

ORIGINAL

APR 12 2018

VENTURA
SUPERIOR COURT
FILED

APR 12 2018

MICHAEL D. PLANET
Executive Officer and Clerk
BY: Fabian Duran Deputy
FABIAN DURAN

1 Ari E. Moss (SBN 238579)
2 MOSS BOLLINGER, LLP
3 15300 Ventura Blvd., Suite 207
4 Sherman Oaks, CA 91403
5 Ph: (310) 982-2984
6 Fax: (818) 963-5954
7 ari@mossbollinger.com

8 Mary Neifert (SBN 237062)
9 Anoiel Khorshid (SBN 223912)
10 Neifert Khorshid, A PLC
11 2625 Townsgate Rd., Suite 330
12 Westlake Village, CA 91361-5749
13 Ph: (805) 267-1112
14 Fax: (805) 267-9776

15 Attorneys for Plaintiff Michael D'Amore

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF VENTURA

18 MICHAEL D'AMORE, on behalf of
19 himself and those others similarly situated,

20 Plaintiffs,

21 vs.

22 VOLKSWAGEN GROUP OF
23 AMERICA, INC., VOLKSWAGEN
24 AKTIENGESELLSCHAFT, and DOES 1-
25 10,

26 Defendants.

27 CASE NO. 56-2018-00510371-CU-BT-VTA

28 CLASS ACTION COMPLAINT

1. Violation of the Magnuson-Moss
Warranty Act (15 U.S.C. § 2301, *et seq.*)
2. Violation of Consumer Legal Remedies
Act (Cal. Civ. Code § 1750, *et seq.*,
seeking injunctive relief only)
3. Violation of California Unfair
Competition Law (Business and
Professions Code § 17200, *et seq.*)
4. Violations of the California False
Advertising Law (Bus. & Prof. Code §
17500, *et seq.*)
5. Common Law Fraud
6. Breach of Implied Warranty
7. Breach of Express Warranty

DEMAND FOR JURY TRIAL

BY FAX

2-ED

1 Plaintiff Michael D'Amore ("Plaintiff"), by and through his attorneys, bring this action on
2 behalf of himself and all others similarly situated against Volkswagen AG and Volkswagen
3 Group of America, Inc. ("Volkswagen"). Plaintiff alleges the following upon information and
4 belief, except as to those allegations that pertain to Plaintiff.

5 **I. NATURE OF THE ACTION**

6 1. Volkswagen has represented itself as one of the safest automobile brands
7 manufacturing and selling vehicles in America. "It brakes when you don't," was a pledge made in
8 commercials to American consumers when Volkswagen tried to sell its 2016 models.

9 2. Volkswagen represented that its 2016 and 2017 models contained two technology
10 systems: Forward Collision Warning and Autonomous Emergency Braking (the "Systems").
11 Attached as Exhibits 1 through 8 are true and correct copies of the relevant pages from
12 Volkswagen Owner's Manuals explaining the operation of the system in some of the Class
13 Vehicles.¹ These owner's manuals explain the operation of the Autonomous Emergency Braking
14 system and the relevant speeds at which the system can operate. Additionally, Volkswagen made
15 representations in press releases, including in 2016 about the 2017 Passat. Attached as Exhibit 9 is
16 a true and correct copy of a 2016 Press Release from Defendants discussing the features of the
17 2017 Passat, including the Autonomous Emergency Braking system.

18 3. Despite Volkswagen's representations, at no point in 2016 or 2017 did these
19 systems properly work at speeds over 18 miles per hour. Attached as Exhibit 10 is a statement by
20 the Insurance Institute for Highway Safety ("IIHS") of how points are allocated for safety
21 systems, including, in the marked section, the safety system at issue herein. Attached as Exhibit
22 11 are the results from the IIHS's analysis of these systems in the Class Vehicles. Therein, the
23 Class Vehicles do not earn points for the safety systems represented and warranted by
24 Volkswagen.
25
26
27
28

¹ "Class Vehicles" is defined in paragraph 11 herein.

1 4. Volkswagen's intentional misrepresentation of the safety Systems rendered the
2 vehicles less valuable than the price for which they were sold.

3 5. Not only did Volkswagen's misrepresentation of the Systems diminish the value of
4 its 2016 and 2017 vehicles, Volkswagen endangered the owners and drivers who relied on the
5 safety technology promised, warranted and sold in its 2016 and 2017 vehicles.

6 6. Plaintiff, on behalf of himself and on behalf of a class of California residents who
7 purchased or leased Class Vehicles ("Class Members"), brings this action challenging
8 Volkswagen's deceptive representations and omissions regarding the safety of its nearly 100,000
9 2016 and 2017 vehicles sold in California and marketed as part of Volkswagen's broad-based
10 campaign to capitalize on safety concerns of consumers, including consumers with children.

11 7. Volkswagen utilized high-impact television commercials, the Internet, and print
12 advertisements that misleadingly touted safety.

13 8. Volkswagen's scheme may have succeeded except for testing conducted by the
14 IIHS (as evidenced in Exhibits 10 and 11).

15 9. Specifically, Volkswagen knowingly and intentionally misrepresented safety
16 features available in its 2016 and 2017 models.

17 10. Volkswagen's deliberate scheme impacted at least the vehicles listed in the chart
18 below in paragraph 11 ("Class Vehicles") and endangered not only the owners/operators of the
19 vehicles, but also the general driving public whose lives were at risk while driving on the
20 highways and streets alongside what drivers of Class Vehicles believe are vehicles equipped with
21 particular safety features. Further investigation may uncover additional vehicle models and model
22 years affected by Volkswagen's illegal ploy.

23
24 ///

25 ///

26 ///

27 ///

28 ///

11. The Class Vehicles are defined as:

Model Year	Vehicle Model
2016	Golf, Golf GTI ("GTI"), Golf R, e-Golf, Golf SportWagen
2016	CC
2016	Jetta
2016	Passat
2017	Golf, Golf GTI ("GTI"), Golf R, e-Golf, Golf Alltrack, Golf SportWagen
2017	CC
2017	Jetta
2017	Passat

12. Because of Volkswagen's illegal conduct, Volkswagen deceitfully sold every proposed Class Vehicle to consumers based on knowingly false representations concerning the actual safety features available and standard on the Class Vehicles. Volkswagen's widespread advertising based on the existence of these safety features in the Class Vehicles was also false and misleading.

13. Volkswagen's misrepresentations and omissions regarding the Class Vehicles' safety in advertising, public statements, marketing materials, and owner's manuals were material factors in inducing Plaintiff and Class Members to purchase the Class Vehicles. As a result of Volkswagen's scam, over one million Class Vehicles were purchased worldwide based on misleading and downright false claims of the Class Vehicles' attributes. Had Plaintiff and Class Members known that the Class Vehicles lacked the safety features advertised and promised, and instead that such representations were part of a calculated scheme by Volkswagen to deceive consumers, Plaintiff and the Class Members would not have purchased or leased their respective Class Vehicles, or Plaintiff and Class Members would have paid significantly less for the vehicles than they did.

14. This lawsuit seeks to remedy Volkswagen's premeditated scheme to defraud and ultimately endanger the public.

1 **II. THE PARTIES**

2 15. **Plaintiff Michael D'Amore** is a retired executive living in Ventura County,
3 California. Since childhood, Mr. D'Amore has had visual depth perception problems, and as a
4 result is a cautious, and safety-conscious consumer.

5 16. On November 11, 2016, Mr. D'Amore returned his 2014 Diesel Passat. At the
6 time he returned the 2014 Passat, Mr. D'Amore intended to purchase a 2017 Ford Fusion. Simply,
7 he was willing to wait for delivery of the new Fusions. However, he was told by employees at the
8 Neftin Volkswagen Dealership in Thousand Oaks, California, ("Neftin Volkswagen") that the
9 2017 Passat had the same safety features as the 2017 Fusion and that they could locate a 2017
10 Passat for him. Specifically, that like the 2016 before it, the 2017 Passat had autonomous braking
11 at higher speeds. This feature was material to Mr. D'Amore's purchase of the 2017 Passat.

12 17. Thereafter, the Neftin Volkswagen salesman showed Mr. D'Amore press releases
13 and other information from Volkswagen about the feature. Additionally, Mr. D'Amore viewed
14 commercials on YouTube highlighting the safety feature.

15 18. Mr. D'Amore purchased the 2017 Passat specifically because it contained safety
16 features that provided for autonomous braking at speeds over 25 miles per hour.

17 19. Based on the representations mentioned above, Mr. D'Amore purchased a brand
18 new 2017 Passat from Neftin Volkswagen in November of 2016.

19 20. Upon purchasing his 2017 Passat, Mr. D'Amore was given and read the owner's
20 manual for his new vehicle which contained a representation that the 2017 Passat has high-speed
21 autonomous braking system as a standard feature.

22 21. **Defendant Volkswagen Aktiengesellschaft.** Established in 1937, Defendant
23 Volkswagen Aktiengesellschaft ("Volkswagen AG") is a German car corporation organized and
24 existing under the laws of Germany, with its principle place of business in Wolfsburg, Germany.
25 Volkswagen AG is the parent company of Volkswagen Group of America, Inc., also a named
26 Defendant in this Complaint. Both Defendants (Volkswagen AG and Volkswagen Group of
27 America, Inc.) are collectively referred to in this complaint as "Volkswagen."
28

1 22. **Volkswagen Group of America, Inc.** Founded in 1955, Defendant Volkswagen
2 Group of America, Inc. ("VW of America") is a wholly-owned subsidiary of Volkswagen AG, a
3 corporation organized and in existence under the laws of the State of New Jersey and registered
4 with the California Secretary of State to conduct business in California. Volkswagen is one of the
5 world's largest producers of passenger cars and Europe's largest automaker. VW of America sells
6 its vehicles through over 600 independent dealers in the United States. VW of America's
7 operations in the United States include research and development; parts and vehicle processing;
8 parts distribution centers; sales; marketing; services offices; financial service centers; and a state-
9 of-the-art manufacturing facility in Chattanooga, Tennessee (the Volkswagen Chattanooga
10 Assembly Plant, which opened in 2011 and currently has over 3,200 Volkswagen employees, and
11 over 9,500 indirect supplier employees).

12 23. Volkswagen operates an Electronics Research Laboratory in Belmont, California.
13 The Volkswagen Electronic Research Laboratory ("ERL") is located at 500 Clipper Drive,
14 Belmont, California, 94002. ERL is part of the global research and development network that
15 supports Volkswagen's brands, including Audi, Bentley, Bugatti, Lamborghini, Porsche, and
16 Volkswagen. The ERL is a subsidiary of VW of America, with the parent company being VW of
17 America. The ERL was touted as one of Volkswagen's largest research facilities outside of
18 Germany and takes advantage of its proximity to Silicon Valley to cultivate numerous
19 partnerships to enhance the knowledge of Volkswagen.

20 24. Volkswagen also operates a test center and emissions lab in Ventura County,
21 California. This facility, known as the "Test Center California in Oxnard" is a 64,000 square foot
22 development and emissions lab. Volkswagen employs approximately fifty engineers and
23 instructors who work on government compliance, powertrain, parts analysis, dealer service and
24 training, and emissions quality testing. Per Volkswagen's statements, "Test Center California
25 represents the latest step in the Volkswagen Group's \$4 billion growth strategy for the U.S.
26 market, which includes an investment of more than \$100 million in California. The Oxnard
27 facility will be the only Volkswagen Group research and development center of its kind in North
28

1 America with a primary focus on powertrain and systems development, governmental compliance
2 and field quality testing. Engineers at the TCC will continue to play a pivotal role in the
3 integration of engine development into the product development process, acting as the final stop
4 before vehicles are approved for production.”

5 25. During the Class Period, each Defendant acted as an agent, servant, employee,
6 and/or joint venturer of the Defendants and in doing the things alleged acted within the course of
7 such agency, employment, and/or in furtherance of the joint venture to accomplish the scheme.
8 Each of Defendants’ acts alleged herein was done with the permission and consent of each of the
9 other Defendants. While each of the Defendants are separate legal entities, Defendants work
10 together under a common identity as portrayed to the public and there is sufficient unity of
11 interest and control between each Defendant such that the acts of one are for the benefit of and
12 can be imputed to the other.
13

14 26. During the Class Period, Volkswagen was engaged in the business of designing,
15 manufacturing, constructing, assembling, marketing, advertising, promoting, distributing, and/or
16 selling automobiles and other motor vehicles and motor vehicle components throughout the
17 United States.

18 27. **DEFENDANTS DOES 1-10** Plaintiff is unaware of the true names of Defendants
19 DOES 1 through 10. Plaintiff sues said Defendants by said fictitious name and will amend this
20 complaint when the true names and capacities are ascertained or when such facts pertaining to
21 liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes
22 that each of the fictitiously named Defendants is in some manner responsible for the events and
23 allegations set forth in this complaint.

24 28. **CO-CONSPIRATORS** Plaintiff is informed and believes, and based thereon
25 alleges, that at all relevant times, each Defendant was an employer, was the principal, agent,
26 partner, joint venture, officer, director, controlling shareholder, subsidiary affiliate, parent
27 corporation, successor in interest and/or predecessor in interest of some or all of the other
28 Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for

1 profit and bore such other relationships to some or all of the other Defendants so as to be liable
2 for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed
3 and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the
4 relationships alleged above, and that at all relevant times, each Defendant knew or should have
5 known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of
6 all other Defendants. As used in this complaint "Defendant" means "Defendants and each of
7 them," and refers to the Defendants named in this particular action.

8 29. At all times mentioned herein, each Defendant was the co-conspirator, agent,
9 servant, employee, and/or joint venture of each of the other Defendants and was acting within the
10 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
11 permission and consent and knowledge of each of the other Defendants.

12 30. Plaintiff makes the allegations in this complaint without any admission that, as to
13 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and
14 Plaintiff reserves all of Plaintiff's rights to plead in the alternative.
15

16 **III. JURISDICTION AND VENUE**

17 31. This Court has personal jurisdiction over Plaintiff because Plaintiff resides in the
18 County of Ventura, California, and submits to the Court's jurisdiction. This Court has personal
19 jurisdiction over Volkswagen because Volkswagen has conducted and continues to conduct
20 substantial business in California, and has sufficient minimum contacts with California in that: (1)
21 Volkswagen's Electronics Research Laboratory is located in Belmont, California; (2) its Test
22 Center California is located in Oxnard, California; (3) its Design Center is located in Santa
23 Monica, California; (4) its Pacific Region Office is located in Westlake Village, California; and
24 (5) its Parts Distribution Center is located in Ontario, California.

25 32. This Court has jurisdiction over this action under Article 6 of the California
26 Constitution and California Code of Civil Procedure § 410.10.
27
28

33. This Court has jurisdiction over Plaintiff's and the Class Members' claims for injunctive relief, and restitution and other ill-gotten benefits arising from Defendant's unlawful and/or unfair business practices under California Business & Professions Code §§17200 *et seq.*

34. Venue is proper in this judicial district, pursuant to California Code of Civil Procedure § 395.5 because the acts, conduct, omissions, and events alleged herein, occurred in part as to a large portion of the Class Members in this County.

35. Venue is proper in this Court because Volkswagen sells a substantial amount of automobiles in this County, has dealerships in this County, maintains and operates a Test Center in this County, and many of Volkswagen's acts complained of herein occurred within this County. Furthermore, a substantial part of the events alleged in this Complaint, giving rise to Plaintiff's claims, including the false and misleading advertising alleged herein, occurred in, emanated from and/or were directed from this County. Venue is also proper in this Court because Volkswagen caused harm to Class Members residing in this County.

IV. FACTUAL ALLEGATIONS

36. Beginning with advertisements for model year 2016, Volkswagen promoted an autonomous braking system that operated at speeds well over 25 miles per hour.

37. To further support their nefarious advertisements, Volkswagen had the temerity to put into the owner's manuals for each of the Class Vehicles language that expressly warranted and promised collision warnings and autonomous emergency braking. Specifically, the language provided in pertinent part (also attached as Exhibits 1 through 8 hereto):

Distance warning

If the vehicle is traveling within a speed of about 44-130 mph (70-210 km/h), the system warns the driver with a message in the instrument cluster display (→fig. 144 [symbol]) if it detects that the vehicle is driving too close to the vehicle ahead→ [symbol] in *Introduction* on page 270. No acoustic warning will sound.

The warning period varies according to the traffic situation and your driving style.

1 **Increase the distance between your vehicle and the vehicle**
2 **ahead.**

3 **Advance warning**

4 If the vehicle is traveling within a speed range of about 18-130 mph
5 (30-210 km/h), the system warns the driver with a warning chime
6 and a message in the instrument cluster display (→ fig. 145 [image
7 on page] if it detects a possible collision with a vehicle
8 → [symbol] in *Introduction* on page 270.

9 The warning period varies according to the traffic situation and
10 your driving style.

11 **Brake or take action to avoid the vehicle ahead!**

12 However, do not rely solely on Front Assist. Under certain
13 conditions, the reactions of Front Assist may be unexpected or
14 delayed from the driver's viewpoint. Always pay attention and take
15 over if necessary → [symbol].

16 **Immediate warning**

17 If you fail to respond to the advance warning, within a speed range
18 of about 18-130 mph (30- 210 km/h), Front Assist can initiate a
19 short active braking maneuver, should you not react accordingly to
20 an advance alert. In this case you will notice brief, jerky braking of
21 the vehicle to warn you of an impending collision.

22 The moment of this alert can vary, depending on the traffic situation
23 and the driving behavior.

24 **Autonomous Emergency Braking**

25 If you should also fail to react to the immediate warning, within a
26 speed range of about 3-130² mph (5-210 km/h), Front Assist can
27 initiate an automatic braking maneuver that will **abruptly-**
28 **decelerate the vehicle** with elevated braking force. The emergency
 braking maneuver occurs shortly before a potential collision to
 reduce vehicle speed and help minimize the effects of a collision.

...

Braking support

Front Assist can help to minimize the effects of a collision by
supporting with additional braking force in case of an emergency
braking situation, should the system detect that the force applied to
the brake pedal by the driver is not sufficient to avoid a collision. In

² This range varies based on the model type. The language herein is specifically taken from the 2017 Passat Owner's Manual.

1 order for Front Assist to apply this support, it must have detected an
2 impending collision with another vehicle ahead of yours and the
3 brake pedal has to be hit hard and suddenly. However, this support
only works as long as the brake pedal is depressed.

4 Front Assist considers the driver's response time to give warnings
5 in time. This response time reduces automatically when the system,
6 for example, detects movement of the accelerator or steering wheel.
The system thus prevents unnecessary brake interventions, for
example, when the driver passes another vehicle.

7 Front Assist cannot react when approaching standing objects ahead
8 of you, for example, when driving up to a line of stopped vehicles
9 in heavy traffic.

10 38. As seen, Volkswagen made representations and warranties about the collision
11 warning system, how it operates, and the features provided therein.

12 39. However, Volkswagen never made such features available for vehicles traveling in
13 excess of 25 miles per hour. Based on personal experience, while driving his 2017 Passat in
14 excess of 25 miles per hour, Plaintiff did not experience any warning (visual or auditory), nor did
15 his vehicle engage in any autonomous braking.

16 40. Moreover, Plaintiff is informed and believes, and based thereon alleges, that the
17 Class Vehicles never had such safety technology and that Volkswagen knew or had reason to
18 know that such technology was either not available or did not function on their vehicles.

19 41. Volkswagen's imputed knowledge of this defect, is based, in part, on the results of
20 published unbiased testing conducted by the Insurance Institute for Highway Safety ("IIHS").

21 42. Based on IIHS testing, not one of the tested Class Vehicles had any high speed
22 autobrake technology that would reduce speed in a meaningful way, when the vehicle was
23 traveling over 25 miles per hour.

24 43. As reported by the IIHS, the 2016 and 2017 Passat speed was reduced by 0 miles
25 per hour when the Passat was traveling at 25 miles per hour.

26 44. As reported by the IIHS, the 2016 and 2017 Golf speed was reduced by 1 mile per
27 hour, when the Golf was traveling at 25 miles per hour.
28

1 45. As reported by the IIHS, the 2016 and 2017 Golf Sportwagen speed was reduced
2 by 1 mile per hour, when the Golf Sportwagen was traveling at 25 miles per hour.

3 46. As reported by the IIHS, the 2017 Golf Alltrack speed was reduced by 1 mile per
4 hour, when the Golf Alltrack was traveling at 25 miles per hour.

5 47. As reported by the IIHS, the 2016 Jetta speed was reduced by 0 miles per hour,
6 when the Jetta was traveling at 25 miles per hour.

7 48. As reported by the IIHS, the 2017 Jetta speed was reduced by 0 miles per hour,
8 when the Jetta was traveling at 25 miles per hour.

9 49. Despite these test results, Volkswagen maintains that the vehicles have the high
10 speed autonomous braking function.

11 50. When totaled, Volkswagen sold over 600,000 vehicles in the United States that
12 Volkswagen warranted had autonomous braking, but actually did not have autonomous braking.
13

14 **V. PLAINTIFF AND THE CLASS WERE HARMED BY VOLKSWAGEN'S**
15 **ACTIONS**

16 51. As a result of Volkswagen's actions, Plaintiff and the Class have been harmed.
17 Class Members would never have purchased the Class Vehicles, and/or would have paid
18 substantially less for their vehicle had they known the safety systems did not properly operate.
19 The Class Vehicles have lost value because of Defendants' actions and are not worth as much in a
20 trade or sale as if the vehicle had been as warranted. There is this actual harm and also the harm to
21 the brand, all which decreases the value of the Class Vehicles.

22 52. Accordingly, the Plaintiff and the Class have sustained incidental and
23 consequential damages as herein alleged.

24 **VI. CLASS ACTION ALLEGATIONS**

25 53. Plaintiff brings this action as a class action under California law on behalf of
26 himself and all others similarly situated. Plaintiff seeks to represent a Class of individuals (the
27 "Class") defined as:
28

1 All current and former owners of Class Vehicles who reside in the
2 State of California and/or who purchased or leased Class Vehicles
3 in California. Expressly excluded from the Class are Defendants
4 and their subsidiaries, affiliates, officers, directors, and employees.

5 54. Certification of the Class is appropriate pursuant to the applicable rules of Court,
6 statutes, and the public policy of the State of California. The proposed class is composed of tens
7 of thousands of persons dispersed throughout California and joinder is impracticable. The precise
8 number and identity of Class Members are unknown to Plaintiff at this time but can be obtained
9 from Volkswagen's internal records.

10 55. There are questions of law and fact common to the members of the Class, which
11 predominate over questions affecting only individual Class Members, inter alia:

- 12 a. Whether Volkswagen misrepresented the safety features of the Class Vehicles;
- 13 b. Whether Volkswagen publicized and advertised the safety features of the Class
14 Vehicles with respect to autonomous braking;
- 15 c. Whether Volkswagen's publicity and advertising regarding the safety features of
16 the Class Vehicles with respect to autonomous braking was misleading;
- 17 d. Whether the Class was harmed by the misrepresentation of the safety features of
18 the Class Vehicles;
- 19 e. Whether the Class is entitled to restitution of the purchase price of the Class
20 Vehicles;
- 21 f. Whether Volkswagen has engaged in unlawful, unfair or fraudulent business
22 practices;
- 23 g. Whether Volkswagen's misrepresentations and omissions regarding the safety
24 features of the Class Vehicles has deceived or is likely to have deceived Plaintiff
25 and the Class;
- 26 h. Whether Volkswagen's conduct violated the Magnuson-Moss Warranty Act;
- 27 i. Whether Volkswagen's conduct violated the California Consumer Legal Remedies
28 Act;

1 j. Whether Volkswagen's conduct violated California Business and Professions
2 Code § 17200, *et seq.*;

3 k. Whether Volkswagen's conduct violated California False Advertising Law
4 (Business and Professions Code § 17500, *et seq.*);

5 l. Whether Volkswagen breached express and/or implied warranties;

6 m. Whether Volkswagen's unlawful, unfair or deceptive practices have harmed
7 Plaintiff and members of the Class;

8 n. Whether Plaintiff and members of the Class are entitled to equitable or injunctive
9 relief;

10 o. Whether Plaintiff and members of the Class are entitled to damages,
11 including punitive damages; and

12 p. Whether Volkswagen has any common defenses applicable to the claims alleged
13 herein.

14
15 56. Plaintiff is a member of the Class and Plaintiff's claims are typical of the claims of
16 the Class.

17 57. Plaintiff is willing and prepared to serve the Court and the proposed Class in a
18 representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and
19 has no interests adverse to or which conflict with the interests of the other members of the Class.

20 58. The self-interest of Plaintiff is co-extensive with and not antagonistic to those of
21 absent Class Members. Plaintiff will undertake to represent and protect the interests of absent
22 Class Members.

23 59. Plaintiff has engaged the services of counsel who are experienced in complex class
24 litigation, will adequately prosecute this action, and will assert and protect the rights of and
25 otherwise represent the Plaintiff and absent Class Members.

26 60. The prosecution of separate actions by individual members of the Class would
27 create a risk of inconsistency and varying adjudications, establishing incompatible standards of
28 conduct for Volkswagen.

61. Volkswagen has acted on grounds generally applicable to the Class, thereby making relief with respect to the members of the Class as a whole appropriate.

62. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Prosecution of the complaint as a class action will provide redress for individual claims too small to support the expense of complex litigation and reduce the possibility of repetitious litigation.

63. Plaintiff anticipates no unusual management problems with the pursuit of this Complaint as a class action.

FIRST CLAIM

Violation of the Magnuson-Moss Warranty Act

15 U.S.C. § 2301 et seq.

(On Behalf of Plaintiff and the Class Against All Defendants)

64. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

65. Plaintiff and the Class bring this claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq. ("the Act").

66. The Class Vehicles are consumer products as defined in 15 U.S.C. § 2301(1).

67. Defendants are a supplier and warrantor as defined in 15 U.S.C. § 2301(4),(5).

68. Plaintiff and the Class received written warranties as defined in 15 U.S.C. §2301(6)(A) and/or (B), which Defendants have breached.

69. Plaintiff and the Class are "consumers" as defined in 15 U.S.C. § 2301(3). They are consumers because they bought a Class Vehicle. They are entitled under California law to enforce both written and implied warranties.

70. Pursuant to 15 U.S.C. § 2310(e), Plaintiff and the Class are not required to provide Defendants notice of this class action and an opportunity to cure until the time the Court determines the representative capacity of Plaintiff.

71. Defendants are liable to Plaintiff and the Class pursuant to 15 U.S.C. § 2310(d)(l) because they breached their written warranties.

72. Further, in connection with the sale of the Class Vehicles, Defendants gave an implied warranty under the Act. As part of that implied warranty, Defendants warranted that the Class Vehicle complied with all applicable federal and state regulations. Defendants breached the implied warranty of merchantability.

73. Plaintiff and the Class are entitled to damages caused by Defendants' breaches of the warranties, including economic damages based upon either a return of Plaintiff Class Members' purchase price; and/or the difference between the price paid for the Class Vehicle as warranted and the actual value of the Class Vehicle as delivered, and consequential damages.

74. In addition, Plaintiff and the Class are entitled to reasonable attorneys' fees and costs as determined by the Court.

75. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

SECOND CLAIM

Violations of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*

(On Behalf of Plaintiff and the Class Against All Defendants)

76. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

77. This cause of action is brought pursuant to the California Consumers Legal Remedies Act ("CLRA"), Civil Code section 1750, *et seq.* Plaintiff brings this action on his own behalf and on behalf of the Class Members, all of whom are similarly situated consumers within the meaning of Civil Code section 1781.

78. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically a motor vehicle, in consumer transactions. Volkswagen has violated, and continues to violate, the CLRA, Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16), and (a)(5) by:

- Representing to consumers purchasing the Class Vehicles that these vehicles possessed safety features that included autonomous braking at high speeds.

- Representing in their written and other advertising methods facts as true that are false with respect to safety features.

79. Plaintiff and the Class members have suffered harm as a result of these violations.

80. Plaintiff has suffered as a result of Volkswagen's unlawful conduct because they purchased the Class Vehicles believing, based on Volkswagen's representations, that the Class Vehicles had certain safety features and characteristics that made them as safe or more safe than other vehicles on the road. In fact, the Class Vehicles never had these features, and when advertised, Volkswagen knew that despite the advertising these features neither properly worked, or were extant in the Class Vehicles. These misrepresentations also resulted in higher purchase prices for the Class Vehicles and the subsequent revelation will result in lower resale value.

81. Volkswagen concealed from Plaintiff accurate information concerning the safety features and safety technology of the Class Vehicles.

82. Volkswagen's misrepresentations and omissions described in the preceding paragraphs were intentional, or alternatively, made without the use of reasonable procedures adopted to avoid such errors.

83. Volkswagen, directly or indirectly, has engaged in substantially similar conduct with respect to Plaintiff and to each member of the Class.

84. Unless Volkswagen is enjoined from engaging in such wrongful actions and conduct in the future, members of the consuming public will be further damaged by Volkswagen's conduct.

85. Plaintiff and the Class are entitled to equitable relief on behalf of the members of the Class in the form of an order, pursuant to Civil Code section 1780, subdivision (a)(2), prohibiting Volkswagen from continuing to engage in the above-described violations of the CLRA. Plaintiff and the Class further seek reasonable attorneys' fees under Civil Code section 1780(e).

86. Plaintiff reserves his rights to amend this cause of action to seek monetary relief once the necessary time elapses for his consumer notice to be considered.

1 87. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

2 **THIRD CLAIM**

3 **Violation of California Business and Professions Code § 17200, *et seq.***

4 **Unlawful Business Acts and Practices**

5 **(On Behalf of Plaintiff and the Class Against All Defendants)**

6 88. Plaintiff incorporates by reference each of the paragraphs set forth above as though
7 fully set forth hereinafter.

8 89. Business & Professions Code section 17200, *et seq.* prohibits acts of “unfair
9 competition” which is defined by Business & Professions Code section 17200 as including “any
10 unlawful, unfair or fraudulent business act or practice”

11 90. Volkswagen has violated and continues to violate Business & Professions Code
12 section 17200’s prohibition against engaging in “unlawful” business acts or practices, by, *inter*
13 *alia*, the following:

- 14 • Violating the CLRA, Civil Code section 1750, *et seq.* (as alleged herein);
- 15 • Violating the Magnuson-Moss Act;
- 16 • Engaging in fraudulent behavior; and
- 17 • Violating Business & Professions Code section 17500, *et seq.* (as further
18 alleged herein).

19 91. Volkswagen also acted fraudulently and unfairly for purposes of section 17200.
20 Volkswagen’s misrepresentations and omissions regarding the Class Vehicles’ safety technology
21 and safety performance in its advertising, public statements and marketing were a material factor
22 in inducing Plaintiff to purchase his Class Vehicle.

23 92. Plaintiff suffered injury in fact and lost money and/or property as a result of
24 Volkswagen’s unlawful business acts and practices and Class members have suffered harm when
25 each was required to pay a purchase price for their Class Vehicles which they never would have
26 purchased if the true facts were known; or paid a price in excess of what a Class Member would
27 have paid if Volkswagen had accurately disclosed the Class Vehicles’ true characteristics, and in
28 the form of decreased resale value of the Class Vehicles.

1 93. As a result of Volkswagen's violations of Business & Professions Code section
2 17200, *et seq.*, Plaintiff and the Class are entitled to equitable relief in the form of full restitution
3 for the inflated sale price of the Vehicles.

4 94. Plaintiff and the Class also seek an order enjoining Volkswagen from continuing
5 their unlawful business practices and from such future conduct.

6 95. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

7
8 **FOURTH CLAIM**

9 **For Violations of the California False Advertising Law,
10 Bus. & Prof. Code § 17500, *et seq.***

11 **(On Behalf of Plaintiff and the Class Against All Defendants)**

12 96. Plaintiff incorporates by reference each of the paragraphs set forth above as though
13 fully set forth hereinafter.

14 97. Volkswagen violated California's False Advertising Law, Business & Professions
15 Code sections 17500, *et seq.* by using false and misleading messages regarding the safety
16 technology and equipment of the Class Vehicles in television, print, and Internet advertising.

17 98. These representations and/or omissions have deceived and are likely to deceive
18 Plaintiff, the Class, and consumers across the country in connection with their decision to
19 purchase Class Vehicles. Volkswagen's representations and/or omissions were material and were
20 a substantial and material factor in Plaintiff's decision to purchase the Class Vehicle. Had
21 Plaintiff known the actual facts, he would not have purchased the Class Vehicle and/or would not
22 have paid what he did had Volkswagen accurately disclosed the Class Vehicle's true
23 characteristics.

24 99. Volkswagen directly and indirectly has engaged in substantially similar conduct
25 with respect to each Plaintiff and to each Class Member.

26 100. Plaintiff suffered injury in fact and lost money and/or property as a result of
27 Volkswagen's false and misleading advertising and Class Members suffered harm when each was
28 required to pay a purchase price in excess of what a Class Member would have paid if

1 Volkswagen had accurately disclosed the Class Vehicles' true characteristics, and in the form of
2 decreased resale value of the Class Vehicles.

3 101. As a result of Volkswagen's violations, Plaintiff and the Class are entitled to
4 equitable relief in the form of full restitution of all monies paid for the sales price of the Class
5 Vehicles, diminished value of the Class Vehicles, and/or disgorgement of the profits derived from
6 Volkswagen's false and misleading advertising.

7 102. Plaintiff also seeks an order enjoining Volkswagen from such future conduct.

8 103. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

9
10 **FIFTH CLAIM**
11 **For Common Law Fraud**
12 **(On Behalf of Plaintiff and the Class Against All Defendants)**

13 104. Plaintiff incorporates by reference each of the paragraphs set forth above as though
14 fully set forth hereinafter.

15 105. Volkswagen misrepresented, omitted and concealed important facts from Plaintiff
16 as alleged in the Complaint, including the following:

- 17 • Representing to consumers purchasing the Class Vehicles that these vehicles
18 possessed safety features that included autonomous braking at high speeds.
- 19 • Representing in their written and other advertising methods facts as true that
20 are false with respect to safety features.

21 Plaintiff and the Class members have suffered harm as a result of these violations.

22 106. Volkswagen's misrepresentations and omissions regarding the Class Vehicles'
23 safety features in their advertising, manuals, public statements and marketing were a material
24 factor in inducing Plaintiff to purchase his Class Vehicle. Plaintiff suffered injury in fact and lost
25 money and/or property as a result of Volkswagen's unlawful business acts and practices and Class
26 Members have suffered harm when each was required to pay a purchase price for their Class
27 Vehicle in excess of what a Class member would have paid if Volkswagen had accurately
28

1 disclosed the Class Vehicles' true characteristics, and in the form of decreased resale value of the
2 Class Vehicles.

3 107. Volkswagen concealed from Plaintiff accurate information concerning the safety
4 features of the Class Vehicles.

5 108. Volkswagen either knew that the representations were false when they made them,
6 or they made the representations recklessly and without regard for their truth.

7 109. Volkswagen had a duty to disclose the true characteristics of the Class Vehicles
8 due to their superior knowledge as well as due to their affirmative misrepresentations regarding
9 the safety features of the Class Vehicles.

10 110. Volkswagen intended for Plaintiff to rely on Volkswagen's representations.
11 Volkswagen intended to induce Plaintiff and the Class to: (a) purchase Class Vehicles; and (b) to
12 purchase Class Vehicles at a higher purchase price than they would have absent Volkswagen's
13 misrepresentations and concealment.

14 111. Plaintiff reasonably relied upon Volkswagen's representations regarding the
15 characteristics of the Class Vehicles. Plaintiff's reasonable reliance upon Volkswagen's
16 representations was a substantial factor in causing Plaintiff's harm.

17 112. As a direct and proximate result of Volkswagen's fraud, Plaintiff and the Class
18 have sustained damages in an amount to be determined at trial.

19 113. The aforementioned acts of Defendants, and each of them, were done maliciously,
20 oppressively, and fraudulently, and Plaintiff and the Class are entitled to punitive and exemplary
21 damages in an amount be shown according to proof at trial.

22 114. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

23
24 **SIXTH CLAIM**

25 **Breach of Implied Warranty**

26 **(On Behalf of Plaintiff and the Class Against All Defendants)**

27 115. Plaintiff incorporates by reference each of the paragraphs set forth above as though
28 fully set forth hereinafter.

1 116. Volkswagen impliedly warranted to persons purchasing the Class Vehicles that
2 these vehicles were what they were represented to be.

3 117. These implied warranties induced the community in general and Plaintiff and other
4 Class Members in particular to purchase the Class Vehicles from Volkswagen. These implied
5 warranties were both directly and indirectly believed and relied upon by Plaintiff and Class
6 Members and induced them to choose Volkswagen's Class Vehicles for purchase. This reliance
7 was justified by Volkswagen's skill, expertise, and judgment in the design, manufacturing,
8 testing, labeling, distribution, or sale of such products.

9 118. At the time of the sale, Volkswagen had knowledge of the purpose for which its
10 Class Vehicles were purchased and impliedly warranted the same to be, in all respects, fit and
11 proper for this purpose.

12 119. Volkswagen breached its aforesaid warranties in that the Class Vehicles were not
13 fit for the purpose for which they were intended and used; rather, Volkswagen sold to Plaintiff a
14 product which was not fit for use as represented. The defect in the Class Vehicles existed prior to
15 the delivery of the products to Plaintiffs and the Class.

16 120. Plaintiff and the Class have suffered injury in fact and have suffered an economic
17 loss by, *inter alia*: (a) leasing and/or purchasing a product they never would have leased or
18 purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics
19 render it of a lesser value than represented, (c) incurring costs for diminished resale value of the
20 Class Vehicles purchased, (d) leasing and/or purchasing a product that poses a danger to the
21 health and safety of the public, (e) incurring increased costs to repair the Class Vehicles
22 purchased, and (f) incurring costs for loss of use. Accordingly, the Court must issue an injunction
23 restraining and enjoining Volkswagen from sending or transmitting false and misleading
24 advertising to individuals or entities concerning the purported safety and quality of the Class
25 Vehicles from Volkswagen.

26 121. WHEREFORE, Plaintiff and the Class pray for judgment as set forth below.
27
28

SEVENTH CLAIM

Breach of Express Warranty

(On Behalf of Plaintiffs and the Class Against All Defendants)

122. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

123. Volkswagen expressly warranted to persons purchasing the Class Vehicles that they were what they were represented to be.

124. These express warranties induced the community, in general, and Plaintiff and members of the Class, in particular, to use and purchase Volkswagen's products. These express warranties were both directly and indirectly believed and relied upon by Plaintiff and the Class and induced Plaintiff and the Class to choose the Class Vehicles for purchase.

125. Volkswagen breached its aforesaid warranties in that its products were not fit for the use and purpose expressly warranted by Volkswagen.

126. Plaintiff and the Class have suffered injury in fact and have suffered an economic loss by, inter alia: (a) leasing and/or purchasing a product they never would have leased or purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics render it of a lesser value than represented, (c) incurring costs for diminished resale value of the products purchased, (d) leasing and/or purchasing a product that poses a danger to the health and safety of not only the purchaser but also the public, (e) incurring increased costs to repair the products purchased, and (f) incurring costs from loss of use. Accordingly, the Court must issue an injunction restraining and enjoining Volkswagen from sending or transmitting false and misleading advertising to individuals or entities concerning the purported safety and quality of vehicles from Volkswagen.

127. WHEREFORE, Plaintiff and the Class pray for judgment as set forth below.

///

///

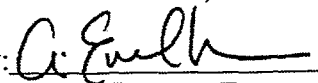
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for relief as follows:

1. An Order certifying this lawsuit for class action treatment;
2. An Order appointing Plaintiff to represent the proposed Class and designating his counsel as Class Counsel;
3. An Order enjoining Volkswagen from future violations of the CLRA, 15 U.S.C. section 2301, *et seq.*, Business & Professions Code section 17200, *et seq.*, Business & Professions Code section 17500, *et seq.*, as alleged herein;
4. An Order awarding Plaintiff and the Class restitution and/or disgorgement;
5. An Order awarding Plaintiff and the Class compensatory damages;
6. An Order awarding Plaintiff and the Class punitive damages;
7. An Order awarding Plaintiff his attorneys' fees, expert witness fees and other costs, including pre and post-judgment interest thereon to the extent allowed by law; and
8. Such other relief as the Court deems proper.

Respectfully submitted,

MOSS BOLLINGER, LLP
NEIFERT KHORSHID, APLC

By: 
Ari E. Moss, Esq.
Attorneys for Plaintiff and Putative Class

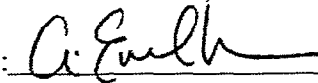
Dated: April 10, 2018

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury for all claims and issues so triable.

Respectfully submitted,

MOSS BOLLINGER, LLP
NEIFERT KHORSHID, APLC

By: 
Ari E. Moss, Esq.
Attorneys for Plaintiff and Putative Class

Dated: April 10, 2018