegality means the repetition of separate and distinct acts or conduct that affects more than one person, and "persistent" fraud or illegality means the continuance or carrying on of any fraudulent or illegal act or conduct.
89. Executive Law § 63(12) provides for injunctive relief, restitution, damages, disgorgement of profits, and other appropriate equitable relief.
90. In any action or proceeding pursuant to Executive Law § 63(12), pursuant to CPLR § 8303(a)(6), the Attorney General is entitled also to recover \$2,000 against each defendant, whether or not other costs have been awarded.

CAUSES OF ACTION**COUNT I**

**PURSUANT TO ECL §§ 71-2103 AND 71-2107:
VIOLATIONS OF NEW YORK LAW PROHIBITING EMISSIONS THAT
UNREASONABLY INTERFERE WITH THE COMFORTABLE ENJOYMENT OF
LIFE OR PROPERTY
(Both Defendants)**

91. The State repeats and re-alleges paragraphs 1 through 90 as if fully set forth herein.
92. By assisting VW and FCA with implementing the defeat devices and/or the undisclosed AECDs in the Diesel Vehicles, and thus increasing the amount of NO_x emitted by those vehicles by many multiples of the allowable amounts under 6 NYCRR §§ 218-2.1 & 200.9, as well as by remaining silent about this conduct with regulators, consumers and the public, Defendants have “caus[ed] or allow[ed] emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property” throughout New York, in violation of 6 NYCRR § 211.1.
93. Excess NO_x, ozone and particulate matter are present throughout New York as a result of Defendants’ actions, and illegal and harmful pollution continues to be emitted into New York’s environment from the Diesel Vehicles. NO_x in the atmosphere can lead to the formation of ozone and particulate matter, which are serious problems in New York and harmful to its residents’ health.
94. As a result of Defendants’ conduct, excess NO_x, ozone and particulate matter are present throughout New York, and are continuing to be emitted into the environment.

95. As a result of Defendants' conduct, large numbers of people throughout New York have been exposed and/or will continue to be exposed to excess NO_x, ozone and particulate matter, thereby affecting the health, safety and welfare of each person.

COUNT II

**PURSUANT TO ECL §§ 71-2103 AND 71-2107:
VIOLATIONS OF NEW YORK PROHIBITION OF DEFEAT DEVICES
(Both Defendants)**

96. The State repeats and re-alleges paragraphs 1 through 95 as if fully set forth herein.

97. Pursuant to 6 NYCRR § 218-6.2, no person shall disconnect, modify, or alter any air containment emission control system required by New York air pollution regulations, except as necessary to repair the vehicle.

98. By assisting VW and FCA with implementing the concealed defeat devices and/or the undisclosed AECDs in the Diesel Vehicles that caused the emission control system of each vehicle to be disconnected, modified or rendered inoperative, Defendants violated, or caused or allowed the violation of 6 NYCRR § 218-6.2 with respect to each of the Diesel Vehicles.

COUNT III

**VIOLATIONS OF GBL § 349
(Both Defendants)**

99. The State repeats and re-alleges paragraphs 1 through 98 as if fully set forth herein.

100. At all times relevant, Defendants have been persons engaged in business, trade or commerce in the State of New York within the meaning of GBL § 349.

101. Defendants engaged in deceptive acts and practices by, without limitation:

- a. co-promoting the Diesel Vehicles with VW and FCA as “clean,” “green” and compliant with emission standards, despite the fact that the Diesel Vehicles emitted NO_x well in excess of permissible limits in regular driving conditions;
- b. falsely, misleadingly and/or deceptively advertising, promoting and representing the diesel emissions-related technology they were selling to VW and FCA as “green” “clean diesel” technology that would allow the Diesel Vehicles to meet emission standards in all fifty states and enable them to achieve performance and fuel-efficiency comparable or superior to that of other vehicles, while emitting fewer pollutants, despite knowing the Diesel Vehicles emitted NO_x well in excess of permissible limits in regular driving conditions; and
- c. concealing and failing to disclose the existence of the defeat devices in the Diesel Vehicles.

102. At all relevant times, Defendants also knew or should have known that VW and FCA were engaged in their own deceptive acts and practices, including by, *without limitation*:

- a. manufacturing and/or installing defeat devices in the Diesel Vehicles, which rendered those vehicles non-conforming with applicable emission standards;
- b. misrepresenting and/or falsely certifying and warranting the Diesel Vehicles’ compliance with applicable emission standards;
- c. placing into commerce vehicles that failed to comply with applicable emission standards;
- d. failing to disclose and/or actively concealing from environmental regulators the existence of the defeat devices and their harmful environmental impact;
- e. failing to disclose and/or actively concealing from consumers the existence of the defeat devices and their harmful environmental impact;
- f. selling and offering for sale vehicles that were defective because, without limitation, the vehicles failed to conform to applicable state and federal emission standards;
- g. falsely and deceptively advertising, promoting and warranting the Diesel Vehicles as “clean” and “green” and compliant with emissions standards despite the fact that, in regular driving, they emit NO_x at many multiples the allowable amounts; and
- h. falsely, misleadingly and/or deceptively advertising, promoting and warranting the Diesel Vehicles by failing to disclose that certain performance measures could only be met when the defeat devices were operating.

103. Defendants facilitated and directly participated in these deceptive acts and practices by, *without limitation*, knowingly:

- a. assisting VW and FCA with the implementation and/or concealment of the undisclosed AECDs and/or defeat devices in the Diesel Vehicles;
- b. remaining silent and/or concealing the undisclosed AECDs and/or defeat devices in the Diesel Vehicles;
- c. working with VW and FCA to co-promote the “clean diesel” engines as “clean,” “green” and compliant with emission standards, despite the fact that, in regular driving, they emit NO_x at many multiples the allowable amounts; and
- d. engaging in its own deceptive marketing and advertising of the same “clean diesel” engines, which was targeted at regulators, consumers and the public.

104. Defendants’ deceptive conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

COUNT IV

AIDING AND ABETTING VIOLATIONS OF GBL § 349 (Both Defendants)

105. The State repeats and re-alleges paragraphs 1 through 104 as if fully set forth herein.

106. As alleged herein, Defendants aided and abetted the deceptive acts and practices of VW and FCA alleged in paragraph 102 by knowingly providing substantial assistance to VW and FCA, including by, without limitation:

- a. assisting VW and FCA with the implementation of the defeat devices in the “clean diesel” engines of the Diesel Vehicles;
- b. remaining silent and concealing VW’s and FCA’s illegal and deceptive conduct from regulators, consumers and the public;

- c. working with VW and FCA to co-promote the “clean diesel” engines as “clean,” “green” and compliant with emission standards, despite the fact that, in regular driving, they emit NO_x at many multiples the allowable amounts; and
- d. engaging in its own deceptive marketing and advertising of the same “clean diesel” engines, which was targeted at regulators, consumers and the public.

107. Defendants’ conduct in aiding and abetting VW’s and FCA’s conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

COUNT V

VIOLATIONS OF GBL § 350 (Both Defendants)

108. The State repeats and re-alleges paragraphs 1 through 107 as if fully set forth herein.

109. At all relevant times, Defendants have been persons engaged in business, trade or commerce in New York within the meaning of GBL § 350.

110. Defendants engaged in false advertising in the conduct of business, trade or commerce in the state of New York in violation of GBL § 350 by, without limitation:

- a. co-promoting the Diesel Vehicles with VW and FCA as “clean,” “green” and compliant with emission standards, despite the fact that the Diesel Vehicles emitted NO_x well in excess of permissible limits in regular driving conditions; and
- b. falsely, misleadingly and/or deceptively advertising, promoting and representing the diesel emissions-related technology they were selling to VW and FCA as “green” “clean diesel” technology that would allow the Diesel Vehicles to meet emission standards in all fifty states and enable them to achieve performance and fuel-efficiency comparable or superior to that of other vehicles, while emitting fewer pollutants, despite knowing the Diesel Vehicles emitted NO_x well in excess of permissible limits in regular driving conditions.

111. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

COUNT VI

**PURSUANT TO EXECUTIVE LAW § 63(12):
REPEATED AND PERSISTENT ILLEGALITY
(Both Defendants)**

112. The State repeats and re-alleges paragraphs 1 through 111 as if fully set forth herein.

113. At all relevant times, Defendants have been persons engaged in the carrying on, conducting, or transaction of business in New York within the meaning of Executive Law § 63(12).

114. Defendants have engaged in repeated and persistent illegal acts in violation of Executive Law § 63(12) by, without limitation:

- a. assisting VW and FCA with implementing and concealing the defeat devices and/or the undisclosed AECDs in the Diesel Vehicles, thereby:
 - i. causing or allowing air pollution that is injurious to human health and welfare and the environment throughout New York, in violation of 6 NYCRR § 211.1;
 - ii. causing the emission control system of each vehicle to be disconnected, modified or rendered inoperative, in violation or causing or allowing the violation of 6 NYCRR § 218-6.2 and Vehicle & Traffic Law Article 9, section 375.28-a; and
 - iii. preventing the installed air pollution control systems in the vehicles from operating in continued conformity with state emission standards, in violation of Vehicle & Traffic Law § 375.28-c;
- b. acquiescing to FCA's submission to CARB of certification documents for the FCA Diesel Vehicles that were inaccurate due to their failure to disclose the undisclosed AECDs in those vehicles, in violation of 6 NYCRR § 200.3;

- c. engaging in deceptive acts and practices in the conduct of business, trade or commerce in the state of New York in violation of GBL § 349;
- d. aiding and abetting VW's and FCA's deceptive acts and practices in the conduct of business, trade or commerce in the state of New York in violation of GBL § 349; and
- e. engaging in false advertising in the conduct of business, trade or commerce in the state of New York in violation of GBL § 350.

115. Defendants' conduct was repeated and persistent.

116. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

COUNT VII

PURSUANT TO EXECUTIVE LAW § 63(12): AIDING AND ABETTING FRAUD (Both Defendants)

117. The State repeats and re-alleges paragraphs 1 through 116 as if fully set forth herein.

118. At all relevant times, Defendants have been persons engaged in the carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).

119. Defendants aided and abetted the fraudulent acts of VW and FCA alleged in paragraph 102 by knowingly providing substantial assistance to VW and FCA, including by, without limitation:

- a. assisting VW and FCA with the implementation of the defeat devices in the "clean diesel" engines of the Diesel Vehicles;

- b. remaining silent in the face of VW's and FCA's concealment from regulators of their illegal and deceptive conduct;
- c. working with VW and FCA to co-promote the "clean diesel" engines as "clean," "green" and compliant with emission standards, despite the fact that, in regular driving, they emit NO_x at many multiples the allowable amounts; and
- d. engaging in its own deceptive marketing and advertising of the same "clean diesel" engines, which was targeted at regulators, consumers and the public.

120. When making the decision to purchase or lease a Diesel Vehicle, consumers in New York reasonably relied on VW's and FCA's fraudulent misstatements, omissions and practices regarding the clean, green and environmentally-friendly characteristics of the Diesel Vehicles as well as their purported compliance with the law.

121. Defendants' conduct was repeated and persistent.

122. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain, whose vehicles have suffered a diminution in value and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

PRAYER FOR RELIEF

WHEREFORE, New York requests that this Court grant the following relief:

- A. Enter an order permanently enjoining Defendants from further violations of Executive Law § 63(12) and GBL Article 22-A, §§ 349 and 350;
- B. Enter an order pursuant to Executive Law § 63(12) and GBL §§ 349 and 350, permanently enjoining Defendants from advertising, promoting, marketing, concealing or assisting, facilitating or participating in any manufacturer's advertising, promotion,

- marketing or concealment of any new motor vehicle equipped with a Defeat Device or Undisclosed AECD or any new motor vehicle not eligible for sale pursuant to emission and environmental standards in New York;
- C. Enter an order that Defendants pay to New York pursuant to ECL § 71-2103(1), for violations of 6 NYCRR §§ 200.3, 211.1, and 218-6.2, civil penalties, and pursuant to Vehicle & Traffic Law § 1800(b)(1), for violations of Vehicle & Traffic Law §§ 375.28-a and 375.28-c, a fine for each violation;
- D. Enter an order that Defendants pay a civil penalty for each violation of GBL §§ 349 and 350;
- E. Enter an order pursuant to Executive Law § 63(12) and GBL § 349 and 350 that Defendants disgorge all revenues, profits and gains achieved in whole or in part through their fraudulent and deceptive acts or practices complained of herein;
- F. Enter an order pursuant to ECL §§ 71-2103 and 71-2107 and Executive Law § 63(12) permanently enjoining Defendants from:
- i. Implementing or concealing defeat devices in motor vehicles to be sold or used in New York, or assisting in the same; and
 - ii. Submitting, causing to be submitted, or acquiescing in the submission of false or misleading certifications to DEC;
- G. Award Plaintiffs costs plus an additional allowance of \$2,000 against each Defendant pursuant to CPLR § 8303(a)(6); and
- H. Grant such additional and further relief as the Court deems appropriate and just.

January 10, 2019

Respectfully submitted,

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