

AMENDED THIS July 5/18 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ()

THE ORDER OF Justice Belobaba
L'ORDONNANCE DU

DATED / FAIT LE July 5/18

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REGISTRAR (GREFFIER)
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

GEORGE LEON, in his capacity as Trustee of
THE GEORGE LEON FAMILY TRUST

Plaintiff

and

VOLKSWAGEN AKTIENGESELLSCHAFT

Defendant

Proceedings under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

Date: December 22, 2016

Issued by: _____

Registrar

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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 at artificially high prices 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 (the “**Omission**”), 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 George Leon in his capacity as Trustee of the George Leon Family Trust;
- p) “**SEC**” means the U.S. Securities and Exchange Commission;
- q) “**Securities**” means the same definition as found in the Ontario Securities Act and, specifically VW’s ADRs and shares;
- r) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval, which is a filing system developed for the Canadian Securities Administrators; and
- s) “**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 the Plaintiff 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) A declaration that the release of VW's Misrepresentation caused the Plaintiff and Class Members to acquire VW's Securities at artificially high prices;
- e) The assessment of damages pursuant to common law measured by the closing price of VW's Securities immediately prior to the release of the Corrective Disclosure and the closing price after the release of 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 in respect of individual issues;
- f) In the alternative to the tort measured damages, the Plaintiff and the Class Members advance the doctrine of waiver of tort and seek rescissionary damages measured by selling the VW Securities that they purchased during the Class Period back to VW for their purchase price;
- g) 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;
- h) Pre-judgment interest and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- i) 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
- j) 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) During the Class Period, in order to sell its cars in North America and to increase its investment quality and the corresponding price for its Securities, VW created and installed a software function in millions of its 2.0 and 3.0 litre diesel engines that cheated emissions tests in Canada and the US, providing false readings of nitrous oxide

emissions as compared to the emissions of nitrous oxide emitted under normal driving conditions (herein “defeat device”).

5) The fraudulent scheme allowed VW to brand its diesel engines as “clean diesel engines” when in fact they produced up to 40 times the permitted amount of nitrous oxide. The fraudulent scheme allowed VW to sell millions of vehicles installed with its diesel engines in North America, including Ontario, that otherwise could not be sold or driven in Ontario and throughout Canada and the United States.

6) Nitrous oxide is a toxic pollutant known to cause serious health issues and environmental damage, hence vehicle emissions of nitrous oxide are strictly controlled in both Canada and the United States.

7) The Defendant is a publicly-traded corporation that lists its Securities, specifically its preference and ordinary ADRs and shares, on various international stock exchanges. Its Securities also trade in over-the-counter markets, dark pools, and intra-broker markets.

8) In describing its investment quality and to encourage investors to purchase its Securities, the Defendant released its core documents on its website, allowed for Canadian-based investment banks to publish research reports on VW’s investment quality as well as its wholly owned subsidiaries, and directed that various core documents be sent to Class Members. The Defendant also released its non-core documents on its website and elsewhere, including the internet and it made public statements, including the product information stickers it affixed to each diesel vehicle that it exported to Ontario, Canada and the United States, which stated that the diesel vehicles complied with all relevant environmental emissions regulations, all in order to induce Ontario-based investors to purchase the Defendant’s Securities.

9) In addition to containing the Misrepresentation, the Defendant's core and non-core documents and public statements 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 NO₂ emissions.

10) The release of the Defendants' Misrepresentation caused the Plaintiff and the Class Members to purchase VW's Securities at artificially high prices and holding all or some of those Securities until after the release of the Corrective Disclosure.

11) On September 20, 2015, the Defendant commenced a process of releasing one of the several Corrective Disclosures acknowledging that it had created the defeat device for use in its diesel-automobiles to enable them to manipulate and contravene environmental standards during the Class Period.

12) This Corrective Disclosure, independently and in combination with the subsequent Corrective Disclosures and VW's guilty plea in the United States, confirmed that the Defendant's core and non-core documents and public statements about clean diesel released during the Class Period were materially false and misleading, because, among other things, the Omission had not been disclosed and the truth of the Misrepresentation.

13) 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%.

14) 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%.

15) 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%.

16) 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%.

17) All Class Members suffered the same, per Security, amount in damages.

THE PLAINTIFF

18) The Plaintiff is George Leon in his capacity as Trustee of the George Leon Family Trust (the "Trust").

19) Mr. Leon is a retiree who resides in Ontario.

20) Mr Leon is authorized on behalf of the Trust to bring this action and to make investment decisions on its behalf as Trustee.

21) Mr. Leon read VW's documents containing the Misrepresentation and heard its public statements about its "clean diesel" technology, including VW's supposed

compliance with emission standards. Believing the Misrepresentation to be true, Mr. Leon, as the Trustee of the Trust, acquired VW's ADRs prior to the Corrective Disclosure. The Trust held all those Securities until after the Corrective Disclosure, and it suffered an economic injury because its VW Securities dropped in value as a direct and foreseeable result of the Corrective Disclosure concerning the Misrepresentation, including the Omission.

22) The Trust holds a brokerage account with TD Waterhouse in Ontario. In June 2013, Mr. Leon, as Trustee of the Trust, believing the Misrepresentation to be true, purchased a total of 600 American Depository Receipts ("ADRs") of VW for the Trust, investing a total sum of US\$24,317. In October 2014, Mr. Leon purchased an additional 700 ADRs for the Trust, bringing its total investment in VW ADRs to approximately US\$51,884 for all 1,300 ADRs. The Trust held its VW ADRs in its TD Waterhouse account in Ontario until after the release of the first Corrective Disclosure.

23) 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.

24) 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.

25) The Plaintiff has common interests that it 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.

26) On behalf of all Class Members, the Plaintiff seeks damages measured by the closing price of VW's Securities immediately prior to the release of the Corrective Disclosure and the closing price after the release of the Corrective Disclosure; or alternatively to the tort measured damages, the Plaintiff and the Class Members advance the doctrine of waiver of tort and seek rescissionary damages measured by selling the VW Securities that they purchased during the Class Period back to VW for their purchase price.

THE DEFENDANT

27) 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.

28) VW owns and operates the Volkswagen Group, which has 120 production sites throughout the world. Volkswagen Group Canada Inc ("VW Canada") is one of VW's wholly owned subsidiaries, first directly owned, and then indirectly owned by VW during the Class Period. VW sells the vehicles it manufactures to VW Canada and exports those vehicles into Canada. VW is obliged to report to Environment Canada and other regulatory agencies regarding the emissions standards of the vehicles it ships to Canada for sale in Ontario, and VW is required to comply with the emissions standards

set by Environment Canada and other regulatory agencies with respect to the vehicles it exports to Ontario, and elsewhere in Canada.

29) VW Credit Canada, Inc. operates as a subsidiary of VW (“VW Credit Canada”). The company was incorporated in 1989 and is based in St. Laurent, Canada. VW Credit Canada offers automotive financing for VW AG vehicles sold in Canada. VW Credit Canada has raised funds in Canada for its operations.

30) VW issues equity securities in the form of preference and ordinary shares under the ticker symbols “VLKAY” and “VLKPY” and has entered into an agreement with JP Morgan allowing that company to offer VW ADRs under the ticker symbols, VOW and “VOW3”. Five ADRs correspond to one underlying VW ordinary or preferred share.

31) 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.

32) 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.

33) 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.

34) During the Class Period, VW created and operated a website to promote its clean diesel technology which was accessible and accessed from Ontario by members of the Class.

35) Ontario-based investors held well over a million shares and ADRs of VW.

36) As a result of “dieselgate” six senior executives of VW have been indicted in the US, including the former CEO of VW, Martin Winterkorn. Two of the six executives have pled guilty to the criminal charges against them in the United States.

THE MATERIAL FACTS

37) In 2007 and 2008, 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 NO₂ tests. VW’s senior executives ignored this warning and authorized the use of defeat device in its diesel engine vehicles in order to cheat emissions tests.

38) 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.

39) 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.

40) 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)

41) The 2008 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂

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

42) This Omission artificially inflated VW's investment quality and Securities prices.

43) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class would not have purchased Securities or additional Securities of VW at the inflated prices they paid, or at all.

44) 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.

45) 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)

46) The 2009 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

47) The above Omissions artificially inflated VW's investment quality and Securities prices.

48) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class would not have purchased VW Securities or additional Securities of VW at the inflated prices they paid, or at all.

49) 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.

50) 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 CO₂ emissions. (p. 217)

51) The 2010 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

52) The above Omissions artificially inflated VW's investment quality and Securities prices.

53) 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 NO₂ being produced by its diesel engines in order to defeat government

emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class would not have purchased VW Securities or additional Securities of VW at the inflated prices they paid, or at all.

54) 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.

55) 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)

56) The 2012 Annual report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

57) The above Omissions artificially inflated VW's investment quality and Securities prices.

58) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class

would not have purchased VW Securities or additional Securities of VW at the inflated prices they paid, or at all.

59) 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.

60) 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 CO₂ emissions. (p. 241)

61) The 2012 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

62) The above Omissions artificially inflated VW’s investment quality and Securities prices.

63) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and/or members of the Class would not have purchased VW Securities or additional Securities of VW at the inflated prices they paid, or at all.

64) 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.

65) 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 CO₂ emissions. (p. 147)

66) The 2013 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

67) In 2013, the Misrepresentation was further disseminated by VW Canada, VWAG’s agent in Canada, when it organized the “Volkswagen Great Canadian TDI Clean Diesel Tour”, a driving tour from Halifax to Vancouver showcasing the fuel efficiency and emissions performance of five Volkswagen brand models.

68) The above Omissions artificially inflated VW’s investment quality and Securities prices.

69) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class

would not have purchased Securities or additional Securities of VW at the inflated prices they paid, or at all.

70) 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.

71) 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.

72) 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".

73) 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.

74) 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)

75) The 2014 Annual Report did not disclose that the CleanDiesel technology included secret, undisclosed software that would defeat or otherwise manipulate NO₂ tests to produce false low emissions compared to the emissions produced during normal operation of the vehicles.

76) In addition to the Misrepresentation contained and repeated in VW's annual reports throughout the Class Period, for the years 2008 to 2012 VW's annual reports included a "Consumption and Emission Data" chart which contained false and misleading information regarding the emissions from VW's vehicles.

77) Each of these charts was sent to and accessible by investors in Ontario.

78) These charts mislead investors and created a false perception that VW's vehicles' emissions complied with emission standards, when in fact they did not.

79) The above Omissions together with the false affirmative Misrepresentations artificially inflated VW's investment quality and prices for its Securities.

80) 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 NO₂ being produced by its diesel engines in order to defeat government emission tests on over ten million of its branded vehicles, and thereby artificially increase the price for its Securities, the Plaintiff and members of the Class would not have purchased VW Securities or additional Securities of VW at the inflated prices they paid, or at all.

81) Throughout the Class Period, VW affixed stickers or ‘National Emission Marks’ to the engines of the cars it sold in order to comply with the requirement of the Canadian Environmental Protection Act 1999 (“CEPA”). Affixing the National Emissions Mark, or equivalent sticker, to its cars was a representation to the public in Canada including the Class that VW vehicles complied with Canadian emission standards, per section 153(1) CEPA, and part of the Misrepresentation.

82) Throughout the Class Period when VW made and/or repeated the Misrepresentation in its core documents, non-core documents and public statements, senior management of VW was aware that the Misrepresentation was false, or recklessly disregarded that it was false.

THE CORRECTIVE DISCLOSURE

83) 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-litre diesel vehicles with defeat devices to bypass, defeat, or render inoperative elements of the vehicles’ emission-control system.”

84) 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.

85) 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.

86) 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.

87) 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).

88) 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."

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

90) 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%.

91) 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%.

92) 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%.

93) 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%.

94) 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

95) 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

96) 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."

97) 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

98) 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.

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

100) 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

101) The elements of common law fraudulent misrepresentation are: (i) the Defendant made a false representation, (ii) the Defendant had some level of knowledge of the falsehood of the representation or was reckless in not caring whether the statement was true or false, (iii) the false representation caused the Plaintiff and the Members of the Class to act, and (iv) the Plaintiff's actions and the Class Members' actions resulted in loss.

102) 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 including those in Ontario and Canada. VW also made the decision to publicly state, repeatedly, orally and through its public disclosure, that it was in compliance with emission standards, when it knew it was not. 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.

103) VW made the decision to release core and non-core documents containing the Misrepresentation, and to make public statements 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.

104) VW also made the decision to not disclose its scheme to manipulate emission standards testing, knowing that the scheme and the Omission was material information which would: (a) artificially inflate its investment quality; (b) artificially inflate the price of its Securities; and (c) cause a reasonable investor to purchase its Securities at an artificially high price(s).

105) VW is directly and vicariously liable for the decisions and actions of the persons within VW who caused the defeat device to be employed and the Misrepresentation to be made.

106) VW's Misrepresentation had a direct and foreseeable result of the Plaintiff and the Class Members to purchase VW's Securities at artificially high prices.

107) Had the truth behind the Misrepresentation been disclosed to the Class they would (a) have purchased VW's Securities at a lower price, or (b) not have purchased the VW Securities.

108) The Plaintiff and the members of the Class suffered an economic injury when VW released the Corrective Disclosure, 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.

COUNT 2: WAIVER OF TORT

109) In the alternative, the Plaintiff waives the tort of fraud damages and pleads that he and the Class Members are entitled to recover under restitutionary principles; such as rescissionary damages measured by selling the VW Securities that they purchased during the Class Period back to VW for their purchase price.

THE CLASS PROCEEDINGS ACT, 1992

110) 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 on behalf of itself and the members of the Class, (i) a claim of fraudulent misrepresentation against VW for releasing core and non-core documents and making public statements while knowing that these core and non-core documents and public statements contained the Misrepresentation, and, in the alternative, (ii) a claim for waiver of tort against VW.

111) The Plaintiff alleges that this second fresh as amended statement of claim discloses a cause of action for the tort of fraudulent misrepresentation and, in the alternative, waiver of tort.

112) 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.

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

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

115) 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

116) The Plaintiff and the members of the Class suffered economic injuries as a result of acting on VW's core and non-core documents and public statements 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 Class Members pursuant to common law. Alternatively, the Plaintiff and Class Members are entitled to recover under restitutionary principles.

117) 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 legal fees and costs.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO, CANADA

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

- (a) The Plaintiff alleges that the Defendant engaged in an intentional tort directed to the Plaintiff and Class Members in Ontario;

- (b) The Plaintiff is Trustee of a Trust that is domiciled in Ontario;
- (c) All Class Members are domiciled or residents of Ontario;
- (d) The Plaintiff brings this action in his capacity as Trustee of the Trust which is governed by the laws of Ontario;
- (e) The Trust's brokerage account holding the ADRs of VW was and continues to be in Ontario;
- (f) The Plaintiff's decisions to purchase ADRs of VW were made in Ontario, based upon receipt of the Misrepresentations received in Ontario, and the Trustee gave instructions to the Trust's broker to acquire the VW ADRs in Ontario, and the steps taken by the broker to acquire the ADRs were initiated in Ontario;
- (g) The core and non-core documents and public statements referred to herein as containing the Misrepresentation were directed to and received in Ontario by the Plaintiff and Class Members;
- (h) The Plaintiff and Class Members suffered damages in Ontario;
- (i) During the Class Period, VW sent executives, marketing materials and other core and non-core documents containing the Misrepresentation to Ontario to market its investment quality to induce Ontario-based residents to purchase its diesel-powered automobiles and Securities;
- (j) VW entered into contracts in Ontario for the export of vehicles to Ontario with VW Canada, communicated with Canadian environmental and regulatory authorities in Ontario, and shipped the vehicles to Ontario, and thereby carried on business in Ontario;
- (k) VW Canada acted as VW's agent in Canada, helping carry out its core business of manufacturing and selling cars. VW carried on business in Ontario both in its own right and via its agent, VW Canada; and
- (l) During and after the Class Period, VW directed its wholly owned subsidiary VW Credit Canada to issue billions of dollars worth of Securities in the form of bonds, which were underwritten by Canadian banks and sold to Ontario investors.

SERVICE OUTSIDE OF ONTARIO

119) Pursuant to Rules 17.02(g) and 17.04(1) of the Ontario *Rules of Civil Procedure*, this second 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 and selling cars (rule 17.02(p)).

RELEVANT LEGISLATION

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

PLACE OF TRIAL

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

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THE GEORGE LEON FAMILY TRUST**

**v. VOLKSWAGEN
AKTIENGESELLSCHAFT**

Plaintiff

Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

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