

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-

500-06-000838-173

**SUPERIOR COURT**  
(Class Action)

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**LAWRENCE CHANDLER**, residing and domiciled at 5350 MacDonald Ave., Apt. 1714, in the city of Montreal, province of Québec, H3X 3V2

*Representative Plaintiff*

v.

**VOLKSWAGEN AKTIENGESTLLCHAFT**, a moral person incorporated pursuant to the laws of Germany, having its principal place of business at Berliner Ring 2, 38440 Wolfsburg, Germany

*Defendant*

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**MOTION FOR AUTHORIZATION OF A CLASS ACTION**

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**IN SUPPORT OF ITS MOTION FOR AUTHORIZATION, THE REPRESENTATIVE PLAINTIFF RESPECTFULLY SUBMITS AS FOLLOWS:**

**I - DEFINITIONS**

1. In addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- a) "**CARB**" means the California Air Resources Board;
- b) "**CCP**" means the *Code of Civil Procedure*, CQLR c C-25.01;
- c) "**CCQ**" means the *Civil Code of Quebec*, CQLR c CCQ-1991;
- d) "**Class**" and "**Class Members**" are comprised of the following, other than **Excluded Persons**:

All residents of Quebec who purchased **VW**'s securities during the **Class Period** and held all or some of those acquired **VW** securities until after the **Corrective Disclosure**;

- e) "**Class Period**" means March 12, 2009 to September 18, 2015;
- f) "**Code**" means **VW**'s Code of conduct, communicated herewith as **Exhibit P-1**;
- g) "**Company**" means **VW**;

- h) “**Core Documents**” (each being a “Core Document”) refers to the documents sent by VW to its investors, including but not limited to :
- i) VW's 2008 annual report released on March 12, 2009, communicated herewith as **Exhibit P-2**;
  - ii) VW's 2009 annual report released on March 11, 2010, communicated herewith as **Exhibit P-3**;
  - iii) VW's 2010 annual report released on March 10, 2011, communicated herewith as **Exhibit P-4**;
  - iv) VW's 2011 annual report released on March 12, 2012, communicated herewith as **Exhibit P-5**;
  - v) VW's 2012 annual report released on March 14, 2013, communicated herewith as **Exhibit P-6**;
  - vi) VW's 2013 annual report released on March 13, 2014, communicated herewith as **Exhibit P-7**;
  - vii) VW's 2014 annual report released on March 12, 2015, communicated herewith as **Exhibit P-8**; and
  - viii) VW's 2015 annual report released on April 28 2016, communicated herewith as **Exhibit P-9**;
- i) “**Corrective Disclosure**” means the EPA's notice of violation of the *Clear Air Act* sent to VW on September 18, 2015, which confirmed that VW intentionally engaged in conduct to secretly install a software to manipulate the quantity of pollutants being discharged from certain of its diesel engines while they were being tested for compliance with the applicable emissions standards, communicated herewith as **Exhibit P-10**;
- j) “**Defendant**” means **VW**;
- k) “**EPA**” means the US Environmental Protection Agency;
- l) “**Excluded Persons**” means **VW's** subsidiaries, affiliates, officers, directors, executive level employees, legal representatives, heirs, predecessors, successors and assigns;
- m) “**IFRS**” means International Financing Reporting Standards;
- n) “**Plaintiff**” and “**Representative Plaintiff**” means Lawrence Chandler;
- o) “**SEC**” means the US Securities and Exchange Commission; and
- p) “**VW**” means Volkswagen Aktiengesellschaft, a German-based automobile manufacturer.

## II - INTRODUCTION AND CONTEXT SUMMARY

2. This action relates to VW's intentional misrepresentations which led investors in Quebec, and throughout the world, to suffer monetary damages;
3. The Defendant is a publicly-traded corporation that lists its securities on various international stock exchanges;
4. In order to encourage investors to purchase its securities, the Defendant published its core and non-core documents on its website which was accessible to and read by investors in Quebec;
5. The Defendant also sent Core Documents such as proxies and annual reports as well as non-core documents to investors and Class Members in Quebec;
6. Throughout the Class Period, the Defendant engaged in a scheme to defraud its investors by preparing and releasing core and non-core documents containing misstatements and omissions of material facts regarding its business operations;
7. More specifically, the Defendant's Core Documents and non-core documents failed to disclose the fact that it had created and installed a software function in the auxiliary emissions control devices ("AECD") installed in numerous of its 2.0 and 3.0 litre diesel engines ("Cheating Device") in order to cheat US emissions tests administered by the EPA and falsely obtain certificates of conformity ("COC") stating that VW respected US emission standards;
8. This fraudulent scheme allowed VW to brand its diesel engines as "clean diesel engines" when in fact, they produced up to 40 times the EPA's nitrous oxide ("NOx") limits, the whole as appears from p.5 of James Robert Liang's (Leader of Diesel Competence for VW Group of America) Rule 11 Plea Agreement, communicated herewith as **Exhibit P-11**;
9. The Defendant made false and misleading statements in its Core Documents and non-core documents in relation to the Company's Cheating Device. As such, the Defendant breached its legal obligations and duties by failing to disclose that it had created and installed a Cheating Device to perpetrate a massive scheme to deceive and defraud consumers and investors throughout the world, including in Quebec;
10. In addition to the misrepresentation particularized above, the Defendant's Core Documents also indicated that the Company's value should not solely be based on its key financial indicators, but also on its non-financial performance, namely, quality assurance and its "contribution to environmental protection" by way of a reduction of CO<sub>2</sub> emissions, as appears from pp. 148 and 165 of Exhibit P-2, p. 182 of Exhibit P-4 and p.192 of Exhibit P-5;
11. As a result of its misrepresentations, VW's stock was artificially inflated at all relevant times during the Class Period;
12. In light of the above, the Plaintiff and Class Members acquired VW securities at artificially-inflated prices;

### III - THE PARTIES

#### A. The Plaintiff

13. The Plaintiff resides in Quebec;
14. On July 19, 2012, the Plaintiff purchased three hundred (300) of VW's sponsored unlisted American Depositary Receipts ("ADR") listed on the OTC Markets Group at US \$32.09 per share for a total of US \$9,627.00, the whole as appears from RBC's Confirmation Notice, communicated herewith as **Exhibit P-12**;
15. The Plaintiff issued his trade order for VW ADRs from Quebec and the confirmation of his purchase of VW ADRs was received in Quebec;
16. The Plaintiff purchased VW securities during the Class Period based on his confidence in VW, its management team and *inter alia* his implicit belief that VW was not engaged in a scheme to defraud investors and consumers;
17. The Plaintiff held his ADRs until the end of the Class Period;
18. Had the Plaintiff known of the misrepresentations and the scheme hatched by the Defendant, he would not have purchased VW's ADRs;
19. VW breached the general duty of diligence it owed to the Plaintiff and all other Class Members by preparing and publishing core and non-core documents that contained misrepresentations;
20. The Plaintiff suffered monetary damages as the direct, immediate and foreseeable result of the Defendant's misrepresentations;

#### B. The Defendant

21. VW is one of the world's largest automotive manufacturers and is affiliated with such brands as Audi, Bentley, Bugatti, Lamborghini, Porsche, SEAT, Škoda and Ducati;
22. VW owns and operates the Volkswagen Group, which has 120 production sites throughout the world and also owns, operates or is affiliated with over 40 Volkswagen dealers in Quebec;
23. VW is incorporated pursuant to the laws of Germany and its principal executive offices are located in Wolfsburg, Germany;
24. VW issued securities in the form of ordinary securities, preferred securities and ADRs under the tickers "VLKPY", "VOW3" and "VLKAY";
25. Five ADRs correspond to one underlying VW ordinary or preferred share, as appears from p.104 from Exhibit P-9;

#### IV - FACTS GIVING RISE TO THE PRESENT CLASS ACTION

##### A. The Defendant's fraudulent scheme

26. In 2006, the Defendant designed a new "EA 189" diesel engine, as appears from p.5 of Exhibit P-11;
27. The Defendant knew that its new diesel engine could not meet the stricter US emission standards;
28. Consequently, in order to obtain the EPA'S COCs, sell vehicles and increase its share price, the Defendant created the Cheating Device so as to give the illusion that VW vehicles met US emission standards, as appears from p.5 of Exhibit P-11;
29. The Cheating Device was built to recognize whether the vehicle was undergoing US emissions testing by way of a dynamometer (an instrument used to measure an engine's power) or whether it was being driven on a road under normal conditions;
30. If the Cheating Device detected that it was being tested, the vehicle it was installed in would performed in an emissions mode that met US emission standards for NOx. If the vehicle was not being tested, then it would operate in a different mode which emitted 40 times more NOx than permitted, as appears from p.5 of Exhibit P-11;
31. On November 21, 2008, VW introduced the new Jetta TDI Clean Diesel at the Los Angeles Auto Show which, unbeknownst to the public, contained the Cheating Device and won the "Green Car of the Year" award, as appears from p.293 of Exhibit P-2;
32. VW introduced this new line-up of vehicles as containing "CleanDiesel engines" and affirmed that it was the first automotive manufacturer to offer a diesel car approved in all 50 US states, thus illustrating the future potential of diesel technology in the American market, as appears from p.181 of Exhibit P-2;
33. In January 2009, Volkswagen Canada unveiled its 2009 CleanDiesel Jetta at the Montreal International Auto Show, the whole as appears from a CNW article, communicated herewith as **Exhibit P-13**;
34. The Defendant also created and operated a website to promote its clean diesel technology which was accessible and accessed from Quebec;
35. This website stated that the Company's innovative clean diesel fuel "meet[s] the strictest emission regulations in the US [...], contains less than 15 parts per million of sulphur [and] deliver[s] on average 18% higher fuel efficiency while reducing CO<sub>2</sub> emissions when compared to corresponding gas models", the whole as appears from a screen capture of [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org), communicated herewith as **Exhibit P-14**;
36. In 2014, independent researchers at West Virginia University, in association with the International Council on Clear Transportation, noticed that VW's emissions were substantially different when its CleanDiesel engines were being tested by a dynamometer compared to when they were being tested on the road, as appears from p.6 of Exhibit P-11;

37. The EPA attempted to work in collaboration with VW in order to determine the cause of these discrepancies. This eventually led to an admission by James Robert Liang that VW had installed the Cheating Device in approximately 500,000 vehicles from 2008 through 2015, as appears from pp.6-7 of Exhibit P-11;
38. On April 28, 2016, the Defendant released its 2015 annual report;
39. In the segment entitled "The Emissions Issue", the group management report stated that VW deeply regretted the irregularities in its "handling of emissions figures" and that it intended to take all necessary steps to ensure that such irregularities did not re-occur, as appears from p.49 of Exhibit P-9;
40. Numerous claims and class actions were instituted by owners of VW vehicles against Volkswagen Group Canada Inc. and AUDI Canada Inc. (collectively, the "VW Respondents") following their false representations that their vehicles had clean diesel engines with reduced emissions that were cleaner than gasoline engines;
41. On December 19, 2016, the Commissioner of Competition and the VW Respondents reached a Class Action Settlement Agreement of approximately \$2.1 billion in relation to the consumer class actions filed in Ontario and Quebec, the whole as appears from pp.4 -5 of the Consent Agreement between the Commissioner of Competition and the VW Respondents communicated herewith as **Exhibit P-15**;

**B. The Defendant's failure to disclose adverse material facts**

42. The following Core Documents contain misstatements relating to VW's compliance with US emission standards, each of which was sent to and accessible by investors in Quebec:

42.1. VW's 2008 annual report:

- i) "The Jetta TDI CleanDiesel, introduced at the Los Angeles Auto Show, wins the "Green Car of the Year" award. The newly developed CleanDiesel technology is one of the world's lowest-emission diesel technologies.";
- ii) "On the basis of our fuel and drivetrain strategy, we are pointing the way towards sustainable mobility and contributing to cutting global CO<sub>2</sub> emissions. We are also reducing our local nitrous oxide and particulate emissions and lowering our dependence on oil."; and
- iii) "The pace of innovation in reducing other harmful emissions also remains high. The new milestone in environmental technology is the Passat BlueTDI. Although the Euro-6 emissions standard will not enter into force until 2014, one range of new Volkswagen models already meets this standard. The BlueTDI name stands for a significant reduction in nitrous oxides in exhaust gas. These outstanding results are achieved thanks to an innovative catalytic converter in conjunction with the AdBlue additive.";

as appears respectively from pp. U7, 165 and 181 of Exhibit P-2;

42.2. VW's 2009 annual report:

- i) "Since 2009, the CO<sub>2</sub> emission limit for these models has been 145 grams per kilometer, a figure that is set to fall to 120 grams by 2012. «In the segments that are relevant for the fleet business, our specifications are currently primarily met by diesel vehicles with BlueMotion technology and by natural gas-powered EcoFuel models», explains Dr. Frank Woesthoff, Head of Fleet Management at Volkswagen Leasing.";
- ii) "As a company with operations worldwide, Volkswagen is expressly committed to this corporate responsibility and puts all of its innovative strength into making an effective contribution to sustainable mobility – with technologies for the cleanest, most fuel-efficient automobiles.";
- iii) "Introducing clean diesel technology and the 1.6 l TDI common rail engine in the market enabled us to reach significant milestones for diesel engines in 2009, which will ensure that we will remain the innovation leader in the field of diesel engine development. The clean diesel TDI common rail engines already comply with the Euro 6 emission standard due to come into effect in 2014. These engines have enjoyed considerable success in the North American market in particular, which tends to have a low take-up of diesel. Excellent fuel economy coupled with outstanding driving characteristics and low emissions led to the Jetta TDI clean diesel winning the 2009 Green Car of the Year award at the LA Auto Show."; and
- iv) "In light of tighter exhaust and emissions regulations and a CO<sub>2</sub>-based vehicle tax, a vehicle's CO<sub>2</sub> emissions are becoming an increasingly important criterion for buyers. Volkswagen will systematically pursue its efficient drive technology initiative and thus continue to consolidate its status as an innovation leader in the area of environmentally compatible mobility.";

as appears respectively from pp.59, 184, 182 and 199 of Exhibit P-3;

42.3. VW's 2010 annual report:

- i) "And, last but not least, we will be investing €53.5 billion in the Automotive Division and an additional €10.6 billion in China until 2015 - in new, fascinating products, in expanding our production and sales network, and in environmentally friendly technologies.";
- ii) "Last year, the SEAT brand rolled out a new generation of efficient TDI and TSI engines that together with aerodynamic features, a start-stop system and regenerative braking have trimmed fuel consumption and emissions.";
- iii) "In 2010, the new models of Passat, Caddy and Transporter were each awarded an Environmental Rating. Updated Environmental Ratings - including for the new BlueMotion models - were also issued for the Polo and Golf."; and

- iv) "The Volkswagen Passenger Cars brand unites all fuel consumption and emission reducing activities under its BlueMotion Technologies umbrella brand. These technologies, including BlueMotion, BlueMotionTechnology, BlueTDI and TSI EcoFuel, set standards in consumption and CO<sub>2</sub> emissions.";

as appears respectively from pp. 23, 183, 202 and 217 of Exhibit P-4;

42.4. VW's 2011 annual report:

- i) "Worldwide, we implement concrete environmental protection measures in accordance with environmental certification processes under the international standard EN ISO 14001.";
- ii) "With the Modular Diesel System (MDB), Volkswagen is also nearing the introduction of a completely new generation of three- and four-cylinder diesel engines. These will debut in 2012 in the new Audi A3 and set new benchmarks for driving pleasure, cleanliness and efficiency. The Volkswagen Group has also continued to write the success story of the diesel engine in other areas. Steadily rising market securities in the North American market, which has a critical attitude towards diesel engines, and recognition in Europe in the form of five stars in the ADAC ecoTest for the 1.6 liter TDI Passat BlueMotion, are examples of this."; and
- iii) "Using Think Blue as a holistic, ecological sustainability policy, the Volkswagen Passenger Cars brand not only combines innovative technology and solutions such as BlueMotion technologies, but also offers recommendations for reducing consumption and emissions when using products, for example, tips and training on how to save fuel. Volkswagen also supports a number of ecological projects and initiatives worldwide with Think Blue. In addition to its BlueMotion vehicles, the BlueTDI and TSI EcoFuel drivetrains also set standards for fuel consumption and CO<sub>2</sub> emissions.";

as appears respectively from pp. 211, 215 and 233 of Exhibit P-5;

42.5. VW's 2012 annual report:

- i) "[...] we established another key milestone: in early 2012, we launched the most extensive ecological reorganization in the Group's history. We are systematically focusing our vehicles and our plants on being environmentally friendly and efficient. You can see just how serious we are about this from the fact that the Volkswagen Group is the first carmaker to commit to the extremely ambitious European CO<sub>2</sub> target of 95g/km by 2020.";
- ii) "The Golf has never been more efficient, with consumption and emissions reduced by up to 23 percent compared with its predecessor.";



- iii) "By 2018, we also intend to be the number one in the automotive industry in ecological terms. [...] Every new model generation is designed to be 10% to 15% more efficient than its immediate predecessor."; and
- iv) "The Volkswagen Passenger Cars brand has consolidated its holistic ecological sustainability policy in its "Think Blue." concept. This not only combines innovative technology and solutions such as the BlueMotion technologies, but also offers recommendations for reducing emissions and consumption, such as tips and training on how to save fuel. Like the BlueMotion vehicles, highly efficient technologies such as the BlueTDI and TSI EcoFuel drives (CNG) set standards for consumption and CO<sub>2</sub> emissions.";

as appears respectively from pp. 23, 32, 218 and 241 of Exhibit P-6;

#### 42.6. VW's 2013 annual report:

- i) "With CO<sub>2</sub> emissions of 87 g/km and fuel consumption of only 3.31 l per 100km, the Polo BlueMotion is one of the most environmentally friendly and economical five-door vehicles in the world.";
- ii) "The Gold BlueMotion, with its new 1.6 TDI engine, uses an average of only 3.2 l of fuel per 100 km, while its CO<sub>2</sub> emissions are a mere 85g/km.";
- iii) "The ŠKODA Octavia GreenLine emits only 85g/km of CO<sub>2</sub> and uses 3.2 l of diesel per 100 km.";
- iv) "The eco up! - available since the end of 2012 - has CO<sub>2</sub> emissions of just 79g/km with its 1.0 CNG engine"; and
- v) "The Volkswagen Passenger Cars brand has consolidated its holistic ecological sustainability policy in its "Think Blue" concept. This not only combines innovative technology and solutions such as the BlueMotion technologies, but also offers recommendations for reducing emissions and consumption, such as tips and training on how to save fuel. In addition to the BlueMotion vehicles, highly efficient technologies such as the BlueTDI and TSI EcoFuel drives (CNG) set standards for consumption and CO<sub>2</sub> emissions.";

as appears from pp. 141 and 147 of Exhibit P-7;

#### 42.7. VW's 2014 annual report:

- i) "When it comes to vehicles with conventional drive systems, we have significantly reduced average fuel consumption. The primary contributing factors here were the introduction of BlueMotion Technology in our TDI and TSI engines [...]";

- ii) "Our BlueMotion models are setting standards for consumption and emission reductions through their efficiency technologies such as start-stop systems, brake energy recuperation and aerodynamic and tire rolling resistance optimization.";

as appears from pp. 149 and 156 Exhibit P-8;

43. In addition to the materially-false statements referred to above, the annual reports for years 2008, 2009, 2010, 2011 and 2012 included a "Consumption and Emission Data" chart which contained false and misleading information regarding the Defendant's vehicles' emissions;
44. Each of these charts were sent to and accessible by investors in Quebec;
45. These charts mislead investors and created a false perception that the Defendant's vehicles' emissions complied with emissions standards, when in fact they did not;
46. As a result, the Defendant's securities traded at an artificially-inflated price during the entire Class Period;

**C. Misrepresentations regarding the Defendant's code of conduct**

47. The Defendant adopted a Code which applied to the Defendant, its employees and members of its executive bodies and further stated that "each individual is equally responsible [for the compliance to said Code]", as appears from p.5 of Exhibit P-1;
48. Accordingly, at all relevant times during the Class Period, VW maintained written standards of ethical conduct which were designed to promote integrity and deter wrongdoing;
49. *Inter alia*, the Defendant's Code stated as follows:
- 49.1. "Our products help to ensure that mobility is environmentally friendly, efficient, and safe. In this context, the future obligates us to promote mobility in the interest of the common good, while doing justice to individual needs, ecological concerns, and the economic requirements placed on a global enterprise.";
- 49.2. "To achieve our goal,
- we act responsibly, for the benefit of our customers, shareholders, and employees;
  - we consider compliance with international conventions, laws, and international rules to be the basis for sustainable and economic activities;
  - we act in accordance with our declarations; and
  - we accept responsibility for our actions [...]"

49.3. "In the context of leadership responsibility, the superiors guard against unacceptable conduct. They bear responsibility for ensuring that that [sic] no violations or rules occur [...]"

as appears from pp.4, 5 and 9 Exhibit P-1;

50. More specifically, with regards to environmental protection, the Code states the following:

"We develop, produce, and distribute automobiles around the world to preserve individual mobility. We bear responsibility for continuous improvement of the environmental tolerability of our products and for the lowering of demands on natural resources while taking economic considerations into account. We therefore make ecologically efficient advanced technologies available throughout the world and implement them over the entire lifecycle of our products. At all of our locations, we are a partner to society and politics with respect to the configuration of social and ecologically sustainable positive development.";

as appears from p.19 of Exhibit P-1;

51. All of the foregoing representations were false and misleading;

#### **D. The Defendant's violation of IFRS**

52. As indicated in its Core Documents, the Defendant's management is responsible for preparing the consolidated financial statements in compliance with the IFRS, as appears from p.192 of Exhibit P-2;

53. IFRS includes the International Accounting Standards ("IAS") which states under Standard 37 that a company is required to recognize a "provision" for contingencies;

54. Provisions are defined as liabilities of uncertain timing or amount, as appears from the Technical Summary of Standard 37, communicated herewith as **Exhibit P-16**;

55. A provision should be recognized when an entity has an actual or potential legal obligation as a result of a past event which may require an outflow of capital to settle said legal obligation;

56. At all relevant times during the Class Period, the Defendant failed to recognize a provision for the contingency relating to its use of the Cheating Device;

57. As a result of this failure, VW's operating profits, net assets and shareholders' equity were materially overstated, whereas its liabilities were materially understated in all of the financial statements it issued during the Class Period;

#### **V - PERIOD OF CORRECTIVE DISCLOSURE**

58. On September 17, 2015, VW's ADR closed at US \$38.03 on the OTC Markets Group on a trading volume of 33,300, the whole as appears from the historical data published on Yahoo! Financial, communicated herewith as **Exhibit P-17**;

59. On September 18, 2015, the Corrective Disclosure was issued by EPA which alleged that:

"[the] four-cylinder Volkswagen and Audi diesel cars from model years 2009-2015 include software that circumvents EPA emissions standards for certain air pollutants. California is separately issuing an In-Use Compliance letter to Volkswagen, and EPA and the California Air Resources Board (CARB) have both initiated investigations based on Volkswagen's alleged actions".

as appears from Exhibit P-10;

60. The Corrective Disclosure further indicated that VW admitted to having installed the Cheating Device in its vehicles, thus systematically defrauding investors and the public for years by deliberately cheating US emission tests and making its diesel vehicles appear cleaner than they actually were, as appears from Exhibit P-10;
61. Following the Corrective Disclosure, VW's ADR closed at US \$36.31 on the OTC Markets Group on a trading volume of 225,800, as appears from Exhibit P-18;
62. On Sunday, September 20, 2015, VW issued a press release announcing that following their investigation, the EPA and CARB had detected manipulations that violated American environmental standards, the whole as appears from the VW's news release, communicated herewith as **Exhibit P-18**;
63. When the OTC markets opened on Monday, September 21, 2015, the value of VW's ADR dropped to US \$29.72 on a trading volume of 3,239,100, as appears from Exhibit P-18;
64. On September 21, 2015, the US Department of Justice, the US House of Representatives, and the German government all initiated investigations into VW's Cheating Device admission, the whole as appears from a Reuters article published on that same day, communicated herewith as **Exhibit P-19**;
65. On September 22, 2015, VW released a statement announcing that the Cheating Device has been installed in vehicles with EA 189 diesel engines, ultimately involving some eleven million vehicles worldwide, the whole as appears from VW's news release, communicated herewith as **Exhibit P-20**;
66. Following the Defendant's press release, the value of VW's ADR plummeted to close at US \$25.44 on the OTC Markets Group on a trading volume of 8,596,700, as appears from Exhibit P-18;
67. By the tenth trading day following the release of the Corrective Disclosure, VW's ADR closed at US \$23.07 which represents a 36.46% drop in value, as appears from Exhibit P-18;
68. On October 28, 2015, the Defendant released its interim report ending September 30, 2015, in which it admitted to irregularities in the software used for certain diesel engines, the whole as appears from p.3 of the interim report, communicated herewith as **Exhibit P-21**;
69. These significant drops in the value of VW's securities caused significant damages to the Class Members and are a direct result of the Defendant's misrepresentations;

## **VI - RIGHT OF ACTION UNDER ART. 1457 OF THE CIVIL CODE OF QUEBEC**

70. The Plaintiff asserts a civil right of action under art. 1457 of the CCQ on behalf of all Class Members against the Defendant based on its misrepresentations, egregious conduct, fraud, negligence and breach of its general duty of diligence owed to the Class Members;
71. The Defendant's violations of its duty of diligence are particularized herein;
72. The Defendant did not fulfill its legal obligations warranted by its special relationship with the Class Members;
73. The Plaintiff relied on the fact that the Defendant's portrayal of its business, affairs and operations was truthful and accurate;
74. The Plaintiff would not have purchased VW's securities had he been aware that the Defendant had established and implemented a fraudulent scheme to defeat US emissions tests;
75. The Plaintiff purchased VW securities at artificially inflated prices during the Class Period, held those securities until after the Corrective Disclosure was released and suffered an economic injury as a direct and immediate result of the Defendant's misrepresentations;
76. As a result, the Defendant's misrepresentations, fraud, breaches of its duties and negligence caused significant monetary damages to the Plaintiff and the Class Members he seeks to represent;
77. The Plaintiff further seeks punitive damages due to the Defendant's deliberate and egregious conduct over the span of six (6) years;
78. The Plaintiff's contract regarding his purchase of VW ADRs was concluded in Quebec;
79. The damages caused by the Defendant were suffered in Quebec;

## **VII - CRITERIA OF ART. 575 CCP**

### **A. The facts alleged appear to justify the conclusions sought**

80. The Defendant's Core Documents contained misrepresentations of material facts;
81. The Defendant released its Core Documents on a yearly basis;
82. From 2009 to 2015, the Defendant released Core Documents containing misrepresentations which failed to disclose the fact that it had installed a Cheating Device in its vehicles in order to comply with US emission standards;
83. The Defendant intentionally or negligently breached its duty as imposed under art. 1457 CCQ by making misstatements regarding the Cheating Device, thus giving rise to the Plaintiff's claim for misrepresentations;
84. Additionally, the Defendant intentionally failed to recognize adequate provisions as per Standard 37 of the IAS;

85. In light of the above, the Defendant is directly liable to the Plaintiff and Class Members;

**B. The claims of the members of the class raise identical, similar or related issues of law or fact**

86. The Plaintiff asks this Honorable Court to certify the following questions of fact and law to be dealt with collectively:

- i) is the Defendant liable under article 1457 of the CCQ? and
- ii) what are the damages sustained by the Class Members?

87. In addition, the Plaintiff asks this Honorable Court to authorize the following conclusions of the proposed class proceedings:

**GRANT** this class action on behalf of the Class;

**GRANT** the Plaintiff's action against the Defendant in respect of the rights of action asserted against the Defendant;

**CONDEMN** the Defendant to pay to the Plaintiff and Class Members compensatory damages for all monetary losses;

**CONDEMN** the Defendant to pay Punitive Damages;

**ORDER** collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**C. The class member appointed as Representative Plaintiff is in a position to properly represent the class members**

88. The Plaintiff is a chartered professional accountant with investment experience who resides in Quebec;

89. The Plaintiff shares common interests with the Class Members;

90. The Plaintiff has mandated his counsel to investigate similar pending *ex juris* class actions as well as the Class Members it would encompass in Quebec;

91. The Plaintiff has the resources, knowledge, time and dedication required to act as the Representative Plaintiff and to advance the case on behalf of the Class Members;

92. The Plaintiff has no conflict of interest with any other members of the Class and is represented by counsel that are experienced at litigating shareholders' claims in class actions against multinational corporations;

**D. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings.**

93. As of December 31, 2015, VW's share capital consisted of 295,089,818 ordinary securities and 206,205,445 preferred securities, as appears from p.85 of Exhibit P-9;
94. VW's securities are publicly-traded on worldwide stock exchanges, namely the OTC Markets and the Frankfurt Stock Exchange, where the average trading volume rises to hundreds of thousands of securities traded daily;
95. There are thousands of investors located in Quebec who are members of the putative Class such that it would be difficult or impracticable to apply the rules for mandates to take part in judicial proceedings;

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**AUTHORIZE** the Class;

**NAME** Lawrence Chandler the Class Representative;

**DECLARE** that the questions of fact and law to be dealt with collectively are:

- a) is the Defendant liable, under the civil law of Quebec including namely 1457 CCQ? and
- b) what damages were sustained by the members of the Class?

**AUTHORIZE** the class action proceedings to seek the following conclusions:

**GRANT** this class action on behalf of the Class;

**GRANT** the Plaintiff's action against the Defendant in respect of the rights of action asserted against the Defendant;

**CONDEMN** the Defendant to pay to the Plaintiff and Class Members compensatory damages for all monetary losses;

**CONDEMN** the Defendant to pay Punitive Damages;

**ORDER** collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**APPROVE** the notice to the Class Members in the form to be submitted to the Court;

**ORDER** the publication of the notice to the Class no later than thirty (30) days after the date of the judgment authorizing the class proceedings;

**ORDER** that the deadline for a member of the Class to exclude himself or herself from the Class action proceedings shall be sixty (60) days from the publication of the notice to the members of the Class;

**THE WHOLE WITH COSTS** including experts' fees.

MONTREAL, this 16<sup>th</sup> day of January, 2017

  
\_\_\_\_\_  
FAGUY & CO. BARRISTERS & SOLICITORS INC.  
Attorneys for the *Representative Plaintiff*



**SUMMONS**  
**(Art. 145 and following C.C.P.)**

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**Filing of a judicial application**

Take notice that the plaintiff has filed this originating application in the office of the Superior Court of Quebec in the judicial district of Montreal

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Notre-Dame St. E, Montreal, Québec within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or

hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the originating application, the plaintiff intends to use the following exhibits:

- Exhibit P-1:** Volkswagen Group's Code of conduct;
- Exhibit P-2:** VW's 2008 annual report released on March 12, 2009;
- Exhibit P-3:** VW's 2009 annual report released on March 11, 2010;
- Exhibit P-4:** VW's 2010 annual report released on March 10, 2011;
- Exhibit P-5:** VW's 2011 annual report released on March 12, 2012;
- Exhibit P-6:** VW's 2012 annual report released on March 14, 2013;
- Exhibit P-7:** VW's 2013 annual report released on March 13, 2014;
- Exhibit P-8:** VW's 2014 annual report released on March 12, 2015;
- Exhibit P-9:** VW's 2015 annual report released on April 28 2016;
- Exhibit P-10:** EPA's news release entitled "EPA, California Notify Volkswagen of Clean Air Act Violations / Carmaker allegedly used software that circumvents emissions testing for certain air pollutants", published on September 18, 2015;
- Exhibit P-11:** James Robert Liang's Rule 11 Plea Agreement between himself and the United States of America, court file No. 16-cr-20394;
- Exhibit P-12:** RBC's Confirmation Notice in relation to Lawrence Chandler's purchase of 300 ADRs on July 19, 2012;

- Exhibit P-13:** CNW article entitled "I- Volkswagen at the 2008 Montreal Auto Show", dated January 17, 2008;
- Exhibit P-14:** Screen capture of [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org) on December 21, 2016;
- Exhibit P-15:** Consent Agreement between the Commissioner of Competition and Volkswagen Group Canada Inc. and Audi Canada Inc. filed in court file no. CT-2016-017 on December 19, 2016;
- Exhibit P-16:** *Technical Summary of IAS 37 Provisions, Contingent Liabilities and Contingent Assets* as issued by the IFRS organization at January 1, 2012;
- Exhibit P-17:** Historical data of VLKAY from September 17, 2015 to October 2, 2015 published on Yahoo! Financial as at January 10, 2017;
- Exhibit P-18:** VW's news release entitled "Statement of Prof. Dr. Martin Winterkorn, CEO at Volkswagen AG:", dated September 20, 2015;
- Exhibit P-19:** Reuters article entitled "UPDATE 7-Volkswagen shares plunge on emissions scandal; U.W. widens probe", dated September 21, 2015;
- Exhibit P-20:** VW news release entitled "Volkswagen AG has issues the following information", dated September 22, 2015; and
- Exhibit P-21:** VW's interim report for the period ending September 30, 2015, dated October 28, 2015.

These exhibits are available on request.

#### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

MONTREAL, this 16<sup>th</sup> day of January, 2017

  
\_\_\_\_\_  
FAGUY & CO. BARRISTERS & SOLICITORS INC.  
Attorneys for the *Representative Plaintiff*

17 JAN. 2017

SUPERIOR COURT

Pi 500-05-0009338-173  
D

N°: 500-

**LAWRENCE CHANDLER**, residing and domiciled at  
5350 MacDonald Ave., Apt. 1714, in the city of Montreal,  
province of Québec, H3X 3V2

Representative Plaintiff

v.

**VOLKSWAGEN AKTIENGESTELLCHAFT**, a moral  
person incorporated pursuant to the laws of Germany,  
having its principal place of business at Berliner Ring 2,  
38440 Wolfsburg, Germany  
Defendant

**MOTION FOR AUTHORIZATION  
OF A CLASS ACTION**

Original

**FAGUY & CO.**  
BARRISTERS & SOLICITORS INC.

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