

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

GROWTHQUEST CAPITAL, INC.

Plaintiff

- and -

VOLKSWAGEN AKTIENGESELLSCHAFT

Defendant

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

THE PLAINTIFF will make a motion to the Honourable Justice Edward Belobaba, the case management judge in this matter, on Tuesday and Wednesday July 10 and 11, 2018 or as soon after that time as the motion may be heard, at the courthouse Osgoode Hall, 130 Queen St. West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an order:

- a) certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended (the “CPA”);
- b) defining the Class as;

All residents of Ontario, Canada, other than Excluded Persons, who acquired Volkswagen Aktiengesellschaft (“VW”) American Depository Receipts (“ADRs”) or shares during the Class Period of March 12, 2009 to and including September 18, 2015, and held all or some of those acquired VW ADRs or shares until after September 20, 2015, where the Excluded Persons are all VW’s subsidiaries, officers, directors, executive level employees, VW’s legal representatives, heirs, predecessors, successors and assigns;

- c) certifying the following common issues attached as Schedule A to this Notice of Motion
- d) appointing Growthquest Capital, Inc. as the representative plaintiff;
- e) declaring that the cause of action asserted is fraudulent misrepresentation/deceit;
- f) approving the Plaintiff’s litigation plan, affixed as Exhibit 1 to the Affidavit of Nigel Watts sworn December 7, 2017;
- g) requiring the Defendant to pay the costs of providing notice of certification of the action as a class proceeding to the Class, and approving a form of notice of certification;
- h) requiring the Defendant to disclose to the Plaintiff the names and contact information for any known members of the Class;
- i) staying any other proceeding asserting the same causes of action against the Defendant based on the facts giving rise to this proposed class proceeding;

- j) declaring that no other class proceeding asserting the same causes of action against the Defendant based upon the facts giving rise to this proceeding may be commenced without leave of the Court;
- k) that the Defendants shall pay to the Plaintiffs their costs of this motion, fixed and payable forthwith; and
- l) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- a) This action was commenced on December 22, 2106, and amended on July 17, 2017, at which time the Plaintiff was substituted as the Plaintiff and the proposed representative Plaintiff;
- b) The fresh as amended statement of claim (the “Claim”) alleges that VW made fraudulent misrepresentations in its public disclosure documentation during the Class Period (March 12, 2009 to September 18, 2015) with respect to the installation and use of defeat devices in its diesel engine automobiles that manipulated the quantity of pollutants discharged by the diesel engines when they were being tested for compliance with applicable emissions standards, so that the defeat devices would bypass, defeat or render inoperative elements of the vehicles’ emission control systems;
- c) During the Class Period, VW released public disclosure documents which, to its knowledge, falsely stated that its diesel vehicles were “clean diesel” and complied with applicable emission standards;

- d) VW knowingly released the public disclosure documents containing the false representations with the intent that the representations be relied upon by the Class and with the knowledge and intent that the false representations would artificially inflate the price at which VW's ADRs and shares would trade world-wide;
- e) VW made corrective disclosure about the installation and use of the defeat devices on September 20, 22, and October 8, 2015, at which time VW confirmed that it intentionally engaged in conduct to secretly install the defeat devices to manipulate the quantity of pollutants discharged by the diesel engines when they were being tested for compliance with applicable emissions standards, so that the defeat devices would bypass, defeat or render inoperative elements of the vehicles' emission control systems;
- f) After the corrective disclosure was made, VW ADR and share prices plummeted by between 36.46% and 43.13%;
- g) The Defendant has acknowledged its wrongdoing, and has pleaded guilty and been convicted of three felony counts in the United States, and a USD \$2.8 billion penalty was imposed on VW;
- h) During the Class Period the Defendant made a series of false representations (the "Misrepresentations"), knowing that the representations were false, or acting recklessly, without belief in the truth of the representations;
- i) The Defendant made the Misrepresentations with the intention that they should be acted upon by the Class, in particular, that the Class would rely upon the Misrepresentations in

acquiring VW ADRs and shares and paying the then-prevailing market price for the shares, and not a lesser amount;

- j) Had the Defendant provided truthful disclosure about the fact that its diesel engine automobiles were equipped with defeat devices, the VW ADRs and shares would have traded at a significantly lower price, therefore the price of the securities was artificially inflated during the Class Period, until VW made its corrective disclosure;
- k) The Plaintiff and the Class relied upon the Misrepresentations in acquiring and holding VW ADRs and shares during the Class Period, and suffered damages as a result thereof;
- l) The Claim discloses a cause of action in fraudulent misrepresentation;
- m) There is an identifiable Class that has been objectively defined;
- n) The Claim raises common issues of fact and law;
- o) A class proceeding is the preferable procedure for the resolution of the common issues;
- p) The Plaintiff has produced a workable plan for the prosecution of the proceeding, including for the resolution of any individual issues;
- q) The Plaintiff will adequately and fairly represent the interests of the Class and has no conflicts with the Class;
- r) Sections 5 and 6 *Class Proceedings Act, 1992*, c. C6;
- s) Rule 37 *Rules of Civil Procedure*; and,
- t) Such further and other grounds as counsel may advise and the Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) Affidavit of George Leon sworn November 30, 2017;
- b) Affidavit of Matthew Aharonian sworn November 24, 2017;
- c) Affidavit of Lawrence Kryzanowski sworn December 7, 2017;
- d) Affidavit of Nigel Watts sworn December 7, 2017; and
- e) Such further and other documentary evidence as this Court may permit.

DATED: December 8, 2017

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Schedule A- Proposed Common Issues:

- a) certifying the following common issues:
- i. During the Class Period, did VW release one or more misrepresentations in its public disclosure documentation with respect to the creation and installation of the Defeat Devices installed on its diesel engine automobiles? If so, what were the misrepresentations, which public disclosures contained those misrepresentations, and when were the public disclosures containing the misrepresentations released to investors?
 - ii. During the Class Period, did VW release misrepresentations in its public disclosure documents with respect to its financial statements being presented in manner that was compliant with the International Financial Reporting Standards?
 - iii. If VW did release public disclosures to investors containing misrepresentations, did VW release those misrepresentations with knowledge of their falsehood, or recklessly, without belief in their truth?
 - iv. If VW did knowingly or recklessly release public disclosures to investors containing misrepresentations, did VW release those public disclosures to investors with the intention of artificially inflating the perceived investment-quality of its securities?
 - v. If VW did knowingly release public disclosures to investors containing misrepresentations, did VW intend that the plaintiff and the Class rely upon those misrepresentations in making a decision to purchase VW's ADRs and shares (securities), or
 - vi. Was VW indifferent or reckless as to whether or not investors would rely on the public disclosures that it made to investors knowing that the public disclosures contained misrepresentations?
 - vii. If VW did knowingly or recklessly release public disclosures to investors containing misrepresentations, did those misrepresentations influence the price or value of VW's securities? If so, can the amount of the artificial increase in value be determined on a per securities basis? If so, can that amount be measured on a class-wide basis?
 - viii. Can the court infer that the misrepresentations were a factor that induced the plaintiff and the Class to acquire VW ADRs or shares?

- ix. Is VW's conduct with respect to intentionally releasing disclosure documents containing the misrepresentation such that it warrants an award of punitive damages, and if so, in what amount?

- x. Should prejudgment and post-judgment interest be payable pursuant to ss. 128 and 129 of the *Courts of Justice Act*, on a compounded basis, or on some other basis because of special circumstances justifying a departure from the *Courts of Justice Act* interest rates?

GROWTHQUEST CAPITAL, INC.
Plaintiff

-and-

VOLKSWAGEN AKTIENGESELLSCHAFT
Defendant

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

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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