

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class action)

No: 500-

SYLVAIN JUNEAU, residing and domiciled
at [REDACTED]

Petitioner

v.

VOLKSWAGEN GROUP CANADA INC., a
legal person having a principal place of
business at 300-4865 Marc-Blain Street, in
the city of St-Laurent, district of Montréal,
Province of Québec, H4R 3B2

-and-

VOLKSWAGEN AKTIENGESELLSCHAFT,
a legal person having its head office at
Brieffach1998, D-38436, in the city of
Wolfsburg, Germany

Respondents

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 et seq. C.C.P.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS
THE FOLLOWING:

1. Petitioner Sylvain Juneau wishes to institute a class action on behalf of the
class of persons hereinafter described, namely:

“All persons in Quebec who owned or leased, as of September 18, 2015, a diesel vehicle model VW Jetta (model years 2009 to 2015), VW Golf (model years 2009 to 2015), VW Golf Wagon (model years 2009 to 2015) VW Beetle (model years 2009 to 2015), VW Passat (model years 2012 and 2013) and Audi A3, 4 cylinders of 2 litres (model years 2009 to 2015)”

Hereinafter referred to as the « **Class** »;

2. The personal claim of the Petitioner, Sylvain Juneau, is based on the following facts:

2.1. Petitioner is the owner of a diesel VW Jetta model 2013;

2.2. Respondent VOLKSWAGEN AKTIENGESELLSCHAFT (“**VAG**”) is a German vehicle manufacturer headquartered in Germany. It is the second largest automaker in the world. VAG is responsible for the engineering, design, development, research and manufacture of, among other, the following diesel car models:

- VW Jetta (model years 2009 to 2015);
- VW Golf (model years 2009 to 2015);
- VW Golf Wagon (model years 2009 to 2015);
- VW Beetle (model years 2009 to 2015);
- VW Passat (model years 2012 and 2013) and;
- Audi A3, 4 cylinders of 2 litres (model years 2009 to 2015);

Hereinafter referred to as the « **Model Cars** »

2.3. Volkswagen Group Canada Inc. (“**Volkswagen**”) was, at all material times, a wholly-owned subsidiary of VAG;

2.4. Volkswagen was, at all material times, the sole distributor of the Model Cars in Canada, including in the Province of Quebec. It sold the Model Cars through its dealer and retailer networks;

2.5. Volkswagen announced on September 21, 2015 that it had stopped sales of the Model Cars in Canada;

2.6. This announcement was made following the revelations during the week of September 14, 2015 that VAG had rigged and therefore falsified emission tests for almost 500,000 diesel cars in the U.S, which include the same vehicles as the Model Cars;

- 2.7. The stop-sale order came three days after the U.S. Environmental Protection Agency ("**EPA**") revealed that half a million diesel-powered Volkswagen cars (including the same as the Model Cars) had been programmed to bypass emission controls, except during emission tests;
- 2.8. In fact, according to the EPA, VAG installed a sophisticated defeat device software program ("**Device**") in at least the above mentioned Model Cars that detects when the car is undergoing official emission testing and turns full emission controls on only during these tests. At all other times when the car is running, however, the emission controls are deactivated, so that pollution is freely released into the environment without the emission controls that are deactivated, the whole, without the knowledge and consent of its customers;
- 2.9. Canada, which has the same pollution norms as in the U.S. relies on the above mentioned tests, the whole, to the knowledge of Respondents;
- 2.10. VAG admitted these facts on September 18, 2015 and the CEO of VAG, Martin Winterkorn, had the following to say about this whole shameful scheme, during the weekend of September 19, 2015: "I personally am deeply sorry that we have broken the trust of our customers and the public.";
- 2.11. VAG also admitted that the Model Cars pollute from 10 to 40 times more than when the Device is activated (which is, as mentioned above, only during official emission testing, not during its normal, day to day usual use);
- 2.12. Petitioner suffered and will continue to suffer numerous serious damages caused directly by the intentional fault of Respondents;
- 2.13. Without limiting the generality of the above, the damages include the cost to remove the Device, the loss of time and inconvenience related to the removal of the Device, the artificially increased cost of the Model Cars paid for, the loss of value of the Model Cars (for the owners) and the future higher increase diesel consumption cost of the Model Cars (after the removal of the Device);
- 2.14. Petitioner is also entitled to punitive damages under the CPA and the Charter of Rights;

3. The personal claims of each of the members of the Class against the Respondents are based on the following facts :

- 3.1. Each of the Class members owned or leased, as of September 18, 2015, a Model Car manufactured and/or sold by the Respondents in which a Device was installed, without his or her knowledge and consent;
- 3.2. Each of the Class members was misled by Respondents' falsehoods and misrepresentations;
- 3.3. Each of the Class members therefore suffered damages caused by the Respondents;
- 3.4. Accordingly, each of the Class members is entitled to be reimbursed for all the damages listed in above paragraph 2.12;
- 3.5. Each Class member is also entitled to punitive damages under the CPA and the Charter of Rights;

4. The composition of the members of the Class makes the application of articles 59 and 67 C.C.P. difficult and/or impractical for the following reasons :

- 4.1. The Class is likely comprised of thousands of persons;
- 4.2. There are 108 500 Model Cars sold in Canada;
- 4.3. Based on population, it is reasonable to conclude that about 25% of them were sold in the Province of Québec;
- 4.4. Indeed, the Model Cars are very popular in the Province of Quebec and there are more than 40 Volkswagen car dealers throughout the Province of Quebec;
- 4.5. Also, the Class members are spread throughout the Province of Quebec and the Petitioner has no way of identifying all of them;
- 4.6. Even if Petitioner could identify all Class members, they would be so numerous that it would be highly impractical, if not impossible, to obtain a mandate from each of them and/or to proceed by joinder of actions;
- 4.7. Accordingly, the composition of the Class renders the application of sections 59 and 67 Code of Civil Procedure ("CPP") highly difficult and impractical;

5. **The identical, similar or related questions of law or of fact between each member of the Class and the Respondents, which Petitioner wishes to have decided by this class action, are :**

5.1 In manufacturing and/or selling the Model Cars with the Device, did the Respondents commit a fault?

5.2 Did the Respondents admit their fault?

5.3 Did this fault cause damages to the Class Members?

5.4 If so, may the Class Members claim the different kind of damages referred to in paragraph 2.12 above?

5.5 What is the value of these damages?

5.6 How much Respondents should pay in punitive damages to the entire Class?

6. **The question of fact which is particular to each of the members of the Class is :**

6.1 What is the specific amount of damages that which each Class Member is entitled to be reimbursed?

7. **The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the Class is :**

7.1. An action in damages and punitive damages against Respondents.

8. **The conclusions sought by Petitioner against the Respondents are as follows :**

8.1 **GRANT** Petitioner's Class Action on behalf of every Class Member he represents;

8.2 **CONDEMN** Respondents, solidarily, to reimburse the totality of the damages suffered by the Class Members, namely, the cost to remove the Device, the loss of time and inconveniences related to the removal of the Device, the artificially increased cost of the Model Cars paid for, the loss of value of the Model Cars, the future higher increase diesel consumption cost of the Model Cars (after the removal of the Device), evaluated at

\$10 000.00 per Class Member, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for Authorization to Institute a Class Action;

8.3 CONDEMN Respondents, solidarily, to pay punitive damages to the Class Members in the total amount of \$20,000,000.00, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for Authorization to Institute a Class Action;

8.4 ORDER the collective recovery of the Class Members' claims;

8.5 THE WHOLE, with costs, including expert costs and the cost of notices;

9. Petitioner is in a position to represent the members of the Class adequately for the following reasons :

9.1. Petitioner asks that he be ascribed the status of Class Representative for the purpose of the present Class Action;

9.2. Petitioner is able to adequately represent the Class Members, for the following reasons:

9.3. Petitioner is a member of the Class and he is ready, willing and able to manage the present class action in the interest of the Class Members that he wishes to represent and he is determined to bring this case to a final resolution, in the interest of the Class Members;

9.4. Petitioner is prepared to dedicate whatever time is necessary to manage this case;

9.5. Petitioner is prepared to collaborate closely with his attorneys;

9.6. Petitioner is not related to Respondents and is acting in good faith and in the interest of the Class members;

10. Petitioner suggests that the class action be brought before the Superior Court for the district of Montreal for the following reasons :

10.1 The undersigned attorneys have their offices in Montreal;

10.2 The Class members are spread throughout the Province of Quebec, but statistically, a large number of them likely in Montreal;

10.3 Volkswagen has its principal place of business in the District of Montreal;

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN:

- a) The present Motion be granted;
- b) That Respondents be ordered to provide the undersigned attorneys, in an electronic format, a list of all known Quebec owners and lessees of the Model Cars;
- c) That the institution of a class action be authorized as follows:

An action in damages and punitive damages against Respondents on behalf of:

“All persons in Quebec who owned or leased, as of September 18, 2015, a diesel vehicle models VW Jetta (model years 2009 to 2015), VW Golf (model years 2009 to 2015), VW Golf Wagon (model years 2009 to 2015) VW Beetle (model years 2009 to 2015), VW Passat (model years 2012 and 2013) and Audi A3, 4 cylinders of 2 litres (model years 2009 to 2015)”

- d) That the principal questions of law and of fact to be dealt with collectively be identified as follows:
 - 1) In manufacturing and/or selling the Model Cars with the Device, did the Respondents commit a fault?
 - 2) Did the Respondents admit their fault?
 - 3) Did this fault cause damages to the Class Members?
 - 4) If so, may the Class Members claim the different kind of damages referred to in paragraph 2.12 above?
 - 5) What is the value of these damages?
 - 6) How much Respondents should pay in punitive damages to the entire Class?
- e) That the conclusions sought by the Petitioner in relation to such questions are as follows:

GRANT Petitioner’s class action on behalf of every Class member he represents;

CONDEMN Respondents, solidarily, to reimburse the totality of the damages suffered by the Class Members, namely the cost to remove the Device, the loss of time and inconveniences related to the removal of the Device, the artificially increased cost of the Model Cars paid for, the loss of value of the Model Cars, the future higher increase diesel consumption

costs of the Model Cars (after the removal of the Device), evaluated at \$10 000.00 per member, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for Authorization to Institute a Class Action;

CONDEMN Respondents, solidarily, to pay punitive damages to the Class Members in the total amount of \$20,000,000.00, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for Authorization to Institute a Class Action;

ORDER the collective recovery of the Class Members' claims;

THE WHOLE, with costs, including expert costs and the cost of notices;

- f) That it be declared that any Member of the Class who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the class action, in accordance with law;
- g) That the delay for exclusion from the Class be fixed at sixty (60) days from the date of notice to the Members, and at the expiry of such delay, the Members of the Class who have not requested exclusion be bound by any such judgment;
- h) That it be ordered that a notice to the Members of the Class be drafted according to the terms of form VI of the Rules of Practice of the Superior Court of Quebec and that it be made public within thirty (30) days of judgment to intervene in the present Motion in the following manner:
 - 1. By publication of a notice to Members of the Class in newspapers, the details of which to be decided following the hearing on the present Motion, in accordance with the model notice provided for as form VI of the Rules of Practice of the Superior Court of Quebec;
 - 2. By publication of the notice to Members of the Class on the internet site of the Respondents and the internet site of the attorneys for Petitioner with a hypertext entitled "Avis aux membres de recours collectif, Notice to all Class Action Members" prominently displayed on Respondents' internet site and to be maintained thereon until the Court orders publication of another notice to members by final judgment in this instance or otherwise;
- i) That the record be referred to the Chief Justice so that he may fix the district in which the class action is to be brought and the Judge before whom it will be heard;

- j) That in the event that the class action is to be brought in another district, the Clerk of this Court be ordered upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated.

THE WHOLE with costs, including expert costs and the costs of all publications of notices.

MONTREAL, September 22, 2015

(s) Kugler Kandestin, LLP

KUGLER KANDESTIN, LLP

Attorneys for Petitioner

TRUE COPY

Kugler Kandestin LLP

KUGLER KANDESTIN, L.L.P

Attorneys for Petitioner

NOTICE TO DEFENDANT
(Article 119 C.C.P.)

TAKE NOTICE that the Plaintiffs has filed this Action in the office of the **Superior Court** for the judicial district of **Montreal**.

To file an answer to this Action, you must first file an Appearance, personally or by advocate, at the **Courthouse of Montreal**, located at **1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6**, within 10 days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an Appearance, the Action will be presented before the Court on **November 12, 2015**, at **9:00 a.m.**, in **Room 2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceedings or the Court may hear the case, unless you make a written agreement with the Plaintiff or the Plaintiff's advocate on a timetable for the orderly progress of the proceedings. The timetable must be filed in the office of the Court.

MONTREAL, September 22, 2015

(s) Kugler Kandestin, LLP

KUGLER KANDESTIN, LLP

Attorneys for Petitioner

TRUE COPY

Kugler Kandestin LLP

KUGLER KANDESTIN, L.L.P

Attorneys for Petitioner

No. : 500-06-000763-159

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