

AMENDED THIS JUL 1 / 2017 PURSUANT TO  
MODIFIÉ CE \_\_\_\_\_ CONFORMÉMENT À  
 RULE/LA RÈGLE 26.02 ( B )  
 THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_

  
REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GRÉFFIER  
COUR SUPÉRIEURE DE JUSTICE

Court File No.: CV-16-566618-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

GROWTHQUEST CAPITAL, INC.

Plaintiff

and

VOLKSWAGEN AKTIENGESELLSCHAFT

Defendant

Proceedings under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in this Statement of Claim served on you pursuant to Rule 17.02 and 17.04 of the Ontario Rules of Civil Procedure.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty (60) days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the Court.

Date: December 22, 2016

Issued by: "M. NIKOLAIDIS"

Registrar

Address of Court Office:

TO:

**Volkswagen Aktiengesellschaft**  
Berliner Ring 2  
38440 Wolfsburg  
Lower Saxony, Germany

SUPERIOR COURT  
OF JUSTICE  
393 UNIVERSITY AVE.  
10TH FLOOR  
TORONTO, ONTARIO  
M5G 1E6

COUR SUPÉRIEURE  
DE JUSTICE  
393 AVE. UNIVERSITY  
10E ÉTAGE  
TORONTO, ONTARIO  
M5G 1E6

## CLAIM

### DEFINED TERMS

1) In addition to the terms and meanings used in section 138.1 of the Ontario *Securities Act* (“*OSA*”), the capitalized terms used throughout this statement of claim have the meanings indicated below:

- a) “**ADR**” means American Depositary Receipt, which is a stock that trades in the United States in USD, but represents a specified number of shares in a foreign corporation;
- b) “**CARB**” means the California Air Resources Board;
- c) “**Class**” and “**Class Members**” means all residents of Ontario, Canada, other than **Excluded Persons**, who acquired VW’s ADRs or shares during the **Class Period** and held all or some of those acquired VW ADRS or shares until after the first **Corrective Disclosure**;
- d) “**Class Period**” means March 12, 2009 to and including September 18, 2015;
- e) “**Corrective Disclosure**” means VW’s releases dated September 20, September 22, and October 8, 2015, which confirmed that VW intentionally engaged in conduct to secretly install software to manipulate the quantity of pollutants being discharged from certain of its diesel engines while the vehicles with said diesel engines were being tested for compliance with the applicable emissions standards and released core and non-core documents with the **Misrepresentation**;
- f) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- g) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- h) “**Defendant**” means VW;
- i) “**EPA**” means the U.S. Environmental Protection Agency;
- j) “**Excluded Persons**” means VW’s subsidiaries, affiliates, officers, directors, executive level employees, legal representatives, heirs, predecessors, successors and assigns;

- k) “FSE” means the Frankfurt Stock Exchange;
- l) “Misrepresentation” means VW’s statements that it produced one of the world’s most environmentally safe diesel engines and rigorously followed governmental emissions standards and VW’s omissions of material fact regarding the fact that it had secretly installed software to manipulate the quantity of pollutants being discharged from certain of its diesel engines while the vehicles with said diesel engines were being tested for compliance with the applicable emissions standards, which separately and together resulted in VW intentionally making fraudulent statements that it produced one of the world’s most environmentally safe diesel engines and rigorously followed governmental emissions standards when, in fact, its diesel engines produced up to 40 times the EPA’s nitrous oxide limits;
- m) “NYSE” means the New York Stock Exchange;
- n) “OTC Market” means the American financial market for over-the-counter, or OTC, securities;
- o) “Plaintiff” means GrowthQuest Capital, Inc.;
- p) “SEC” means the U.S. Securities and Exchange Commission;
- q) “SEDAR” means the System for Electronic Document Analysis and Retrieval, which is a filing system developed for the Canadian Securities Administrators; and
- r) “VW” means Volkswagen Aktiengesellschaft, a German-based automobile manufacturer.

## RELIEF CLAIMED

- 2) Plaintiff claims on its own behalf and on behalf of the members of the Class:
  - a) An order pursuant to the Ontario *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) certifying this action as a class proceeding and appointing it as the representative plaintiff of the Class;
  - b) A declaration that VW made the Misrepresentation;
  - c) A declaration that VW made the Misrepresentation intentionally with the intent to defraud regulators, consumers, and investors;
  - d) The assessment of damages pursuant to common law in a sum to be determined once it is established how many ADRs or shares of VW were purchased by residents of Ontario, Canada during the Class Period, and how many of those ADRs or shares were held until after the Corrective

Disclosure, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;

- e) An order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- f) Pre-judgment interest and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- g) Costs of this action on a full indemnity basis, or in an amount that provides substantial indemnity plus, pursuant to s. 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action; and
- h) such further and other relief as to this Honourable Court seems just.

#### **SUMMARY OF THE CLAIM**

- 3) This action relates to an intentional economic tort originating from an automobile-manufacturing company in Germany and directed to investors in Ontario, Canada, and elsewhere.
- 4) The Defendant is a publicly-traded corporation that lists its securities, specifically its preference and ordinary ADRs and shares, on various international stock exchanges.
- 5) In describing its investment quality and to encourage investors to purchase its securities, the Defendant released its core documents on its website and sent them by mail to the Ontario-based Plaintiff and the members of the Class. The Defendant also released its non-core documents on its website and elsewhere, including the internet, in order to induce Ontario-based investors to purchase the Defendant's securities.
- 6) In addition to containing the Misrepresentation, the Defendant's core documents stressed that its investment quality was not measured solely on the basis of units sold or financial performance, but rather, included all areas of the company such as being "more

environmentally friendly” and “sustainable mobility” by being the first automaker to commit to cutting NO<sub>2</sub> emissions.

7) The Plaintiff and the Class it seeks to represent relied upon the Defendant’s statements within its core and non-core documents, including the Misrepresentation, in making their decisions to invest and purchase the Defendant’s securities.

8) On September 20, 2015, the Defendant commenced a process of releasing one of several corrective disclosures (the “**Corrective Disclosure**”) acknowledging that it had created mechanisms for use in its diesel-automobiles to enable them to manipulate and contravene environmental standards during the Class Period. This Corrective Disclosure confirmed that the Defendant’s core and non-core documents released during the Class Period were materially false and misleading.

9) Prior to the first Corrective Disclosure, the Defendant’s common ADRs on the OTC Market with ticker symbol VLKAY closed at USD \$36.31. On September 21, 2015, the Defendant’s common ADRs closed at USD \$30.10, and by the tenth trading day after this first Corrective Disclosure, the Defendant’s common ADRs closed at USD \$23.07, or down 36.46%.

10) Prior to the first Corrective Disclosure, the Defendant’s common shares on the FSE with ticker symbol VOW closed at €161.35. On September 21, 2015, the Defendant’s common shares closed at €133.70, and by the tenth trading day after this first Corrective Disclosure, the Defendant’s common shares closed at €101.15, or down 37.31%.

11) Prior to the first Corrective Disclosure, the Defendant’s preference ADRs on the OTC Market with ticker symbol VLKPY closed at USD \$36.47. On September 21, 2015, the Defendant’s preference ADRs closed at USD \$29.77, and by the tenth trading-

day after this first Corrective Disclosure, the Defendant's preference ADRs closed at USD \$20.99, or down 42.45%.

12) Prior to the first Corrective Disclosure, the Defendant's preference shares on the FSE with ticker symbol VOW3 closed at €162.40. On September 21, 2015, the Defendant's preference shares closed at €132.20, and by the tenth trading day after this first Corrective Disclosure, the Defendant's preference shares closed at €92.36, or down 43.13%.

13) The Plaintiff read the Defendant's core documents containing the Misrepresentation, acquired the Defendant's securities prior to the Corrective Disclosure, held all those securities until after the Corrective Disclosure, and suffered an economic injury because its securities in the Defendant corporation dropped in value as a direct and foreseeable result of the Corrective Disclosure concerning the Misrepresentation.

14) The Plaintiff and the Class it seeks to represent demand damages from the Defendant in an amount equal to the amount the Defendant's securities lost value on a per share basis measured from the moment prior to the Corrective Disclosures relative to the price after the Corrective Disclosures, which represents the quantum by which the securities were inflated in value as a result of the Misrepresentation

#### **THE PLAINTIFF**

15) The Plaintiff, GrowthQuest Capital, Inc., is a corporation incorporated pursuant to the laws of Ontario with its headquarters in Toronto, which is owned and managed by George Leon. The Plaintiff holds a brokerage account with TD Waterhouse in Ontario. The Plaintiff purchased 200 shares of VW on June 4, 2013, 200 shares of VW on June

19, 2013, and 200 shares of VW on June 21, 2013, which it held in its TD Waterhouse account

16) VW had a special and proximate relationship with the Plaintiff and the other owners of VW's securities. In particular, VW knew that the Plaintiff and the proposed Class Members would rely upon the representations it made about the business and operations of VW, including representations about the fuel-efficiency and environmental impact of the vehicles it manufactured and sold around the world, that the Plaintiff and the proposed Class Members would have no means of independently verifying the truthfulness of the representations, and that it was duty-bound by statute and under the common law duty of good faith not to intentionally make false representations about its business and affairs. VW made these representations for the purpose of, among other things, inducing investors to invest in and hold VW securities.

17) During the Class Period, VW published core documents and made other statements containing the Misrepresentation, which were intended to and did induce the Plaintiff and other members of the Class to purchase VW's securities.

18) The Plaintiff and the Class suffered an economic injury, in the form of lost value of their VW securities, as a direct and foreseeable result of the Misrepresentation.

19) The Plaintiff has common interests that he shares with the residents of Ontario, Canada, who purchased VW's securities during the Class Period and held those securities until after the release of the first Corrective Disclosure.

#### **THE DEFENDANT**

20) VW is incorporated pursuant to the laws of Germany with its principal executive offices located in Wolfsburg, Germany. VW is one of the largest automobile



manufacturers in the world and is affiliated with other automakers such as Audi, Bentley, Bugatti, Lamborghini, and Porsche.

21) VW issues equity securities in the form of preference and ordinary shares and ADRs under the ticker symbols “VLKAY”, “VLKPY”, VOW and “VOW3”.

22) During August 2008, VW introduced a new line-up of “CleanDiesel” engines, identified as Year 2009 models, that it represented as being compliant with U.S. and Canadian emission standards.

23) On March 12, 2009, VW released its 2008 Annual Report, which touted the CleanDiesel technology as one of the world’s lowest-emission diesel technologies and represented that these engines resulted in a significant reduction in nitrous oxide emissions.

24) During the Class Period, VW also directed its communications originating from Germany and elsewhere, including from within Canada, about its investment quality to Ontario-based investors to induce them to purchase VW’s securities.

25) Ontario-based investors held well over a million shares of VW stock.

#### **THE MATERIAL FACTS**

26) During 2007, the manufacturer and supplier of the emissions defeat-device software warned VW’s senior executives not to use the product for improper purposes, i.e., to defeat or otherwise manipulate NO<sub>2</sub> tests.

27) On November 21, 2008, VW introduced the new Jetta TDI Clean Diesel at the Los Angeles Auto Show, and won the “Green Car of the Year” award. VW touted that it had created one of the world’s lowest-emission diesel technologies.

28) On March 12, 2009, VW released its 2008 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

29) The 2008 Annual Report stated in relevant part:

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. (p. U7)

and,

The BlueTDI name stands for a significant reduction in nitrous oxides in exhaust gas. These out-standing results are achieved thanks to an innovative catalytic converter in conjunction with the AdBlue additive (p. 181)

30) The 2008 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

31) This omission artificially inflated VW’s investment quality and securities prices.

32) Had VW disclosed that it had commenced a practice of installing undisclosed, secret software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the members of the Class would not have purchased securities or additional securities of VW.

33) On March 11, 2010, VW released its 2009 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

34) The 2009 Annual Report stated in relevant part:

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. (p. 182)

35) The 2009 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

36) The above omissions artificially inflated VW's investment quality and securities prices.

37) Had VW disclosed that it had commenced a practice of installing undisclosed, secret software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the members of the Class would not have purchased VW securities or additional securities of VW.

38) On March 10, 2011, VW released its 2010 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

39) The 2010 Annual Report stated in relevant part:

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. (p. 217)

40) The 2010 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to

produce false low emissions compared to the emissions produced during normal operation of the vehicles.

41) The above omissions artificially inflated VW's investment quality and securities prices.

42) Had VW disclosed that it had commenced a practice of installing undisclosed, secret software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the members of the Class would not have purchased VW securities or additional securities of VW.

43) On March 12, 2012, VW released its 2011 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

44) The 2011 Annual Report stated in relevant part:

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 shares 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. (p. 215)

45) The 2012 Annual report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

46) The above omissions artificially inflated VW's investment quality and securities prices.

47) Had VW disclosed that it had commenced a practice of installing secret, undisclosed software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the members of the Class would not have purchased VW securities or additional securities of VW.

48) On March 14, 2013, VW released its 2012 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

49) The 2012 Annual Report stated in relevant part:

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. (p. 241)

50) The 2012 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

51) The above omissions artificially inflated VW’s investment quality and securities prices.

52) Had VW disclosed that it had commenced a practice of installing secret, undisclosed software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the members of the Class would not have purchased VW securities or additional securities of VW.

53) On March 13, 2014, VW released its 2013 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation.

54) The 2013 Annual Report stated in relevant part:

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. (p. 147)

55) The 2013 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

56) The above omissions artificially inflated VW's investment quality and securities prices.

57) Had VW disclosed that it had commenced a practice of installing secret, undisclosed software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the Plaintiff and members of the Class would not have purchased securities or additional securities of VW.

58) During May 2014, VW's senior executives, including its then CEO Martin Winterkorn, received multiple memoranda advising them that certain industry experts had learned that VW was using emissions defeat-device software on certain of its diesel-powered vehicles.

59) On March 12, 2015, VW released its 2014 Annual Report. This core document contained affirmative statements and omissions of material fact which were false and constitute the Misrepresentation. In VW's 2014 Annual Report, it represented under the section entitled:

(a) "Corporate Social Responsibility and Sustainability", that it was a good corporate citizen focused on the environment with a corporate social responsibility ("CSR") approach. It represented that its CSR approach was aimed at ensuring that VW recognize and manage at an early stage risks and development opportunities in the areas of environment, society and governance opportunities at every step along the value chain, and further improve its reputation.

(b) "Code of Conduct and Guidelines", that the Company had in place a Code of Conduct embodying VW's values of "customer focus, top performance, creating value, renewability, respect, responsibility, and sustainability" and that all employees were equally responsible for adhering to these principles.

60) VW's Code of Conduct explicitly stated that "[e]ach of our employees make appropriate and economical use of natural resources and ensure that their activities have only as limited an influence on the environment as possible".

61) The representations about VW's Corporate Social Responsibility and Sustainability and Code of Conduct and Guidelines were false because VW knew that it was employing defeat devices in its "Clean Diesel" vehicles, which had the intended purpose and result of producing false low emissions under testing environments, as opposed to the emissions produced during normal operation of the vehicles.

62) In addition, the 2014 Annual Report continued the Company's consistent pattern of misrepresenting the efficiency of its BlueMotion technology, stating:

[O]ur 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. (p. 156)

63) The 2014 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO<sub>2</sub> tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

64) The above omissions together with the false affirmative statements artificially inflated VW's investment quality and share prices.

65) Had VW disclosed that it had commenced a practice of installing software on certain of its diesel engines for the intended purpose of manipulating the amount of NO<sub>2</sub> being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, the Plaintiff and members of the Class would not have purchased VW securities or additional securities of VW.

#### **THE CORRECTIVE DISCLOSURE**

66) On September 3, 2015, a VW official formally signed a document submitted to CARB admitting that it had installed secret and undisclosed defeat devices in its diesel vehicles. CARB has stated that in this document "VW admitted ... that it designed and manufactured its 2.0-liter diesel vehicles with defeat devices to bypass, defeat, or render inoperative elements of the vehicles' emission-control system."

67) On Friday, September 18, 2015, the EPA and CARB publicly issued letters indicating that VW admitted to systematically defrauding investors and the public for years by deliberately cheating U.S. emission tests and making its diesel vehicles appear cleaner than they actually were. The EPA issued a Notice of Violation of the *Clean Air Act* to VW, alleging that four-cylinder VW and Audi diesel cars from model years 2009 – 2015 included a defeat device that enabled the cars to circumvent the EPA's emission standards for certain pollutants.



68) On September 20, 2015, VW released a statement announcing that the EPA and CARB investigated and found a mechanism on certain VW vehicles that manipulated American environmental standards.

69) On September 21, 2015, the U.S. Department of Justice, the U.S. House of Representatives, and the German government all initiated investigations into VW's defeat device mechanism admission.

70) On September 22, 2015, VW released a statement announcing that the mechanism used to manipulate emissions related to vehicles with Type EA 189 engines, involving some eleven million vehicles worldwide. VW admitted that the defeat-device was not only installed on vehicles with 2.0 litre engines, but had also been installed on vehicles with 3.0 litre diesel engines, since 2009. Affected vehicles included: VW Jetta (2009 – 2015), VW Jetta SportWagen (2009 – 2014), VW Beetle and Beetle Convertible (2012 – 2015), VW Passat (2012 – 2015), VW Golf (2010 – 2015), VW Golf SportWagen (2015), Audi A3 (2010 – 2015), VW Touareg (2009 – 2016), Audi A6 Quattro (2014 – 2016), Audi A7 Quattro (2014 – 2016), Audi A8 and A8L (2014 – 2016), Audi Q5 (2014 – 2016), Audi Q7 (2009 – 2016), and Porche Cayenne (2013 – 2016).

71) VW's CEO, Martin Winterkorn, made a video statement on September 22, 2015, in which he acknowledged the company's wrongdoing, stating, in part: "many millions of people across the world trust our brands, our cars and our technologies. I am endlessly sorry that we betrayed their trust."

72) On September 22, 2015, Environment Canada opened an investigation into the VW defeat devices use as well.

73) Prior to the first Corrective Disclosure, the Defendant's common ADRs on the OTC Market with ticker symbol VLKAY closed at USD \$36.31. On September 21,

2015, the Defendant's common ADRs closed at USD \$30.10, and by the tenth trading-day after this first Corrective Disclosure, the Defendant's common ADRs closed at USD \$23.07, or down 36.46%.

74) Prior to the first Corrective Disclosure, the Defendant's common shares on the FSE with ticker symbol VOW closed at €161.35. On September 21, 2015, the Defendant's common shares closed at €133.70, and by the tenth trading-day after this first Corrective Disclosure, the Defendant's common shares closed at €101.15, or down 37.31%.

75) Prior to the first Corrective Disclosure, the Defendant's preference ADRs on the OTC Market with ticker symbol VLKPY closed at USD \$36.47. On September 21, 2015, the Defendant's preference ADRs closed at USD \$29.77, and by the tenth trading-day after this first Corrective Disclosure, the Defendant's preference ADRs closed at USD \$20.99, or down 42.45%.

76) Prior to the first Corrective Disclosure, the Defendant's preference shares on the FSE with ticker symbol VOW3 closed at €162.40. On September 21, 2015, the Defendant's preference shares closed at €132.20, and by the tenth trading-day after this first Corrective Disclosure, the Defendant's preference shares closed at €92.36, or down 43.13%.

77) On October 28, 2015, VW released its interim report for the period ending September 30, 2015, in which it admitted to irregularities in the software used for certain diesel engines, and launched an internal investigation.

#### **U.S. CONGRESSIONAL HEARINGS**

78) On October 8, 2015, VW's executive admitted to the U.S. Congress that on May 15, 2014, he was informed that VW's vehicles did not meet governing emissions standards

and that the defeat device software was also secretly installed on diesel-powered vehicles for the European market. This same executive also admitted that VW had broken the trust it had with its customers, dealerships, employees, as well as the public and regulators.

#### **U.S. FEDERAL COURT CONVICTION**

79) On March 10, 2017, VW pleaded guilty to three felony counts of: (1) conspiracy to defraud the United States, engage in wire fraud, and violate the *Clean Air Act*; (2) obstruction of justice; and (3) importation of merchandise by means of false statements. On April 21, 2017, the court accepted the parties' plea agreement, which imposed a \$2.8 billion penalty on VW. VW's general counsel made the plea, confirming that he was authorized by the VW board of directors to enter the guilty plea and stated, "Your honour, VW AG is pleading guilty to all three counts because it is guilty on all three counts."

80) Separately, VW resolved civil claims with the United States EPA by agreeing to pay an additional \$1.5 billion in civil penalties.

#### **INTERNATIONAL FINANCIAL REPORTING STANDARDS**

81) VW is required to present its financial statements to investors, including the members of the Class, in a format that conforms with IFRS, which includes International Accounting Standards ("IAS"). IAS 37 governs when a company is required to recognize a "provision" for contingencies. Provisions are recognized as liabilities in financial statements because they are present obligations and it is probable that an outflow of capital will be required to settle the obligation.

82) During the Class Period, VW did not, pursuant to IAS 37, make provisions for the contingency of the Corrective Disclosure being released.

83) VW's failure to recognize contingency reserves relating to its use of illegal and secret emissions defeat devices and software caused its operating profits, net assets, and

shareholders' equity to be materially overstated and its liabilities to be materially understated in all of its financial statements issued during the Class Period.

**COUNT 1: TORT: FRAUDULENT MISPRESENTATIONS**

84) The elements of common law fraudulent misrepresentation are: (i) the Defendant made the misrepresentation knowing that it was false, or recklessly, caring not whether it was true or fraud, (ii) the Defendant intended that the Plaintiff, or a class of persons including the Plaintiff, rely upon the misrepresentation, (iii) the Plaintiff and the other Class Members relied upon the representation and were induced to act by it, and (iv) the Plaintiff and the members of the Class suffered damages.

85) VW made the decision to secretly install software to manipulate the quantity of pollutants being discharged from certain of its diesel engines while the vehicles with said diesel engines were being tested for compliance with the applicable emissions standards, and it did not disclose the software to any regulators. VW therefore intentionally made fraudulent statements that it produced one of the world's most environmentally safe diesel engines and rigorously followed governmental emissions standards, when in fact, its diesel engines produced up to 40 times the EPA's nitrous oxide limits.

86) VW made the decision to release core and non-core documents containing the Misrepresentation while knowing that such statements were false as reflected by VW's decision to secretly install software to manipulate the quantity of pollutants being discharged from certain of its diesel engines while the vehicles with said diesel engines were being tested for compliance with the applicable emissions standards, thereby resulting in VW intentionally making fraudulent statements that it produced one of the world's most environmentally safe diesel engines and rigorously followed governmental

emissions standards, when in fact, its diesel engines produced up to 40 times the EPA's nitrous oxide limits.

87) VW intended the Plaintiff and the members of the Class to rely upon its core and non-core documents containing the Misrepresentation in making the decision to purchase VW's securities. It touted its "clean diesel" technology as a key reason and inducement for investors to purchase VW securities, and intended the Class to rely upon the Misrepresentation in making their investment decisions.

88) The Plaintiff and the members of the Class did rely upon VW's core and non-core documents containing the Misrepresentation as reflected by their purchase of VW's securities. Had the Misrepresentation been disclosed to the Class they would not have purchased the VW securities at the price at which the securities were trading during the Class Period, or at all.

89) The Plaintiff and the members of the Class suffered an economic injury when VW released the Corrective Disclosures, and the value of their VW securities plummeted to their true value based upon the fact that VW had been installing defeat devices in its diesel engines throughout the Class Period.

#### **THE CLASS PROCEEDINGS ACT**

90) The Plaintiff intends to deliver a notice of motion and motion record requesting this Court to certify this action as a class proceeding pursuant to section 5 of the *CPA* asserting a single claim of fraudulent misrepresentation against VW for releasing core and non-core documents while knowing that these core and non-core documents contained the Misrepresentation.

91) The Plaintiff alleges that this fresh as amended statement of claim discloses a cause of action for the tort of fraudulent misrepresentation.

92) The Plaintiff alleges that there is an identifiable class of Ontario-based investors that purchased VW's securities between March 12, 2009 and September 18, 2015.

93) The Plaintiff alleges that the claim of it and the members of the Class raise common issues.

94) The Plaintiff alleges that a class proceeding would be the preferable procedure for the resolution of the all the common issues.

95) The Plaintiff alleges that it would fairly and adequately represent the interests of the members of the Class and does not have an interest in conflict with the interests of the members of the Class.

#### **DAMAGES**

96) The Plaintiff and the members of the Class suffered economic injuries as a result of acting on VW's core and non-core documents containing the Misrepresentation by acquiring VW's securities at artificially-inflated prices and holding those securities until after the first Corrective Disclosure. Therefore, VW is liable to pay damages to the Plaintiff and the members of the Class pursuant to common law.

97) The Plaintiff and the members of the Class are also entitled to recover as damages, or costs in accordance with the *CPA*, the costs of administering the plan to distribute the recovery in this action, and reasonable attorneys' fees.

#### **REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO, CANADA**

98) The Plaintiff pleads that this action has a real and substantial connection with Ontario, Canada, because, among other things:

- (a) The Plaintiff is an Ontario corporation which suffered damages in Ontario, and its brokerage account holding the shares of VW was and continues to be in Ontario;

- (b) The core and non-core documents referred to herein as containing the Misrepresentation were directed to and received and relied upon in Ontario by the Class members;
- (c) During the Class Period, VW sent executives to Ontario to market its investment quality to induce Ontario-based residents to purchase its diesel-powered automobiles and securities.

### **SERVICE OUTSIDE OF ONTARIO**

99) Pursuant to Rules 17.02(g) and 17.04(1) of the Ontario *Rules of Civil Procedure*, this fresh as amended statement of claim may be served without court order outside Ontario in that the claim is:

- (a) All the reasons identified in the preceding paragraphs, including that the Defendant directed its wrongful conduct towards the Plaintiff and members of the Class in Ontario;
- (b) The Plaintiff and member of the Class sustained damages in Ontario (rule 17.02(g) and (h)); and
- (c) During the Class Period, the Defendant regularly carried on business in Ontario, e.g., promoting its investment quality in Ontario. (rule 17.02(p)).

### **RELEVANT LEGISLATION**

100) The Plaintiff pleads and relies on the *CJA, CPA, OSA* and all relevant amendments thereto.

### **PLACE OF TRIAL**

101) The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

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**GROWTHQUEST CAPITAL, INC.**

**v. VOLKSWAGEN  
AKTIENGESELLSCHAFT**

Plaintiff

Defendant

Court File No. CV-16-566618-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

**FRESH AS AMENDED STATEMENT OF CLAIM**

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