

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

EMILY DACK, *et al.*, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

No. 4:20-cv-00615-BCW

**CONSOLIDATED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs Emily Dack, Kim Hensley-Hauser, Matthew May, Neeraj Sharma, Omar Oweis, Marcos Pieras, Linda Christian and Stephan Moonesar (“Plaintiffs”) bring this action for themselves and on behalf of all persons in the United States who purchased or leased the following Volkswagen and Audi brand vehicles that were imported and distributed by Volkswagen Group of America, Inc. (“VWGoA” or “Defendant”) for sale or lease in the United States or Puerto Rico: certain model year 2019-2023 Volkswagen Arteon; model year 2018-2023 Volkswagen Atlas; model year 2020-2023 Volkswagen Atlas Cross Sport; model year 2016-2017 Volkswagen CC; model year 2016-2021 Volkswagen Golf; model year 2016-2019 and model year 2022-2023 Volkswagen Golf R; model year 2016-2019 Volkswagen Golf Sportwagen; model year 2016-2023 Volkswagen GTI; model year 2016-2019 Volkswagen e-Golf; model year 2021-2023 Volkswagen ID.4; model year 2016-2023 Volkswagen Jetta; model year 2016-2022 Volkswagen Passat; model year 2022-2023 Volkswagen Taos; model year 2018-2023 Volkswagen Tiguan; model year 2015-2017 Volkswagen Touareg vehicles equipped with “Front Assist” autonomous braking systems (“the VW Class Vehicles”), or who purchased or leased certain model year 2015-2020 and 2022-

2023 Audi A3; model year 2019-2023 Audi Q3; model year 2013-2023 Audi A4; model year 2013-2023 Audi A5; model year 2013-2023 Audi Q5; model year 2012-2023 Audi A6; model year 2012-2023 Audi A7; model year 2011-2023 Audi A8; model year 2017-2023 Audi Q7; model year 2019-2023 Audi Q8; model year 2019-2023 Audi e-tron; model year 2022-2023 Audi e-tron GT; and model year 2022-2023 Audi Q4 e-tron vehicles equipped with “Audi Braking Guard,” “Pre Sense Front,” “Audi Pre Sense City,” and/or “Turn assist” autonomous braking systems (the Audi Class Vehicles”) (together with the VW Class Vehicles, the “Class Vehicles”). The allegations herein are based on personal knowledge as to Plaintiffs’ own conduct and are made on information and belief as to other matters based on, *inter alia*, an investigation by counsel.

2. Autonomous emergency braking (“AEB”) systems are one of the most highly touted advancements in automobile safety. As described by Consumer Reports, with AEB systems installed, “[t]he vehicle stops independently when it senses a crash is imminent to avoid a crash, or to reduce the severity of a crash that can’t be avoided.”¹ There are both forward systems, which activate when the car is driving forward, and rear systems, which activate when the car is in reverse.² When working properly, these systems can reduce the incidence of collisions and the resultant injuries.

3. VWGoA has heavily advertised the safety of the Class Vehicles equipped with the AEB system. As described by VWGoA, the “Front Assist” system “can alert you to a potential collision.”³ VWGoA further states:

Volkswagen’s available Forward Collision Warning and Autonomous Emergency Braking (included in Front Assist) has a sensor in the front to help monitor traffic and can alert you to a

¹ <https://www.consumerreports.org/car-safety/automatic-emergency-braking-guide/>

² *See id.*

³ <http://newsroom.vw.com/vehicles/technology/helping-you-on-the-road/>

potential collision.¹ If the driver brakes too lightly in response to an audible and visual warning, Autonomous Emergency Braking (included in Front Assist) can increase braking pressure to help avoid or mitigate the impact of an impending collision. If the driver does not brake at all, the car can apply the brakes automatically.⁴

4. Similarly, VWGoA has heavily advertised the safety provided by the AEB system of the Audi Class Vehicles⁵:



5. As described by VWGoA, the “Pre Sense” system in the Audi Class Vehicles “detects collision hazards all around the car and initiates specific safety measures.”⁶ Audi Pre Sense Front (alternatively called Audi Pre Sense City) is a forward AEB system that shares components and functionality with the Adaptive Cruise Control and Lane Assist features and uses shared radar sensors and cameras. The Audi Pre Sense Rear system, which is a rear AEB system, shares components and functionality with the Side Assist feature and uses shared radar sensors.

6. VWGoA states the Audi Pre Sense Front/City:

utilize[s] the data of radar sensors and/or the front camera, depending on the car model, to compute the probability of a collision. Within the limitations of the system, it warns of collision threats and initiates braking at specific vehicle speeds. Vehicles are detected in the driving speed range of up to 250 km/h (155.3 mph),

⁴ *Id.*

⁵ Available at https://www.auto-brochures.com/makes/Audi/A4/Audi_US%20A4_2017.pdf

⁶ See <https://www.audi-mediacycenter.com/en/technology-lexicon-7180/driver-assistance-systems-7184>.

pedestrians up to around 65 km/h (40.4 mph) or 85 km/h (52.8 mph) depending on the model, as well as cyclists, depending on the system.⁷

7. Similarly, regarding Audi Pre Sense Rear, VWGoA states:

Audi pre sense rear uses radar sensors in the rear bumper to detect an impending rear-end collision, and it initiates preventive safety measures. These include pretensioning the front seat belts by electric power and closing the windows and sliding sunroof. In addition, the system activates the hazard warning lights to alert following traffic to the critical situation. In this process, the Rear-end collision alert signal (RECAS) is triggered, which flashes the hazard warning lights at a high frequency. Audi pre sense rear is active in background over the car's entire driving speed range with the exception of trailer towing situations.⁸

8. AEB systems are becoming standard on nearly every Volkswagen and Audi model, including the Volkswagen Tiguan and the Audi A4.

9. As described in the 2018 Tiguan brochure, "if it senses that a collision is imminent, Autonomous Emergency Braking (included in Front Assist) can support the driver with increased brake pressure or, under certain circumstances, it can apply the brakes automatically."⁹

⁷ *Id.*

⁸ *Id.*

⁹ See http://www.auto-brochures.com/makes/Volkswagen/Tiguan/VW_US%20Tiguan_2018-2.pdf

6 | Forward Collision Warning and Autonomous Emergency Braking with Pedestrian Monitoring (Front Assist)*

The available Forward Collision Warning (included in Front Assist) system can help monitor traffic and can alert you acoustically and visually to a potential front-end collision with the vehicle moving ahead. If it senses that a collision is imminent, Autonomous Emergency Braking (included in Front Assist) can support the driver with increased brake pressure or, under certain circumstances, it can apply the brakes automatically. The Pedestrian Monitoring (included in Front Assist) feature can warn of pedestrians crossing in front of the vehicle and under certain circumstances can brake automatically to help prevent or mitigate the outcome of a collision with a pedestrian if the driver doesn't respond adequately to the warnings.

10. The 2017 Audi A4 brochure also states¹⁰:

This standard innovation monitors vehicles and pedestrians ahead to help prevent collisions. It uses the front camera on the windshield to sense potential obstacles. If there is an imminent threat, it alerts the driver first with a warning—then if no action is taken—gives a warning jolt and finally, activates automatic emergency braking if needed.¹

11. VWGoA has also produced and widely distributed videos and commercials, discussed *infra*, describing how the Front Assist and the Pre Sense systems can prevent a collision when another vehicle stops abruptly in front of the car, when a child darts into a street in front of the oncoming vehicle, when a deer darts in front of the vehicle, or when a pedestrian or car crosses behind the vehicle as it is backing up.

12. In order to make sure these systems work as intended and advertised, VWGoA must ensure that the component systems devised by various suppliers communicate properly. For example, sensors on the front of the vehicle, produced by suppliers such as Robert Bosch LLC, must communicate information to the braking system and the ABS Control Module to apply the brakes, as well as the Transmission Control Module (“TCM”) to shift the car into the proper gear and with the Powertrain Control Module (“PCM”) (or Engine Control Module) to limit power

¹⁰ Available at https://www.auto-brochures.com/makes/Audi/A4/Audi_US%20A4_2017.pdf

from the engine so that car is no longer propelled forward. Calibrating these systems to work together properly is the responsibility of VWGoA.

13. VWGoA failed to inform Plaintiffs and members of the Classes before or during the time of sale that the AEB systems in both the VW Class Vehicles and the Audi Class Vehicles have design, material, manufacturing and/or workmanship defects including but not limited to poor calibration of the software from multiple control modules, including the ABS Control Module, such that they are prone to activating the brakes when there are no objects in the vehicle's path. By the same token, the AEB systems also fail to active when there are persons or objects in motion in the path of the vehicle (the "AEB System Defect" or "Defect"). The AEB System Defect prevents the Class Vehicles from behaving as designed and advertised in real-world driving conditions.

14. Because of the AEB System Defect, the VW Class Vehicles and the Audi Class Vehicles are predisposed to slowing or stopping suddenly without driver input when there are no obstacles in front of behind the vehicle. These unexpected events *increase* the likelihood of collisions. Conversely, the AEB system in the Class Vehicles (the "AEB System") can also fail to activate in the exact situations it was designed to detect and mitigate, such as when a pedestrian or vehicle stops abruptly in front of the vehicle. Thus, the Defect makes the AEB System unpredictable and driving the vehicle unsafe, while at the same time rendering the system unresponsive when it is most needed.

15. Based on pre-production testing, including design failure mode analysis, early warranty claims, replacement part orders, and consumer complaints to VWGoA's authorized network of dealers, as well complaints to the National Highway Traffic Safety Administration ("NHTSA"), Defendant was aware of the AEB System Defect in Audi Class Vehicles as early as

2013 and in the VW Class Vehicles as early as 2015. Despite being aware of the Defect and numerous complaints, VWGoA knowingly, actively and affirmatively omitted and concealed the existence of the AEB System Defect in advertising and manuals to increase profits by selling additional Class Vehicles at inflated prices.

16. On information and belief, the Class Vehicles utilize the same or substantially identical core vehicle components, and the AEB System Defect is the same for all Class Vehicles.

17. For the VW Class Vehicles,¹¹ VWGoA offers a 6-year or 72,000 miles, whichever comes first, New Vehicle Limited Warranty and a 6-year or 72,000 miles, whichever comes first, Powertrain Limited Warranty. For the Audi Class Vehicles, VWGoA offers a 4-year or 50,000 miles, whichever comes first, New Vehicle Limited Warranty. These warranties are presented on a take-it-or-leave-it basis, and consumers are not permitted to negotiate the terms of the warranties, nor are dealerships empowered to change the warranty terms at any time. Despite knowing of the Defect, VWGoA has not disclosed the existence of the Defect and has not fixed the Defect, exposing Plaintiffs, Class Members, and members of the general public to unsafe driving conditions that often occur without warning.

18. The alleged AEB System Defect was inherent in each Class Vehicle and was present in each Class Vehicle at the time of sale.

19. VWGoA knew about the AEB System Defect present in every Class Vehicle, along with the attendant safety problems, and concealed this information from Plaintiffs and Class Members at the time of sale, lease, repair, and thereafter. In fact, instead of repairing the Class Vehicles, VWGoA has insisted that the vehicles are working as designed.

¹¹ VW Class Vehicles that are 2015-2017 model years are covered by a 3-year or 36,000 miles warranty New Vehicle Limited Warranty. VW increased the time and mileage limitations on the New Vehicle Limited Warranty beginning in the 2018 model year.

20. If Plaintiffs and Class Members had known about the AEB System Defect at the time of sale or lease, Plaintiffs and Class Members would not have purchased or leased the Class Vehicles or would have paid less for them.

21. As a result of their reliance on Defendant's misrepresentations and omissions, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the AEB System Defect, Plaintiffs and Class Members were harmed and suffered actual damages in that the Class Vehicles' are defective, that they overpaid for defective vehicles, and that the Class Vehicles' AEB Systems increase their chances of being involved in a collision by activating without cause and/or failing to activate when they should.

THE PARTIES

Plaintiff Emily Dack

22. Plaintiff Emily Dack ("Dack") is a citizen of Missouri and resides and is domiciled in Independence, Missouri..

23. Ms. Dack owns a 2019 VW Atlas that she purchased new in December of 2019 from Bud Brown Volkswagen located in Olathe, Kansas.

24. Prior to purchasing the vehicle, Ms. Dack reviewed the Monroney (window) sticker, reviewed some of Volkswagen's advertising, discussed the vehicle's features with Volkswagen sales representatives, and took the car for a test drive.

25. The AEB System Defect has stopped Plaintiff's vehicle at inappropriate and unsafe times.

26. In one instance, during her morning commute the AEB System activated while she was traveling at speed on Interstate 470. Ms. Dack was not close to any other cars or objects at

the time, but the light on the dashboard flashed red, she heard a beeping sound, and the brakes activated.

27. If Ms. Dack had known of the AEB System Defect, she would not have purchased her vehicle or would have paid less for it.

Plaintiff Kim Hensley-Hauser

28. Plaintiff Kim Hensley-Hauser (“Hensley-Hauser”) is a citizen of Missouri and resides and is domiciled in Lees Summit, Missouri.

29. Ms. Hensley-Hauser owns a 2019 VW Atlas R-line that she purchased new in February of 2019 from Lees Summit VW in Lee’s Summit, Missouri.

30. Prior to purchasing the vehicle, Ms. Hensley-Hauser reviewed the Monroney (window) sticker and discussed the vehicle’s features with Volkswagen sales representatives.

31. The sales representatives stressed the vehicle’s safety features and described the car as “one of the safest around.” The safety of the car was one of the most important factors in Ms. Hensley-Hauser’s decision to purchase the vehicle.

32. The AEB System Defect has stopped Plaintiff’s vehicle at inappropriate and unsafe times.

33. When Ms. Hensley-Hauser’s wife was driving, the brakes activated came on the highway in downtown Kansas City, Missouri. She was traveling approximately fifty-five (55) miles per hour on northbound US Highway 40. As she approached a fork in the road for the onramp to westbound Interstate 70, the brakes came on abruptly. No vehicles were ahead of her at the time the brakes applied. The traffic behind her was able to slow or change lanes to avoid a collision.

34. If Ms. Hensley-Hauser had known of the AEB System Defect, she would not have purchased her vehicle or would have paid less for it.

Plaintiff Matthew May

35. Plaintiff Matthew May (“May”) is a citizen of Virginia and resides and is domiciled in Arlington, Virginia.

36. In or around March 2018, May leased a 2018 Volkswagen Tiguan equipped with an AEB System from Niello Volkswagen, an authorized Volkswagen dealership located in Sacramento, California.

37. May leased his vehicle primarily for personal, family, or household use.

38. Passenger safety and reliability were factors in May’s decision to lease his vehicle. May reviewed advertisements for the Tiguan on the internet and the window sticker (the “Monroney” sticker), and test drove the 2018 Tiguan prior to his lease. He also performed extensive online research regarding the vehicle, including viewing VWGoA’s website, which prominently advertised and discussed the Front Assist System.

39. Had VWGOA disclosed the AEB System Defect before May leased his vehicle, May would have seen such disclosures and been aware of them. Indeed, VWGoA’s misstatements and omissions were material to May. Like all members of the Class, May would not have leased his Class Vehicle, or would have paid less for the vehicle, had he known of the AEB System Defect.

40. In addition, at the time May leased his vehicle, and in leasing the vehicle, May relied on representations from VWGOA and its authorized dealership that the vehicle was fully functional, safe, durable, reliable, and/or the AEB System operated correctly and effectively. In particular, May recalls viewing several VWGOA commercials, including one in which the driver looked away and the vehicle stopped on its own when a child with a ball darted out into the street in front of it. He also spoke with the salesperson at Niello Volkswagen, who assured him that the 2018 Tiguan was one of the safest cars on the road, that VWGOA was a leader in car safety and

took safety seriously, and that the Front Assist system utilized a radar sensor so that it could work in any weather or light condition. May relied on these representations in purchasing the vehicle and, absent these representations, would not have leased the vehicle or would have paid less for it.

41. Soon after May leased his vehicle, in or about late April 2018, he was driving near his home on a side street at dusk. Without warning and with no objects in the road in front of him, the AEB system fully engaged, forcing his vehicle to a standstill.

42. Similarly, in or about June 2018, May was driving his vehicle on a highway on-ramp attempting to get on the highway when the AEB system again fully engaged, forcing his vehicle to a standstill.

43. May experienced the AEB System Defect in his vehicle frequently since his lease began, in that his vehicle would stop without his input despite the fact that there no objects or vehicles in the vicinity of his vehicle.

44. On or about June 1, 2019, frustrated with the continuing issues with the AEB system, May took his vehicle to Pohanka Volkswagen, an authorized dealer of Volkswagen-branded vehicles located in Capitol Heights, Maryland. While the dealership performed a recall to the panoramic sunroof, he complained about the AEB system spontaneously forcing the vehicle to brake when there was nothing in the vicinity of his car. His vehicle was examined, and he was told that the vehicle was “normal,” and no repairs were performed to the AEB system.

45. On or about November 7, 2019, May returned his vehicle to Pohanka Volkswagen and complained that the Front Assist system activated when there no object in sight on several occasions. He was advised that a non-refundable diagnosis fee of \$154 applied if they examined his vehicle and found a “non-warrantable outside influence.” After examining his car, they claimed to find no faults with the system and no repairs were performed to the AEB system.

46. Subsequently, May continued to experience the AEB System Defect, with his vehicle frequently engaging the brakes despite the fact that there were no obstacles ahead.

47. On or about January 15, 2020, May was driving his vehicle through an intersection in which he had the green light, when a vehicle crossed in front of the path in front of his car. The AEB system in his vehicle did not engage at all and his vehicle was totaled in the resulting collision.

48. Due to the AEB System Defect, Plaintiff May has lost the use of his vehicle, overpaid for a defective vehicle, and also suffered out of pocket costs related to the collision.

49. At all times, Plaintiff May, like all Class Members, had attempted to drive his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

Plaintiff Neeraj Sharma

50. Plaintiff Neeraj Sharma (“Sharma”) is a citizen of California and resides and is domiciled in Hercules, CA.

51. Mr. Sharma leased a 2017 Audi Q7 and Audi A7 for personal or household use from Audi of Concord in California. Mr. Sharma’s cars are equipped with the AEB System which is able to automatically actuate the brakes. Mr. Sharma leased the cars based on the understanding that they would be safe for normal use as cars and that they would not unintentionally brake despite no other vehicles or pedestrians nearby. Mr. Sharma viewed and relied on the Monroney labels on his cars before leasing his cars – which highlighted Audi pre sense– but did not otherwise refer Mr. Sharma to the owner’s manual. Had Defendant disclosed the AEB System Defect, Mr. Sharma would not have leased the cars, or would not have done so on the same terms. Mr. Sharma has experienced the AEB System Defect described herein in the form of unintentional, phantom

braking for no reason, and also instances of error messages appearing on his dashboard indicating the AEB system not functional.

52. Mr. Sharma leased his Audi A7 in October 2017, within three years of first filing this action in April 2020.

53. Mr. Sharma leased his Audi Q7 in November 2016. Mr. Sharma first experienced a false positive braking event in his Q7 car while driving on California Route 4 in May 2018, within three years of first filing this action in April 2020. The car came to a near complete stop on the highway when no obstacles or threats of collision were anywhere close to the vehicle. Before the incident, Mr. Sharma had not heard or seen anything to lead him to believe there were any problems with the AEB Systems in Audi Q7 cars, or in Audi cars generally (whether in the form of false positive braking incidents or dashboard error messages). The dealer had said nothing to Mr. Sharma about the issue when he leased his car in late 2016. None of the marketing materials he read before leasing his car said anything about the problem. And, having never heard about or experienced problems, Mr. Sharma had no reason to search for information about problems with Audi's AEB Systems before May 2018.

Plaintiff Omar Oweis

54. Plaintiff Omar Oweis ("Oweis") is a citizen of Florida and resides and is domiciled in Jacksonville, Florida.

55. On or about October 31, 2018, Oweis purchased a new 2018 Volkswagen Atlas equipped with an AEB System from Tom Bush Volkswagen, an authorized Volkswagen dealership located in Jacksonville, Florida.

56. Plaintiff Oweis purchased his vehicle primarily for personal, family, or household use.

57. Passenger safety and reliability were factors in Oweis's decision to purchase his vehicle. Oweis reviewed advertisements for the Atlas on the internet, particularly the information

on VWGoA's website, as well as the window sticker (the "Monroney sticker"), and test drove the vehicle prior to his purchase. His wife was particularly impressed with the description of the AEB system and he purchased vehicle primarily for her use to drive their children around. During the test drive, the AEB system did not engage.

58. Had VWGOA disclosed the AEB System Defect before Oweis purchased his vehicle, Oweis would have seen such disclosures and been aware of them. Indeed, VWGoA's misstatements and omissions were material to Oweis. Like all members of the Class, Oweis would not have purchased his Class Vehicle, or would have paid less for the vehicle, had he known of the AEB System Defect.

59. In addition, at the time Oweis purchased his vehicle, and in deciding to purchase the vehicle, Oweis relied on representations from VWGOA and its authorized dealership that the vehicle was fully functional, safe, durable, reliable, and/or the AEB System operated correctly and effectively. Oweis relied on these representations in purchasing the vehicle and, absent these representations, would not have purchased the vehicle and/or would have paid less for it.

60. Soon after he purchased the vehicle, Plaintiff Oweis began to experience the AEB System Defect in his vehicle. The AEB System would beep constantly, warning of obstacles that did not exist, and applied the brakes when he or his wife drove on surface roads, highways, and even in parking lots despite the fact that there were no obstacles in its way, causing many near misses by other vehicles driving behind him. The frequent, unnecessary activation in his vehicle also frightened his children who were the passengers. When the vehicle brakes unnecessarily, the vehicle is unpredictable and corrective actions he takes are often overridden.

61. Plaintiff Oweis has taken his vehicle to Tom Bush Volkswagen and complained about the frequent, unnecessary activation of the AEB System in his vehicle on around April 3,

2019. He was told that the AEB system in his vehicle was operating normally and his concern was not documented. He complained about the AEB system's unnecessary activation again when he returned his vehicle on April 9, 2019, but again, his concern was not documented.

62. On or about June 25, 2019, Plaintiff Oweis took his 2018 Volkswagen Atlas to O'Steen Volkswagen, a VWGoA-authorized dealership in Jacksonville, Florida. Tom Bush Volkswagen had told him that O'Steen Volkswagen was the only dealership in the tri-state area that had the equipment to fix problems with the AEB System. O'Steen Volkswagen again told him there was nothing wrong with the AEB System nor did he receive a diagnosis for the problem.

63. In or around August 31, 2020, Plaintiff Oweis took his vehicle to O'Steen Volkswagen once again to complain about unnecessary activation of the AEB System despite the lack of obstacles in front of the vehicle. At first, the dealership informed him that there was no issue with the vehicle, but Plaintiff Oweis insisted that the technician go with him on a test drive. After the test drive, the technician "verified complaint of excessive beeping on road test with customer. [V]ehicle was braking when not close to object." Plaintiff Oweis insisted that the dealership keep his car until it was repaired and, after several days, the dealership called to tell him that VWGoA had agreed to replace sensors on his vehicle under warranty.

64. O'Steen Volkswagen kept his vehicle until September 15, 2020, opened a service ticket (a "VTA") with VWGoA, and ultimately replaced five sensors in his vehicle. However, this repair failed to correct the Defect and his vehicle continues to apply the brakes even when there is no obstacle in the road, though less frequently than before the repair.

65. As of result of VWGoA's and its agent's failure to repair his vehicle, Plaintiff Oweis has lost confidence in his 2018 Volkswagen Atlas to provide safe transportation for himself

and his family. His wife has ceased driving the vehicle and Plaintiff Oweis instead purchased a used minivan that she uses instead. His children also refuse to ride in the 2018 Atlas.

66. Due to the AEB System Defect, Plaintiff Oweis has lost the use of his vehicle, overpaid for a defective vehicle, and also suffered out of pocket costs related to the rental of a vehicle to use while his vehicle was being inspected by Topbush Volkswagen.

67. At all times, Plaintiff Oweis, like all Class Members, had attempted to drive his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

Plaintiff Marcos Pieras

68. Plaintiff Marcos Pieras is a citizen of Georgia and resides and is domiciled in Decatur, Georgia.

69. In or around November 2017, Pieras purchased a 2018 Audi A4 equipped with the Pre Sense system from Audi South Atlanta, an authorized Audi dealership located in Union City, Georgia.

70. Pieras purchased his vehicle primarily for personal, family, or household use.

71. Passenger safety and reliability, as well as a functional Autonomous Emergency Braking system, were factors in Pieras' decision to purchase his vehicle. Before his purchase, Pieras reviewed advertisements for the A4 on the internet, reviewed the window sticker (the "Monroney" sticker), and test drove the 2018 A4. He also performed extensive pre-purchase online research regarding the vehicle, including viewing Audi's website, which prominently advertised and discussed the Pre Sense System.

72. Had VWGOA disclosed the AEB System Defect before Pieras purchased his vehicle, Pieras would have seen such disclosures and been aware of them. Indeed, VWGoA's misstatements and omissions were material to Pieras. Like all members of the Class, Pieras would

not have purchased his Class Vehicle, or would have paid less for the vehicle, had he known of the AEB System Defect.

73. In addition, in making his purchasing decision, Pieras relied on representations from VWGOA and its authorized dealership that the vehicle was fully functional, safe, durable, reliable, and/or the AEB System operated correctly and effectively. In particular, Pieras recalls viewing several Audi commercials, including one in which the vehicle stops automatically to avoid a deer before the driver can react. He also spoke with the salesperson at Audi South Atlanta and, as discussed above, he test drove the vehicle before making his purchase. Pieras relied on these representations in purchasing the vehicle and, absent these representations, would not have purchased the vehicle or would have paid less for it.

74. In or around December 2017, shortly after he purchased the vehicle, Mr. Pieras began to experience the AEB System Defect. Without warning and with no objects in the road in front of him, the AEB system slammed on the brakes, bringing his vehicle to a stop. These unnecessary brake applications occurred seemingly at random, leaving Pieras no way of anticipating these unsafe events.

75. On other occasions, the vehicle alerted him that the Pre Sense system was not functioning at all.

76. Needing to prevent the Defect from reoccurring, Pieras reviewed the owners' manual, and pursuant to its instructions, he lowered the sensitivity of the Pre Sense system, in the hopes that it would solve the AEB System Defect. Despite this effort, the unnecessary braking continued, and he continued to receive occasional alerts from the vehicle that the Pre Sense system was not functioning.

77. On or about October 23, 2019, Pieras took his vehicle to the Audi dealership and complained about the Pre Sense System. The dealership told Mr. Pieras, falsely, that his vehicle was functioning normally, while also resetting the front sensor in his vehicle.

78. Despite the Audi dealership's assurance and sensor recalibration, Pieras again experienced the AEB System Defect when, the very next day, his vehicle braked autonomously without any obstacles in the road. When Mr. Pieras notified the Audi dealership by text, the representative stated that the front sensor was probably dirty and provided instructions for locating the sensor. Mr. Pieras cleaned the sensor.

79. Predictably, this effort again did not repair the AEB System Defect. Instead, the Pre Sense system continues to engage sporadically despite no obstacles being present in front of his vehicle.

80. On or about November 6, 2020, Plaintiff Pieras was driving when his vehicle alerted him that the Pre Sense function was "currently limited." He pulled over and examined his vehicle, including taking a picture, to try and determine the cause of the issue but could not find anything unusual. Later, the "currently limited" error message disappeared without intervention.

81. Due to the AEB System Defect, Pieras has overpaid for a defective vehicle.

82. At all times, Plaintiff Pieras, like all Class Members, had attempted to drive his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

Plaintiff Stephan Moonesar

83. Plaintiff Stephan Moonesar ("Moonesar") is a citizen of New Jersey and resides and is domiciled in Egg Harbor Township, NJ.

84. Plaintiff Moonesar bought a certified pre-owned ("CPO") 2018 Audi S4 for personal or household use from Audi of Turnersville in New Jersey. Plaintiff Moonesar's car is

equipped with the AEB System which is able to automatically actuate the brakes. Plaintiff Moonesar bought the car based on the understanding that it would be safe for normal use as a vehicle and that it would not unintentionally brake despite no other vehicles or pedestrians nearby. Mr. Moonesar viewed and relied on the Monroney label on his car before purchasing his car – which highlighted Audi pre sense– but did not otherwise refer Mr. Moonesar to the owner’s manual. Had Defendant disclosed the AEB System Defect, Plaintiff Moonesar would not have bought the car, or would not have done so on the same terms. Plaintiff Moonesar has experienced the AEB System Defect described herein in the form of unintentional, phantom braking for no reason, and also instances of error messages appearing on his dashboard indicating the AEB system not functional.

Plaintiff Linda Christian

85. Plaintiff Linda Christian (“Christian”) is a citizen of Massachusetts and resides and is domiciled in Salem, Massachusetts.

86. On or about October 1, 2018, Christian leased a 2018 Volkswagen Tiguan equipped with an AEB System from Kelly Volkswagen, an authorized Volkswagen dealership located in Danvers, Massachusetts.

87. Christian leased her vehicle primarily for personal, family, or household use.

88. Passenger safety and reliability were factors in Christian’s decision to lease her vehicle. Christian reviewed advertisements for the Tiguan on the internet, particularly the information on VWGoA’s website, as well as the window sticker (the “Monroney sticker), and test drove a base trim model of the 2018 Tiguan prior to her lease. During the test drive, the AEB system did not engage.

89. Had VWGOA disclosed the AEB System Defect before Christian leased her vehicle, Christian would have seen such disclosures and been aware of them. Indeed, VWGoA's misstatements and omissions were material to Christian. Like all members of the Class, Christian would not have leased her Class Vehicle, or would have paid less for the vehicle, had she known of the AEB System Defect.

90. In addition, at the time Christian leased her vehicle, and in deciding to lease the vehicle, Christian relied on representations from VWGOA and its authorized dealership that the vehicle was fully functional, safe, durable, reliable, and/or the AEB System operated correctly and effectively. Christian relied on these representations in purchasing the vehicle and, absent these representations, would not have leased the vehicle and/or would have paid less for it.

91. About a week after she leased the vehicle, Christian was driving with her grandson in the vehicle when she went around a curve in the road at approximately 25 miles per hour. The AEB system activated despite the fact there were no obstacles in the road and her vehicle braked without reason. Christian managed to get the vehicle moving again but the vehicle soon stopped once more on its own, despite the lack of obstacles in front of the vehicle.

92. Christian immediately took her vehicle to Kelly Volkswagen for repair, assuming that sensors in the AEB system were not properly calibrated. She was told instead that there was nothing wrong with her vehicle.

93. Subsequently, Christian has continued to experience the AEB System Defect several times a week, and is often forced to pull over in order to get the system to disengage and/or turn off the system completely so she can continue driving. One notable incident occurred in or around November 2019, when her vehicle was nearly hit from behind by another car when the

AEB system in her vehicle activated and forced the car to a near stop despite the fact that there were no obstacles in front of her vehicle.

94. Christian has continued to complain to Kelly Volkswagen about the malfunctioning AEB system in her vehicle, which has been experienced by numerous drivers of her vehicle including her daughter and stepson, among others. Within the first six month of her lease, she complained to the dealership at least three times. To date, she has not received any repairs to her vehicle for the AEB System Defect.

95. Due to the AEB System Defect, Plaintiff Christian drives her vehicle less frequently because she fears having an accident and has overpaid for a defective vehicle.

96. At all times, Plaintiff Christian, like all Class Members, has attempted to drive her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

97. Plaintiffs and every other Class member's ascertainable losses include, but are not limited to, out-of-pocket losses by overpaying for the vehicles at the time of purchase and repair costs, decreased performance of the vehicles, loss of use of the vehicles, and diminished value of the vehicles. Accordingly, Plaintiffs bring claims individually and as representatives of the Classes.

Defendant

98. Defendant VWGoA is a New Jersey corporation with its headquarters at 220 Ferdinand Porsche Drive, Herndon, Virginia 20171. One of its fictitious names is Audi of America, Inc., which it has registered with the Virginia Secretary of State.

99. Defendant VWGoA, through its various entities, markets, distributes, warranties, and sells Volkswagen and Audi-branded automobiles and parts for those automobiles, including

the Class Vehicles, in multiple locations across the United States including California, Florida, Georgia, Massachusetts, and Virginia.

100. In order to sell vehicles to the general public, VWGoA enters into agreements with authorized dealerships who engage in retail sales with consumers such as Plaintiffs. In return for the exclusive right to sell new Volkswagen and/or Audi-branded vehicles, authorized dealerships are also permitted to service and repair these vehicles under the warranties VWGoA provides directly to consumers who purchased new vehicles from the authorized dealerships. All service and repair at an authorized dealership is completed according to VWGoA, Audi AG, and VWAG instructions, issued through service manuals, technical service bulletins (“TSBs”), technical tips (“TT”), and other documents. Per the agreements between VWGoA and the authorized dealers, consumers such as Plaintiffs are able to receive services under VWGoA’s issued warranty at dealer locations that are convenient to them. These agreements provide VWGoA with a significant amount of control over the actions of the authorized dealerships.

101. VWGoA also developed and disseminated the owner’s manual and warranty booklets, advertisements, and other promotional materials relating to the Class Vehicles. VWGoA also is responsible for the content of the Monroney Stickers on Volkswagen and Audi-branded vehicles.

102. VWAG is a German corporation headquartered in Wolfsburg, Germany.

103. VWAG is the parent corporation of VWGoA and Audi AG, which are each wholly owned subsidiaries. VWAG is also the parent corporation of the United States manufacturing facilities for Volkswagen and Audi-branded vehicles. VWAG designs and manufactures Volkswagen, Skoda, and Audi-branded vehicles and parts for those vehicles worldwide, including the in the United States. For all its United States subsidiaries, including VWGoA, VWAG and/or

Audi AG provides all the technical and information for the purpose of manufacturing, servicing, and repairing the Class Vehicles.

104. Audi AG is a German corporation headquartered in Ingolstadt, Germany. Audi AG designs and manufactures Audi-branded vehicles and parts for those vehicles worldwide, including in the United States.

105. The relationship between VWAG and VWGoA is governed by a General Distributor Agreement that gives Audi AG and/or VWAG the right to control nearly every aspect of VWGoA's operations related to both Volkswagen and Audi-branded vehicles—including sales, marketing, management policies, information governance policies, pricing, and warranty terms.

106. For all VWAG United States subsidiaries, including VWGoA, VWAG and/or Audi AG provides all the technical and information for the purpose of servicing, and repairing the Class Vehicles, as well as the information needed to draft the owners' manuals.

107. VWAG, Audi AG and/or its agents installed and calibrated the sensors in the Class Vehicles.

JURISDICTION AND VENUE

108. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because plaintiffs and Defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

109. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district, two

plaintiffs reside in this district, VWGoA has advertised in this district, and VWGoA has received substantial revenue and profits from its sales and/or leasing of Class Vehicles in this district.

110. This Court has personal jurisdiction over VWGoA because it has conducted substantial business in this judicial district, and intentionally and purposefully placed Class Vehicles into the stream of commerce within the state of Missouri and throughout the United States.

FACTUAL ALLEGATIONS

111. VWAG is a designer, manufacturer, and distributor of vehicles sold by Defendant VWGoA under the Volkswagen brand throughout the United States. VWAG and Audi AG are designers, manufacturers, and distributors of vehicles sold by Defendant VWGoA under the Audi brand throughout the United States. VWAG and/or Audi AG designed and manufactured the Class Vehicles, and Defendant VWGoA imported, distributed, marketed and/or sold the Class Vehicles in the United States. Defendant VWGoA also provides service and maintenance for the Class Vehicles through its extensive network of authorized dealers and service providers nationwide, using information provided by VWAG and/or Audi AG. VWGOA has sold, directly or indirectly, through dealers and other retail outlets, hundreds of thousands of Class Vehicles in California, Florida, Georgia, Kansas, Massachusetts, Missouri, New Jersey and nationwide in total. In 2018, Volkswagen had sales revenues of €37.7 billion in North American alone, or approximately \$45.8 billion.¹² In 2019, Volkswagen sold over 200,000 Audi vehicles in the United States alone, and Audi AG's group, encompassing its operations in the United States, had €55.7 billion in revenue, or approximately \$66.4 billion.¹³

¹² See https://www.volkswagenag.com/presence/investorrelation/publications/annual-reports/2019/volkswagen/en/Y_2018_e.pdf.

¹³ See <https://www.audi-mediacycenter.com/en/press-releases/financial-year-2019-audi-ag->

112. One of the newest pieces of technology in VWGOA vehicles are the AEB systems, the Front Assist in Volkswagens and the Pre Sense suite of safety features in Audis. These systems feature an autonomous braking system that is supposed to warn the driver of an obstacle in the road and also engage the brakes independently if the driver fails to react. This system is a part of other collision avoidance systems installed in Class Vehicles, which has the goal of preventing or reducing the severity of an impact.

113. The first vehicles with such a system in the Volkswagen lineup were model year 2008 vehicles including certain models of the Volkswagen Passat and the Touareg. This system was the Adaptive Cruise Control (“ACC”) system, which added a separate Front Assist function. While that Front Assist system could not yet brake automatically, it could warn the driver of an obstacle. Pre Sense was first introduced in Audi vehicles in 2010, in the 2011 Audi A8. As with all Pre Sense systems, it utilized the radar and cameras from the ACC and Lane Assist systems.

114. Even in later models, the Front Assist and Pre Sense systems continued to use the same radar sensors in the front of the vehicle that were used by the ACC, the cameras used by the Lane Assist feature, and the sensors used by the parking features. This remains true of the current iterations of the systems.

115. As with other systems in a vehicle, the AEB system in Class Vehicles is run by a control module, built and programmed by the supplier. This module is equipped with a proprietary algorithm that takes the data acquired from sensors, as well as other modules in the vehicle such as the transmission control module to determine the speed, acceleration, and distance for both the vehicle itself and the object ahead.

achieves-its-financial-targets-and-sets-a-course-for-long-term-competitiveness-12695.

116. In any given vehicle model, integration and calibration of the AEB system typically occurs near the end of the research and development process, so that the control module can be given final values for vehicle weight and configuration. This is overseen by the vehicle manufacturer, often with assistance from suppliers' engineers. Modules as provided by the supplier must be "tuned" both to achieve the desired goal of the vehicle manufacturer as well as to work with all the other modules in the vehicle.

117. Upon information and belief, the AEB System Defect is caused by defects in design, materials, and/or workmanship in the manufacture and installation of system components, in the code underlying the algorithms which control the AEB System response, and/or in the calibration and integration of the AEB System software with the software that run related systems in the vehicle, including the steering, transmission, and braking systems.

118. In order to work as intended, the sensors used by the AEB System must be manufactured with materials that are free of impurities. Further, they must be installed and centered precisely. Even tiny variations in materials or positioning can cause the AEB System to malfunction. Upon information and belief, the AEB System Defect is caused in part by such manufacturing issues.

119. Further, upon information and belief, the software which controls the AEB System response – the underlying coding and algorithm which discriminates between landscape and obstacles and then decides on the correct response – suffers from programming defects during manufacturing which differ from the intended design of the software.

120. Moreover, VWGoA's desired goal with the current iteration of the AEB systems in the Class Vehicles¹⁴ is collision avoidance, as opposed to merely reducing the severity of the

¹⁴ The current iteration of the AEB System was first installed in model year 2015

impact. As a result, VWGOA has improperly tuned the AEB systems to fully apply the brakes when the system detects anything stationary in front of the vehicle, even if the object is on the side of the road, regardless of its size, so that the AEB activates unnecessarily early and with unnecessary force. Moreover, the AEB system does not always accurately identify what items are stationary.

121. However, these same sensors are unable to detect moving objects that cross in front of the car, in contradiction to the commercials VWGOA has caused to be distributed that show its vehicles stopping if a car suddenly cuts in front of the vehicle or if a child or a deer darts in front of the vehicle from the side of the road.

122. Moreover, the testing and validation procedures used by VW were insufficient to properly mimic real-world conditions, including actual driver reaction time, the existence of large objects on the side the road like garbage cans or metal guard rails, the presence of extreme curves in certain roads including on and off-ramps to highways and freeways, the many parked cars in a parking lot, and the inclination of at the end of driveways and at entrances to parking lots.

123. Despite this insufficient calibration and tuning process that fails to account for real world driving conditions, VWGOA has touted the improved safety of its vehicles that are equipped with Front Assist and stated that the Pre Sense system provides an “elevated level of safety for vehicle occupants.”¹⁵ For example, in a video, VWGOA explains that Pre Sense Front monitors the traffic and objects ahead of the vehicle with radar and calculates the likelihood of a collision before deciding to engage the system including the brakes. Pre Sense Front is active when the vehicle is traveling at speed above 6 miles per hour and will brake if it does not sense the driver

vehicles.

¹⁵ See https://www.youtube.com/watch?v=Pg1TO_r_UhQc (dated July 9, 2014).

braking.¹⁶ As described by VW, the AEB system first gives an audible warning, then applies some initial braking pressure, and then the full braking force.

124. Further, in another video, VWGOA explains that Front Assist monitors the traffic and objects ahead of the vehicle with radar, with the AEB system engaging when the vehicle is going 3 miles per hour or higher when it detects an object and does not detect braking by the driver.¹⁷ As described by VW, the AEB system first applies partial braking pressure, and then applies the full braking force.

125. In both systems, upon information and belief, the improper tuning and calibration means that the system does not allow drivers enough time to react before applying the full braking force of the vehicle and does not properly account for the size and speed of the object in front, and perhaps to the side, of the vehicle; in other words, the driver has no way of overriding a false positive and preventing this full-force application of the brakes.

126. Similarly, Pre Sense Rear alerts the driver of potential rear collision via the use of sensors it shares with the “Side Guard” system. “If the system senses the risk of a rear collision, it will automatically react...”¹⁸ up to and including engaging the brakes if the vehicle is moving in reverse.

127. The sensors and/or the module which controls Pre Sense can be tuned to a certain degree by the driver, by changing the sensitivity to one of three settings between “early” (the most sensitive) or “late,” or the “braking guard” system can be turned off completely. However even the lowest sensitivity cannot prevent the frequent unnecessary braking and the alternative of

¹⁶ *See id.*

¹⁷ *See* Front Assist Knowing Your Vehicle, available at <https://www.youtube.com/watch?v=fvVGPNGwPZE>

¹⁸ *See* https://www.youtube.com/watch?v=Pg1TOu_UhQc (dated July 9, 2014).

turning the system off must be done every time the driver starts the vehicle. As a result, Plaintiffs Sharma, Pieras, Moonesar, and the members of the Audi Class have no way of repairing the AEB System Defect themselves. Plaintiffs Dack, Hensley-Hauser, May, Oweis, Christian, and the members of the VW Class do not even have this limited ability.

128. Despite the AEB System Defect, VWGoA's commercials often showcase exactly how fast the AEB system can react. For example, one commercial for the 2016 Volkswagen Passat, which VWGOA caused to be aired in American television markets, a father driving his daughter to school fails to notice a convertible cutting in front of his vehicle. The Volkswagen Passat, however, reacts instantly, stopping the car smoothly and preventing a collision. The voiceover announces, "It brakes when you don't."¹⁹

129. In another commercial, one commercial for the 2018 Audi A4, which VWGOA caused to be aired in American television markets, entitled "Instincts," a man is seen driving an Audi Q7 on a county road when a deer darts in front of the vehicle. The vehicle reacts by tightening his seatbelt, closing his sunroof, and stopping the car smoothly to prevent the collision before the man can do anything. The voiceover announces, the vehicle "can prevent collisions, faster than – well – you."²⁰ The commercial goes on to show an Audi A4 and announces that the Pre Sense system is available in the 2018 A4.

130. In another commercial, which VWGOA caused to be displayed in major American television markets, a woman driving a 2018 Volkswagen Atlas is alerted to the appearance of a child darting in front of the vehicle while it is motion and the AEB system activates to stop the vehicle when the driver does not brake.

¹⁹ See <https://www.ispot.tv/ad/ACKN/2016-volkswagen-passat-dad-stop#>

²⁰ See <https://www.ispot.tv/ad/wU3i/2018-audi-a4-instincts>



131. In another commercial, which VWGOA caused to be aired in major American television markets, a woman driving a 2019 Audi Q7 avoids colliding with traffic on a busy city street because the Pre Sense system engages the brakes hard enough to slosh, but not spill, her coffee.²¹

132. In yet another commercial which VWGOA caused to be aired in major American television markets, a woman driving a 2018 Audi Q5 is driving out of a parking garage when a jogger crosses in front of her vehicle. While she does not react, the Pre Sense system engages completely, preventing her from hitting the passing jogger. The voice over states, “One moment can change a life. Intelligent technology can protect it.”²²

133. These advertisements are just five of the many similar statements in press releases, brochures, websites, and commercials VWGOA has caused to be disseminated within the United

²¹ See <https://www.ispot.tv/ad/IhLM/2019-audi-q7-confidence-in-chaos-coffee-t2>

²² See <https://www.ispot.tv/ad/w3Oy/2018-audi-q5-jogger>

States regarding the safety, reliability, and functionality of the AEB systems installed in Class Vehicles.

134. In contrast to the glowing reviews provided by VWGOA in its advertisements, such as these videos, commercials, and brochures, the AEB systems in Class Vehicles activate without cause, startling drivers with alarms and lights, and then applying the brakes and potentially causing collisions when their vehicles suddenly stop in the road. Conversely, the AEB systems can fail to activate when they are most needed – when obstacles or pedestrians suddenly appear in front of a vehicle and the driver requires assistance to avoid or mitigate a collision.

135. Upon information and belief, the AEB System Defect in Class Vehicles is due in part to the poor calibration of the AEB system, including its sensors, and faulty programming of the AEB system control module²³ (particularly its ability to decide when to command other control modules including the antilock brake system control module and the TCM to apply the brakes and stop the vehicle in the middle of traffic). Moreover, each supplier of the different vehicle components—the transmission, the brake system, and others—may use different software and provide a different electronic control module or software for a given vehicle component. Integration of software and controls modules for system components is the responsibility of the car’s manufacturer; in this case, Audi AG and/or VWAG. If those systems are not properly integrated, the AEB system control module may interfere with the normal operation of the vehicle.

136. VWGOA is aware of the difficulties and problems in software integration. In 2019, VW acknowledged that its average vehicle has “about 70 electronic control modules – basically

²³ Upon information and belief, the control module with primary responsibility for the AEB system is the Driver Assist Control Module. However, the distance control module, which controls the ACC, is also involved in the AEB system.

standalone computers – running software from as many as 200 suppliers all of which have to be integrated by the company to make sure the vehicle operates correctly.”²⁴

137. VW further acknowledged that this was an ongoing problem with its vehicles and announced an initiative to reduce the 70 computers to just 3, running on the same kind of software. As noted by Christian Senger, the then-Volkswagen Group board of management member overseeing software development, *VW has not properly overseen integration of software in the past*. As quoted in *Automotive News*:

We are super expert in parts management. But we had more or less delegated the integration of software to our Tier 1 suppliers. So for us, a lot of software was just a black box – and we see that this doesn’t work anymore.²⁵

138. Despite acknowledging generally existing problems—that VW has been lax in relying on suppliers for software design and integration, and in making a path for the development of future vehicles without these software issues—VW has not made fixing software issues in vehicles currently on the road a priority.

139. Instead, VWGOA denies that any issues exist when Plaintiffs and members of the Classes complain and instructs their dealerships to tell consumers that their vehicles are functioning normally. In part, this is because VWGoA’s network of dealers simply does not have the training or equipment to adjust the software in any vehicle, but instead must rely on VW to provide software patches. Often, the only procedure that VW has given them to address consumer complaints about the AEB system is a “reset” or reboot of the AEB system control module, or a

²⁴ See Vellequette, Larry P., “VW’s high-tech bombshell,” *Automotive News* (Sept. 23, 2019) (available at <https://www.autonews.com/suppliers/vws-high-tech-bombshell>) (last visited July 8, 2020).

²⁵ *Id.*

sensor replacement. However, since the programming of the AEB system control module is insufficient to account for real-world driving conditions, this does not repair the Defect.

140. Nor is the testing mandated by NHTSA sufficient to identify vehicles that have AEB Systems that do not function well. The only autonomous emergency brake system testing performed by NHTSA simply requires that the system reduce the vehicle's speed by 9.8 mph when approaching a stationary vehicle at 25 mph in order to pass.²⁶ In fact, because many automakers have voluntarily agreed to put these systems into their vehicles by 2021 for light duty vehicles, and by 2025 for heavier vehicles, NHTSA has declined to institute further regulations on the AEB systems – which leaves automakers to fill in the gaps to ensure that these systems work properly and do not solve one problem by causing another.

141. So far, automakers like VW have not produced vehicles with AEB systems that perform consistently or predictably. While noting that manufacturers may include some warnings in owners' manuals, tests by *Car and Driver* revealed a shocking variation in results even in the same car. ***“Driving the same car toward the same target at the same speed multiple times often produces different results.*** Sometimes the car executes a perfectly timed last-ditch panic stop. Other times it brakes late, or less forcefully, or even periodically fails to do anything at all.”²⁷

The AEB System Defect Poses an Unreasonable Safety Hazard

142. The AEB System Defect causes unsafe conditions in the Class Vehicles, including, but not limited to, improperly engaging the brakes, failing to engage the braking system at all when the obstacles do appear in front of the vehicles, and distracting drivers with false warnings when

²⁶ See Tingwall, Eric, “*We Crash Four Cars Repeatedly to Test the Latest Automatic Braking Safety Systems,*” *Car and Driver* (Nov. 5, 2018), available at <https://www.caranddriver.com/features/a24511826/safety-features-automatic-braking-system-tested-explained/>

²⁷ *Id.* (emphasis added).

no obstacles exist. This safety risk increases the risk of collisions and fails to reduce the incidence and severity of collisions as the AEB system was designed to do.

143. Complaints that Class Vehicles' owners and lessees filed with NHTSA demonstrate that the Defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Defendant's awareness of the problems with the AEB systems and how potentially dangerous the Defect is for consumers. Attached hereto as **Exhibit A** is just a sampling of over one hundred safety-related complaints that describe the AEB System Defect in Class Vehicles (spelling and grammar mistakes remain as found in the original) (Safercar.gov, *Search for Complaints* (November 20, 2020), <http://www-odi.nhtsa.dot.gov/complaints/>).

144. In fact, complaints were so prevalent about the AEB system malfunctions in Volkswagens and Audis, among other vehicles, that NHTSA has opened an investigation into AEB systems in general.²⁸

145. Also, complaints posted by consumers in internet forums demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Defendant's awareness of the problems with the AEB System and how potentially dangerous the defect is for consumers. A sampling of these complaints for VW Class Vehicles are listed on **Exhibit B** attached hereto and another sampling of complaints for Audi Class Vehicles are listed on **Exhibit C** attached hereto.

²⁸ See Foldy, Ben, "As Automatic Braking Becomes More Common in Cars, So Do Driver Complaints," The Wall Street Journal (Aug. 27, 2019), available at <https://www.wsj.com/articles/as-automatic-brakes-become-common-so-do-driver-complaints-11566898205>

146. The AEB System Defect poses an unreasonable safety risk for Class Members and other drivers and is a safety hazard to the general public and increases the risk of automobile accidents.

VWGOA Had Superior and Exclusive Knowledge of the AEB System Defect

147. VWGOA had superior and exclusive knowledge of the AEB System Defect and knew or should have known that the Defect was not known or reasonably discoverable by Plaintiffs and Class Members before they purchased or leased the Class Vehicles.

148. Plaintiffs are informed and believe, and based thereon allege, that before Plaintiffs purchased or leased their Class Vehicles, and since at least 2013, VWGOA knew about the AEB System Defect through sources not available to consumers, including the following: pre-release testing data; early consumer complaints about the AEB System Defect to Defendant's dealers who are their agents for vehicle repairs; warranty claims data related to the defect; aggregate data from VWGOA dealers; consumer complaints to NHTSA and resulting notice from NHTSA; early consumer complaints on websites and internet forums; data from the Car-Net system installed in some consumers' vehicles; data from the Audi Connect system installed in some consumers' vehicles; dealership repair orders; testing conducted in response to owner or lessee complaints; and other internal sources of aggregate information about the problem.

149. VWGoA's internal consumer relations department and/or online reputation management services acting on VWGoA's behalf routinely monitor the internet for complaints about its products, including complaints posted on consumer forums. These posts describe the Defect at issue here. *See generally Exhibits B and C.* The fact that so many customers made similar complaints would have put VWGOA on notice, no later than 2016, that the complaints

were not the result of user error or anomalous incidents, but instead a systemic problem with the Class Vehicles.

150. VWGOA also monitors customers' complaints made to NHTSA. Federal law requires automakers including VWAG and Audi AG to be in close contact with NHTSA regarding potential auto defects, including imposing a legal requirement (backed by criminal penalties) compelling the confidential disclosure of defects and related data by automakers to NHTSA, including field reports, customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414, 114 Stat. 1800 (2000). Upon information and belief, VWGoA is their agent in the United States for liaising with NHTSA.

151. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints regarding their automobiles as part of their ongoing obligation to identify potential defects in their vehicles, including safety-related defects. *Id.* VWGoA tracks the NHTSA database to track reports of false activations with AEB systems in Audi vehicles and then transmits the information to VWAG and Audi AG on a regular basis. *See generally Exhibit A.* From this source, Defendant knew or should have known that AEB-equipped vehicles were experiencing unusually high levels of false activations.

152. VWGOA issues TSBs and TTs, among other communications, to its dealers to provide instructions on how to repair VW vehicles or respond to particular consumer complaints²⁹. These communications standardize service throughout VWGoA's agent dealership network, and

²⁹ As described above, VWGoA is the author, publisher and distributor of such documents, but the technical information therein comes from VWAG and/or Audi AG. Moreover, upon information and belief, VWAG and/or Audi AG approve all TSBs, TTs, and other communications with technical information that is intended to be widely distributed to authorized VW and/or Audi dealerships.

explicitly are not meant for consumer review. Indeed, it only became a requirement for manufacturers to provide NHTSA with a copy of these manufacturer communications in 2012. Further, these communications often do not reveal the cause of a problem, only describe a complaint and a remedy, frequently in terms that a lay person would not understand.

153. On February 5, 2013, VWGOA re-issued a TSB for Audi Class Vehicles entitled “91 Parking assistance provides false warnings.” This TSB was applicable when a customer complained that the “[p]arking aid sporadically warns of obstacles when none exist” or “[p]arking aid is inoperative or provides constant warning.” In addition to trying to find damage, correcting if the sensor is even slightly off-center, wiring issues, and other technical details, the TSB notes that “various environmental factors can cause incorrect warnings,” including “high plants and curbs, gravel or cobble stone paths, pot holes, grates, sharp bends in the road, slopes, driveways, ramps, if water is on the parking sensor, ice or snow on the sensor, exhaust gases under certain weather conditions, conflicting ultrasound sources including pneumatic brakes on trucks or the parking aid system of other vehicles, or fluorescent lighting.” This TSB was re-issued again on January 5, 2015, July 26, 2017, and September 12, 2019, and ultimately covered all Audi vehicles from 2005 through 2020 model years.

154. On March 15, 2013, VWGOA issued a TSB for entitled “91 ACC and braking guard warning message (DTC C110BF0).” This TSB was applicable when the instrument panel read “ACC and braking guard: unavailable at this time” and when the DTC C110BF0 (Adaptive cruise control sensor restricted view) was found in the vehicle’s distance regulation control module, part number J428. The TSB informed dealerships that when any of the radar sensors does not detect an object for an extend duration, the ACC system deactivates. Conditions which could cause this included, “[l]eaves, snow, strong water spray, or direct in the field of vision or either of

the radar sensors,” if “radar sensors [were] pulled out of their plastic mounting clips in a minor collision which produces no visible external damage,” “[w]hen the vehicle is driven through a long tunnel, reflection off the walls to the radar sensors can lead to ACC deactivation,” or “[w]hen the vehicle is driven on desolate roads, the sensors do not receive reflected signals for an extended time.” The dealerships were instructed to “[a]void any unnecessary replacement of the radar sensors,” but instead to clean the sensors, replace the mounting clips on the sensors and recalibrate the ACC system, or advise that the system is operating as designed. This TSB was reissued on July 17, 2014, to update models and model years, and again on June 16, 2017 for the same reason. Ultimately, this TSB was applicable to 2014-2018 A3, A3 Cabriolet, A4, A4 Allroad, S4, A5, S5, S5 Cabriolet, S5 Sport, RS 5 Cabriolet, and R8, 2016-2018 Q5 and SQ5, and 2011-2018 A6, A7, A8, S8, TT, and Q7 vehicles.

155. On May 5, 2017, VWGOA issued a TT³⁰ entitled “27-17-01TT – Adaptive Cruise Control Radar Sensor Function.” This TT was applicable to the 2015-2017 Jetta, Passat, Golf, GTI, Golf R, Sportwagen, Beetle, Tiguan, and Toureg vehicles. It informed dealerships that the radar sensor used by the ACC and the forward collision system (or AEB system), J428, may be impaired by environmental issues including “heavy rain or spray.” In cases like these, the Forward Collision Warning system (Front Assist) will not work.” It further warned that “[t]he function of the Forward Collision Warning system may also be impaired when the radar signal radiation is reflected, for example, in multilevel parking structures, or by nearby metallic objects such as rails or metal plates in the road.”

³⁰ According to VW, the difference between a TSB and TT is that the former is associated with warranty claims, while the latter is merely used to address consumer complaints about vehicle function. Neither a TSB nor a TT is provided directly to the consumer.

156. On November 10, 2017, VWGOA issued a TT entitled “27-17-03TT – Driver Assist – Errors While Attempting Radar Sensor Calibration.” This TT was applicable to the 2015-2018 Volkswagen Golf, GTI, eGolf, Sportwagen, Jetta, Passat, Beetle, Beetle Convertible, Tiguan, Tiguan LWB, Atlas, and Touareg. It warned dealerships that calibration of the radar system could be affected by the interference from ultrasonic transceivers, including those used by automatic doors.

157. On March 15, 2018, VWGOA issued a TSB entitled “91 Laser for Audi Cruise Assist is restricted, DTC C12EBF3 stored in distance control module.” This TSB addressed customer complaints that the driver assistance system stopped working and may also have DTC C12EBF2 (laser for distance control, range recognition restricted) in the control module for distance control, J428. The only service offered pursuant to this TSB was to check if the driver assistance system was being affected by a “third-party ‘car bra’” or another protective cover, but did nothing further. No other instructions were given. This TSB was reissued on August 14, 2019, adding models and model years, such that the TSB was ultimately applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro.

158. On August 17, 2018, VWGOA issued a TT entitled “27-18-06TT – Adaptive Cruise Control DTC C110300 Resulting from Grille Removal.” This TT was applicable to the 2018 Volkswagen Atlas. It warned that removing, replacing, or adjusting the front grille of the vehicle could cause the Front Assist and ACC systems to become misaligned, and that doing so meant that the dealership also had to go through the ACC Calibrating process. It also noted that a code could be generated – Distance Control (ACC) fault code “C110300: Adaptive cruise control sensor misadjusted.”

159. On August 24, 2018, VWGOA issued a TT entitled “27-18-07TT – Replacing the Adaptive Cruise Control (ACC) Module – J428.” This TT was applicable to the 2015-2018 Jetta, Passat, Golf, Golf R, and Golf Sportwagen, 2018 Atlas and Tiguan LWB, and the 2019 Jetta. It warned that ACC sensor, J428, will not calibrate after replacement if there were various data faults in the driver assistance systems. As a result, it instructed dealerships to run the guided fault finding diagnosis, then control module software configuration, then “commissioning,” before the calibration could be completed.

160. On September 7, 2018, VWGOA issued a TT entitled “27-18-08TT – Cruise Control not Available, -R242- Module Camera.” This TT was applicable to all models from 2014 to 2019. It warned that the R242 module front sensor for driver assistant systems may not calibrate, including “[i]n some instances, the camera will calibrate only to return shortly with a calibration fault or limit value exceeded fault.” The TT instructed dealerships to check to see if the module or the windshield had been replaced. If the module had been replaced, it required configuration and a “FES #2 test plan” to be completed before calibration. If the windshield had been replaced, dealers were instructed to check to make sure it was a Volkswagen replacement windshield and then centered correctly, as apparently either issue could cause the system to fail calibration.

161. On November 2, 2018, VWGOA issued a TT entitled “45-18-03TT – Autonomous Braking Event – Data Gathering.” This TT was applicable to the 2015-2017 Touareg, 2016-2019 CC, Golf, GTI, Sportwagen, Golf R, Jetta, Passat, and Tiguan, and 2018-2019 Atlas and Tiguan LWB. It warned that “[t]he customer may have a concern their vehicle performed an unwarranted autonomous braking event.” It instructed the dealerships to check the J428 sensor for misalignment, gather data from three separate control modules, including the distance control module and the front sensors driver assistance system, conduct a visual inspection of the vehicle,

and have the customer complete a Front Assist Questionnaire. That data was to be compiled and sent to VWGOA via the creation of a VTA case, or a Volkswagen Technical Assistance case.

162. On February 1, 2019, VWGOA issued a TSB entitled “91 Adaptive Cruise Assist is not available.” This TSB addressed customer complaints that the adaptive driving assistance is not available or cannot be activated, and certain DTCs were stored in the adaptive cruise control module, J1122, including DTC C12EBF1 (laser for adaptive cruise control, malfunction), DTC B200042 (control unit faulty), or DTC B200047 (control unity faulty). The TSB instructed dealerships to update the software. This TSB was applicable to 2019 A7, A8, and Q8.

163. Between April 4, 2019 and April 12, 2019, VWGOA issued four versions of “Service Action Code: 90L2” with the subject “Driver Assist System Software.” This Service Action addressed software issues with certain 2019 A6, A7, A8, and Q8. These issues included “loss of target object at close range and erroneous drive-off warning in stop-and-go traffic” and “occasional restrictions to comfort when driving over crests and through dips.” The dealerships were instructed to perform a software update to correct the conditions.

164. On June 18, 2019, VWGOA issued a TSB entitled “PSS 91 Adaptive Cruise Assist is not available.” This TSB addressed customer complaints that the ACC system was not available but could become available again without the driver restarting the car, with the DTC 12EBF1 (laser for adaptive cruise control, malfunction) present. The TSB instructed dealerships that a software bug in the control module for the laserscanner was the issue and to tell the customer “a solution is forthcoming and that no repairs are necessary at this point.” This TSB is applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro.

165. On August 14, 2019, VWGOA issued a TSB entitled “PSS 90 Audi adaptive light, pre sense, or Adaptive Cruise Assist malfunction, DTC B200FF9 stored in the driver assist.” This

TSB was in response to complaints that an Audi adaptive light or Pre Sense malfunction is displayed, or if the ACC does not work. The DTC would also be stored in the control module for driver assist systems, J1121 “DTC B200FF9 (internal problem with symptom code 2117711 and is sporadic.” The issue is that “the software diagnostic is too sensitive,” and no fix is currently available. According to a September 11, 2020 update to the TSB, a software patch is projected to be available in the first quarter of 2021. The codes are to be cleared and the vehicle returned to the customer. This TSB is applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro.

166. On August 30, 2019, VWGOA issued a TSB entitled “90 Audi adaptive light, pre sense, or vehicle assistance does not work, DTC C12B3F2 stored in the driver assist systems.” This TSB addressed customer complains that the Audi adaptive light, Audi Pre Sense system error, or adaptive vehicle assistance does not work, with the DTC C12B3F2 (front camera for driver assist systems, wrong vehicle identification number, static) present in the control module for driver assist systems J1121. The TSB instructed dealerships that the software needed to be recalibrated. This TSB was applicable for the 2019-2020 A6, A7, Q6, Audi e-tron quattro, and A8.

167. On September 30, 2019, VWGOA issued a TSB for Audi vehicles entitled “90 Emergency Assist: unexpected seatbelt tugging with brief reductions in speed.” This TSB was a response to customers complaining that the vehicle was tugging on the seatbelts and reducing speed with “[n]o obvious causes for those symptoms like vehicles driving in front of the customer’s vehicle are apparent.” Some DTCS might be stored in the driver assistance control module, J1121. According to the TSB, “[i]f too little steering input is observed over speed and environment depending on the time interval, the system assumes the driver to be incapacitated and started a warning cascade in order to regain the driver’s attention....it can falsely determine the driver to be incapacitated if not enough momentum is perceived on the steering wheel. This might happen on

long straight roads or if the driver does not firmly grip the steering wheel.” The TSB cautioned dealerships not to perform repairs, and that any repairs for this concern may be denied. Instead, the dealerships were instructed to “explain the behavior of the emergency assist to the customer. The vehicle is functioning as designed.”

168. On November 1, 2019, VWGOA issued an update to the TT entitled “27-17-01TT Adaptive Cruise Control Radar Sensor Function.” It updated model and model year applicability, such that the TT was now applicable to the 2015-2019 Jetta, Passat, Golf, GTI, Golf R, Sportwagen, Beetle, Beetle Convertible, Tiguan, Touareg, Atlas, Tiguan, LWB, and Arteon. Again, it warned that heavy rain or snow, being in a multilevel parking structure, or near metallic objects like rails or metal plates could impair the radar signal radiation of the sensor and thus interfere with the ACC and Front Assist.

169. VWGOA also provided its dealerships with additional information at the 2019 National After Sales Meeting for VW vehicles. It provided a handout that drew information from some publicly available information like the Monroney Label and the Owner’s Manual, as well as not-publicly available sources such as the PR codes, Webservice, Customer Care, Training at the VW Academy, and TSBs. The system components of Front Assist were identified as the J428 and the R242. It also noted system limitations for Front Assist, which are not listed in the owner’s manual including:

- May not detect narrow vehicles (bicycles, motorcycles)
- Heavy rain and snow will impede sensor view.
- Will not detect stopped traffic.
- [Unwanted warnings may occur] when vehicle turns off the road or when overtaking another vehicle.

170. Further, even prior to bringing the Class Vehicles to market, VWGOA was cognizant of the difficulty in integrating the software of all systems required for the AEB systems to function as advertised and integrating the different modules involved, including the driver assist control module, the adaptive cruise control module and the distance control module. As a result, despite producing commercials and brochures that overstate the effectiveness and functionality of its AEB systems, warnings in the owners' manuals for the Class Vehicles are vague and incompletely describe the limitations of the system.

171. These warnings include that the Front Assist system "can issue unnecessary warnings in certain complex traffic situations, for example, at traffic islands" and that "[u]nder certain circumstances and complex traffic situations the Autonomous Emergency Braking function can perform unwanted braking maneuvers, like in construction sites."

172. However, these warnings are issued in owners' manuals made available to consumers after the vehicle purchase or lease, and do not inform Plaintiffs and members of the Class that the AEB systems in the Class Vehicles will frequently engage without cause, jerking the vehicles to a stop and leaving the driver and passengers more susceptible to a collision from traffic. Indeed, unlike many manufacturers, VWGOA does not make its owners' manuals available online to consumers until after the vehicle is purchased. These vague warnings, buried in Owners' Manuals hundreds of pages long, are not specific enough or prominent enough to overcome the perception of functionality that VWGOA has promulgated in its brochures and commercials.

173. Moreover, these warnings do not inform Plaintiffs and members of the Class that their Class Vehicles may react differently each time it encounters the same situation, so that they are unable to even learn when their vehicle may malfunction. These warnings do not inform

Plaintiffs and members of the Class that their AEB systems may stop the car unnecessarily when the car is performing such mundane tasks as driving past a home that has a trash can in front of it, exiting a driveway, driving onto a freeway, or navigating a curve in the road.

174. VWGOA has also been alerted to the widespread problems with the AEB System from various lawsuits filed both in the United States and in other countries where Volkswagen, Skoda, and Audi-branded vehicles, with substantially similar AEB systems installed, are sold. Upon information and belief, VWGoA has had to buyback many Volkswagen and Audi vehicles in the United States due to lawsuits brought under Lemon Law statutes, and VWAG and Audi AG are aware of many lawsuits in other countries including Ireland related to the malfunctioning of the AEB systems in Volkswagen, Skoda, and Audi-branded vehicles. Upon information and belief, many of the hardware and software components in Audi, VW, and Skoda vehicles are substantially similar, if not identical.

175. The alleged AEB System Defect was inherent in each Class Vehicle and was present in each Class Vehicle at the time of sale.

176. The existence of the AEB System Defect is a material fact that a reasonable consumer would consider when deciding whether to purchase or lease a Volkswagen or Audi vehicle that was equipped with an AEB system. Had Plaintiffs and other Class Members known that the Class Vehicles had the AEB System Defect, they would not have purchased or leased the Class Vehicles or would have paid less for them.

177. Reasonable consumers, like Plaintiffs, reasonably expect that a vehicle's AEB system will function in a manner that will not pose a safety hazard and is free from defects that actually interfere with its role as a safety feature and make the vehicle unsafe. Plaintiffs and Class Members further reasonably expect that VWGOA will not sell or lease vehicles with known safety

defects, such as the AEB System Defect, and will disclose any such defects to its consumers when it learns of them. They did not expect VWGOA to fail to disclose the AEB System Defect to them and to continually deny the existence of the Defect.

VWGOA Has Actively Concealed the AEB System Defect

178. While VWGOA has been fully aware of the AEB System Defect in the Class Vehicles, it actively concealed the existence and nature of the defect from Plaintiffs and Class Members at the time of purchase, lease, repair, and thereafter. Specifically, VWGOA failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

- (a) any and all known material defects or material nonconformity of the Class Vehicles, including the defects relating to the AEB systems;
- (b) that the Class Vehicles, including their AEB systems, were not in good working order, were defective, and were not fit for their intended purposes; and
- (c) that the Class Vehicles were defective, despite the fact that VWGOA learned of such defects through alarming failure rates, customer complaints, and other internal sources, as early as 2013.

179. In fact, even before releasing the Class Vehicles on the market, VWGOA knew about the AEB System Defect. Nevertheless, VWGOA never disclosed the AEB System Defect to Class Members.

180. As a result of the AEB System Defect, VWGOA and its authorized dealers were inundated with complaints regarding the AEB System Defect.

181. On information and belief, the VWGOA has not made fixing the software issues that cause the AEB system malfunctions as described herein a priority, instead devoting significant resources to the software concerns of future vehicles.

182. When consumers present the Class Vehicles to authorized Volkswagen and Audi dealers for repair of the AEB System Defect, rather than repair the problem under warranty, VWGOA has instructed dealers to deny the AEB System Defect exists. Moreover, because the AEB System Defect is software related, the VWGOA and Audi-authorized dealerships are neither equipped nor trained to provide a remedy.

183. To this day, VWGOA still has not notified Plaintiffs and all Class Members that the Class Vehicles suffer from a systemic defect that causes the AEB systems to malfunction, to the detriment of the safety of drivers, passengers, and the general public.

CLASS ACTION ALLEGATIONS

184. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of the proposed Class and Sub-Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

185. The Classes and Sub-Classes are defined as:

VW Class: All individuals residing in the United States of America and Puerto Rico who purchased or leased certain model year 2019-2023 Volkswagen Arteon; model year 2018-2023 Volkswagen Atlas; model year 2020-2023 Volkswagen Atlas Cross Sport; model year 2016-2017 Volkswagen CC; model year 2016-2021 Volkswagen Golf; model year 2016-2019 and model year 2022-2023 Volkswagen Golf R; model year 2016-2019 Volkswagen

Golf Sportwagen; model year 2016-2023 Volkswagen GTI; model year 2016-2019 Volkswagen e-Golf; model year 2021-2023 Volkswagen ID.4; model year 2016-2023 Volkswagen Jetta; model year 2016-2022 Volkswagen Passat; model year 2022-2023 Volkswagen Taos; model year 2018-2023 Volkswagen Tiguan; and model year 2015-2017 Volkswagen Touareg vehicles equipped with “Front Assist” autonomous braking systems (“the VW Class Vehicles”);

Audi Class: All individuals residing in the United States of America and Puerto Rico who purchased or leased model year 2015-2020 and 2022-2023 Audi A3; model year 2019-2023 Audi Q3; model year 2013-2023 Audi A4; model year 2013-2023 Audi A5; model year 2013-2023 Audi Q5; model year 2012-2023 Audi A6; model year 2012-2023 Audi A7; model year 2011-2023 Audi A8; model year 2017-2023 Audi Q7; model year 2019-2023 Audi Q8; model year 2019-2023 Audi e-tron; model year 2022-2023 Audi e-tron GT; and model year 2022-2023 Audi Q4 e-tron vehicles equipped with “Audi Braking Guard,” “Pre Sense Front,” “Audi Pre Sense City,” and/or “Turn assist” autonomous braking systems (the Audi Class Vehicles”);

California Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of California;

Florida Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of Florida;

Georgia Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of Georgia;

Kansas Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of Kansas;

Massachusetts Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the Commonwealth of Massachusetts;

Missouri Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of Missouri; and

New Jersey Sub-Class: All members of the VW Class and the Audi Class who purchased or leased their Class Vehicles in the State of New Jersey.

186. Excluded from the Classes and Sub-Classes are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Classes and Sub-Classes definitions if discovery and further investigation reveal that the Classes and Sub-Classes should be expanded or otherwise modified.

187. There is a well-defined community of interest in the litigation and the Classes and Sub-Classes are readily ascertainable.

188. **Numerosity:** Although the exact number of prospective class members is uncertain and can only be ascertained through appropriate discovery, upon information and belief, hundreds of thousands of Class Vehicles have been sold in the United States. As such, the number of prospective class members is great enough such that joinder is impracticable. The disposition of prospective class members' claims in a single action will provide substantial benefits to all parties and to the Court. The prospective class members are readily identifiable from information and

records in Defendant's possession, custody, or control, as well as from records kept by the departments of motor vehicles of the various states.

189. Typicality: Plaintiffs' claims are typical of the claims of the all prospective class members in that Plaintiffs and the prospective class members purchased and leased a Class Vehicle designed, manufactured, and distributed by VWGOA and equipped with an AEB Systems. Plaintiffs and all prospective class members have been damaged by Defendant's misconduct in that the Class Vehicles' suffer from the AEB System Defect and Class Members have incurred or will incur the cost of overpaying for the Class Vehicles and repairing or replacing Class Vehicles that have been damaged as a result of the AEB System Defect. Furthermore, the factual bases of VWGoA's misconduct are common to all prospective class members and represent a common thread resulting in injury to all prospective class members.

190. Commonality: There are numerous questions of law and fact common to Plaintiffs and the prospective class members that predominate over any question affecting individual prospective class members. These common legal and factual issues include the following:

- (a) Whether the Class Vehicles suffer from the AEB System Defect;
- (b) Whether the AEB System Defect constitutes an unreasonable safety risk;
- (c) Whether and when Defendant knew about the AEB System Defect;
- (d) Whether Defendant knew or reasonably should have known of the AEB System Defect before selling and leasing Class Vehicles to prospective class members;
- (e) Whether the AEB System Defect constitutes a material fact;
- (f) Whether Defendant has a duty to disclose its knowledge of the AEB System Defect to Plaintiffs and prospective class members;

- (g) Whether Defendant breached the implied warranty of merchantability and their written warranties pursuant to the Magnusson-Moss Warranty Act;
- (h) Whether Defendant violated the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- (i) Whether Defendant violated the California Business & Professions Code § 17200, *et seq.*;
- (j) Whether Defendant violated the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 and 1791.1;
- (k) Whether Defendant breached their written warranties;
- (l) Whether Defendant breached the implied warranty of merchantability under Florida law;
- (m) Whether Defendant violated the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*;
- (n) Whether Defendant breached the implied warranty of merchantability under Georgia law;
- (o) Whether Defendant breached the Georgia consumer protection statutes;
- (p) Whether Defendant breached the implied warranty of merchantability under Kansas law;
- (q) Whether Defendant violated the Kansas consumer protection statutes;
- (r) Whether Defendant breached the implied warranty of merchantability under Massachusetts law;
- (s) Whether Defendant violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws 93A, § 1, *et seq.*;

- (t) Whether Defendant breached the implied warranty of merchantability under Missouri law;
- (u) Whether Defendant violated the Missouri consumer protection statutes;
- (v) Whether Defendant breached the implied warranty of merchantability under New Jersey law;
- (w) Whether Defendant violated the New Jersey consumer protection statutes;
- (x) Whether Plaintiffs and the prospective class members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;
- (y) Whether Defendant should be declared financially responsible for notifying all prospective class members of the AEB System Defect and for expenses of repairing the AEB System Defect;
- (z) Whether Defendant is obligated to inform prospective class members of their right to seek reimbursement for having paid to diagnose, repair, or replace the defective headlight assemblies; and
- (aa) Whether damages, restitution, compulsory or other relief are warranted.

191. Adequate Representation: Plaintiffs will fairly and adequately protect prospective class members' interests. Plaintiffs have retained attorneys experienced in prosecuting class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously.

192. Predominance and Superiority: Plaintiffs and the Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication

of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

193. In the alternative, the Class may be certified because:

- (a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant;
- (b) the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- (c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

CLAIMS

COUNT ONE

**Violation of the Magnuson-Moss Warranty Act,
15 U.S.C. § 2303, *et seq.*
(By Plaintiffs on Behalf of the VW and Audi Classes)**

194. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

195. Plaintiffs Dack, Hensley-Hauser, May, Sharma, Oweis, Pieras, Christian and Moonesar bring this cause of action on behalf of themselves, the VW Class, and the Audi Class against Defendant, or in the alternative Plaintiff Dack brings this cause of action on behalf of the Kansas Sub-Class, Plaintiff Hensley-Hauser brings this cause of action on behalf of the Missouri Sub-Class, Plaintiffs May and Sharma bring this cause of action on behalf of the California Sub-Class, Plaintiff Oweis brings this cause of action behalf of the Florida Sub-Class, Plaintiff Pieras brings this cause of action on behalf of the Georgia Sub-Class, Plaintiff Christian brings this cause of action on behalf of the Massachusetts Sub-Class, and Plaintiff Moonesar brings this cause of action on behalf of the New Jersey Sub-Class.

196. The Class Vehicles are a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

197. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

198. Defendant is and was at all relevant times a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

199. VWGoA’s express warranties are each a “written warranty” within the meaning of 15 U.S.C. § 2301(6).

200. As set forth *supra* and incorporated by reference, VWGoA provided a 72,000 mile or 6 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to Volkswagen vehicle consumers and a 50,00 mile or 4 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to Audi vehicle consumers. These warranties were transferable to subsequent purchasers.

201. VWGoA breached the express warranties by selling and leasing Class Vehicles with the AEB System Defect, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by repairing or replacing, free of charge, any system components that contribute to the AEB System Defect.

202. VWGoA's breach of the express warranties has deprived the Plaintiffs and Class members of the benefit of their bargain by failing to provide Class Vehicles a functional AEB system.

203. VWGOA also provided Plaintiffs and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the Class Vehicles are not merchantable because they are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation. The Class Vehicles would not pass without objection in the trade, are not adequately labeled and do not comfort the promises and affirmations on the label because the Class Vehicles have AEB systems which are prone to forcing the vehicle to brake when there are not obstacles ahead and also fail to engage as described when there are obstacles ahead.

204. VWGOA impliedly warranted that the Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles, which were manufactured, supplied, distributed, and/or sold by VW, would provide safe and reliable transportation; (ii) a warranty that the Class Vehicles would be fit for their intended use; (iii) that the Class Vehicles would pass without objection in the trade; (iv) that Class Vehicles are adequately labeled; and (v) that Class Vehicles would conform the promises and affirmations on their labels.

205. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation, would not pass without objection in the trade, were not adequately labeled, and did not conform to the promises and affirmation on their labels. Instead, the Class Vehicles are defective due to the AEB System Defect.

206. The alleged AEB System Defect is inherent and was present in each Class Vehicle at the time of sale.

207. Because of VWGoA's breach of the applicable implied warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, because of the AEB System Defect, Plaintiffs and the Class Members were harmed and suffered actual damages in that they overpaid for the Class Vehicles, the Class Vehicles suffer a diminution in value, and/or they were involved in collisions.

208. Plaintiffs and members of the Class have had sufficient direct dealings with either VWGOA or its agents (dealerships and technical support) to establish privity of contract between VW, on one hand, and Plaintiffs and each of the other Class Members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Class Members

are intended third-party beneficiaries of contracts between VWGOA and its distributors and dealers, and specifically, of VWGoA's express warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

209. Affording VWGOA a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle and all relevant times thereafter, VWGOA knew or was reckless in not knowing, of the lack of truth in their statements about safety, reliability, and functionality of the AEB system, of the material omissions concerning the standard, quality or grade of the Class Vehicles and the presence of the AEB System Defect and associated safety risk, but failed to repair or replace the defective AEB system and/or disclose the defect. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford VWGOA additional reasonable opportunities to cure its breach of warranties is excused and thereby is deemed satisfied.

210. Plaintiffs and members of the Class would suffer economic hardship if they returned their Class Vehicles, but did not receive the return of all payments made by them to VWGOA and/or their agents. Thus, Plaintiffs and members of the Class have not re-accepted their Class Vehicles by retaining them.

211. Defendant was provided notice by letters dated May 29, 2020, June 15, 2020, and October 21, 2020 that Plaintiffs would pursue a claim under the MMWA on behalf of a class.

212. The amount in controversy of each of Plaintiffs' individual claims meets or exceeds the sum or value of \$25,000. In addition, the amount in controversy meets or exceeds the sum or

value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

213. VWGOA has been afforded a reasonable opportunity to cure its breach, including when Plaintiffs and Class Members brought their vehicles in for diagnoses and repair of the AEB System Defect.

214. As a direct and proximate cause of VWGoA's breach of written and implied warranties, Plaintiffs and Class Members sustained and incurred damages and other losses in an amount to be determined at trial. VWGoA's conduct damaged Plaintiffs and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

Missouri Causes of Action

COUNT TWO

Violation of the Missouri Merchandising Practices Act (MMPA) Mo. Rev. Stat. §407.010 et seq. (Brought by Plaintiff Kim Hensley-Hauser)

215. Plaintiff Hensley-Hauser incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

216. The MMPA provides that it is unlawful to “act, use or employ. . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. . . .” Mo. Rev. Stat. § 407.020.1

217. Defendant stated that “Forward Collision Warning and Autonomous Emergency Braking (included in Front Assist) has a sensor in the front to help monitor traffic and can alert you to a potential collision. If the driver brakes too lightly in response to an audible and visual warning, Autonomous Emergency Braking (included in Front Assist) can increase braking

pressure to help avoid or mitigate the impact of an impending collision. If the driver does not brake at all, the car can apply the brakes automatically.”

218. This statement is false and misleading because Defendant sold and leased the Class Vehicles without disclosing that the Front Assist feature does not work as stated.

219. Defendant also failed to disclose to consumers the existence of the AEB System Defect, which they had an obligation to do because the AEB System Defect is a safety issue.

220. Defendant’s conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce.

221. Defendant's misrepresentations and omissions as set forth in this complaint are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff.

222. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Class Vehicles.

223. Plaintiff purchased her vehicle for personal, family, or household purposes.

224. Plaintiff suffered ascertainable losses as a result of Defendant’s unlawful conduct as alleged herein.

225. Had Plaintiff known the truth about the vehicles, she would not have purchased the vehicle, or would not have paid as much.

226. Plaintiff and the Class are entitled to damages under the MMPA.

COUNT THREE
Breach of Express Warranty
Mo. Stat. §§400.2-314 and 400.2A212
(Brought by Plaintiff Kim Hensley-Hauser)

227. Plaintiff Hensley-Hauser incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

228. Defendant was at all times a “merchant,” “seller” and “lessor” under Mo. Stat. §§ 400.2-103(1)(d), 400.2-104(1) and 400.2A-103(1)(p).

229. Defendant expressly warranted that that the Front Assist feature “can help monitor traffic and can alert you acoustically and visually to a potential rear-end collision with the vehicle moving ahead. If it senses that a frontal collision is imminent, Autonomous Emergency Braking (included in Front Assist) can support the driver with increased brake pressure or, if the driver does not react at all, it can apply the brakes automatically. The Pedestrian Monitoring (included in Front Assist) feature can warn of pedestrians crossing in front of the vehicle and, under certain circumstances, can brake automatically to help mitigate the outcome of a collision with a pedestrian if the driver doesn’t respond to the warnings.”

230. Defendant also expressly warranted that the Class Vehicles – including the Front Assist feature -- were of high quality and, at a minimum, would work properly.

231. Defendant also expressly warranted that it would repair and/or replace defects in material and/or workmanship free of charge that occurred during the New Vehicle Limited Warranty periods (“NVLW”) for a period of 6 years or 72,000 miles, whichever occurs first. This NVLW covers repairs or defects and is applicable to the Front Assist Defect.

232. Defendant breached these warranties by selling to Plaintiff and Class members the Class Vehicles with the known AEB System Defect.

233. As a result of the Defendant's actions, Plaintiff and Class members have suffered economic damages including but not limited to loss of vehicle use while their vehicles are undergoing examination at repair facilities, substantial loss in value and resale value of the vehicles, and other related damage.

234. Defendant's attempt to disclaim or limit these express warranties is unconscionable and unenforceable under the circumstances here. Specifically, Defendant's warranty limitations are unenforceable because it knowingly sold or leased Class Vehicles without informing consumers about the Front Assist Defect. Furthermore, Defendant has failed to repair the Defect.

235. A gross disparity in bargaining power existed between Defendant and Class members, and Defendant knew or should have known that the Class Vehicles were defective at the time of sale and would fail well before their useful lives.

236. Plaintiff and Class members have complied with all obligations under the warranties, or otherwise have been excused from performance of said obligations as a result of Defendant's conduct described herein.

237. Plaintiff and the Class are entitled to damages in an amount to be determined at trial.

COUNT FOUR

Breach of Implied Warranty Under Missouri Law

Mo. Stat. §§ 400.2-103(1)(d), 400.2-104(1) and 400.2A-103(1)(h)

(Brought by Plaintiff Kim Hensley-Hauser)

238. Plaintiff Hensley-Hauser incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

239. Defendant was at all times a "merchant," "seller" and "lessor" under Mo. Stat. §§ 400.2-103(1)(d), 400.2-104(1) and 400.2A-103(1)(h).

240. A warranty that the Class Vehicles were in merchantable condition is implied by

law.

241. The Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently defective in that their Front Assist feature engages for no reason, making them not of high quality, and causing them to pose dangerous conditions for the Class Vehicles' occupants and others on the roadway, and to fail prematurely and/or fail to function properly.

242. Defendant was provided notice of these issues by numerous informal and formal complaints filed against it, through online complaints and discussions and by complaints lodged with NHTSA.

243. As a direct and proximate result of Defendant's breach of the warranties of merchantability, Plaintiff and the other Class members have been damaged in an amount to be proven at trial.

California Causes of Action

COUNT FIVE

Violation of California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*

(On Behalf of Plaintiffs May and Sharma and the California Sub-Class)

244. Plaintiffs May and Sharma incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

245. Plaintiffs May and Sharma bring this cause of action on behalf of themselves and the California Sub-Class.

246. Defendant is and was at all relevant times a "person" as defined by California Civil Code § 1761(c).

247. Plaintiffs May and Sharma and the California Sub-Class Members are “consumers” within the meaning of California Civil Code § 1761(d) because they purchased their Class Vehicles primarily for personal, family, or household use.

248. By failing to disclose and concealing the AEB System Defect from Plaintiffs May and Sharma and prospective Class Members, VWGOA violated California Civil Code § 1770(a), as it represented that the Class Vehicles and their AEB Systems had characteristics and benefits that they do not have and represented that the Class Vehicles and AEB Systems were of a particular standard, quality, or grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

249. VWGoA’s unfair and deceptive acts or practices occurred repeatedly in VWGoA’s trade or business, were capable of deceiving a substantial portion of the purchasing public and imposed a serious safety risk on the public.

250. VWGOA knew that the Class Vehicles and their AEB systems suffered from an inherent defect and/or were defectively incorporated into the Class Vehicles, and were not suitable for their intended use.

251. Because of their reliance on VWGoA’s misstatements about the capabilities of the AEB Systems and omissions regarding the existence of the AEB System Defect, owners and/or lessees of the Class Vehicles, including Plaintiffs May and Sharma, suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, because of the AEB System Defect, Plaintiffs May and Sharma and California Sub-Class Members were harmed and suffered actual damages in that they overpaid for the Class Vehicles, the Class Vehicles suffer a diminution in value, and/or they were involved in collisions.

252. VWGOA was under a duty to Plaintiffs and Class Members to disclose the AEB System Defect and/or the associated safety risk because:

- (a) VWGOA was in a superior position to know the true state of facts about the AEB System Defect in Class Vehicles;
- (b) Plaintiffs May and Sharma and California Sub-Class Members could not reasonably have been expected to learn or discover that Class Vehicles had a dangerous safety defect until it manifested; and
- (c) VWGOA knew that Plaintiffs May and Sharma and California Sub-Class Members could not reasonably have been expected to learn of or discover the AEB System Defect.

253. In advertising and continuing to advertise that the Class Vehicles had functional AEB Systems, VWGOA knowingly and intentionally misrepresented the true nature of the Class Vehicles.

254. In failing to disclose the AEB System Defect, VWGOA knowingly and intentionally concealed material facts and breached its duty not to do so.

255. The facts VWGOA misstated to, concealed from, or failed to disclose to Plaintiffs May and Sharma and California Sub-Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Class Vehicles or whether to pay less for the Class Vehicles. Had Plaintiffs May and Sharma and California Sub-Class Members known that the Class Vehicles' possessed the AEB System Defect they would not have purchased or leased the Class Vehicles or would have paid less for them.

256. Plaintiffs May and Sharma and California Sub-Class Members are reasonable consumers who do not expect AEB Systems in their vehicle to frequently activate when there is no obstacle ahead or to completely fail to activate when there is an obstacle ahead. This is the reasonable and objective consumer expectation relating to a vehicle's AEB system.

257. Because of VWGoA's conduct, Plaintiffs May and Sharma and California Sub-Class Members were harmed and suffered actual damages in that, on information and belief, the Class Vehicles experienced and will continue to experience problems related to the AEB System Defect.

258. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiffs May and Sharma and California Sub-Class Members suffered and will continue to suffer actual damages.

259. Plaintiffs May and Sharma and the California Sub-Class are entitled to equitable relief.

260. Plaintiffs May and Sharma provided VWGOA with notice of its violations of the CLRA pursuant to California Civil Code § 1782(a) on May 29, 2020 and October 1, 2019, respectively. VWGOA did not provide appropriate relief for its violations of the CLRA within 30 days of notice. Accordingly, in addition to equitable relief, Plaintiff May seeks monetary, compensatory, and punitive damages.

COUNT SIX

Breach of Implied Warranties

Pursuant to Song-Beverly Consumer Warranty Act,

California Civil Code §§ 1792 and 1791.1, *et seq.*

(On Behalf of Plaintiffs May and Sharma and the California Sub-Class)

261. Plaintiffs May and Sharma incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

262. Plaintiffs May and Sharma bring this cause of action against Defendant on behalf of themselves and the California Sub-Class.

263. VWGOA was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles.

264. VWGOA provided Plaintiffs May and Sharma and California Sub-Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the Class Vehicles are not merchantable because they are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation. The Class Vehicles would not pass without objection in the trade, are not adequately labeled and do not comfort the promises and affirmations on the label because the Class Vehicles have AEB systems which are prone to forcing the vehicle to brake when there are not obstacles ahead and also fail to engage as described when there are obstacles ahead.

265. VWGOA impliedly warranted that the Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles, which were manufactured, supplied, distributed, and/or sold by VW, would provide safe and reliable transportation; (ii) a warranty that the Class Vehicles would be fit for their intended use; (iii) that the Class Vehicles would pass without objection in the trade; (iv) that Class Vehicles are adequately labeled; and (v) that the Class Vehicles would conform the promises and affirmations on their labels.

266. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs May and Sharma and California Sub-Class Members with reliable, durable, and safe transportation, would not pass without objection in the trade, were not adequately labeled, and did not conform to the

promises and affirmation on their labels. Instead, the Class Vehicles are defective due to the AEB System Defect.

267. The alleged AEB System Defect is inherent and was present in each Class Vehicle at the time of sale.

268. Because of VWGoA's breach of the applicable implied warranties, owners and/or lessees of the VWGOA Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, because of the AEB System Defect, Plaintiffs May and Sharma and the California Sub-Class Members were harmed and suffered actual damages in that they overpaid for the Class Vehicles, the Class Vehicles suffer a diminution in value, and/or they were involved in collisions.

269. VWGoA's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use in violation of California Civil Code §§ 1792 and 1791.1.

COUNT SEVEN
Breach of Express Warranty
Cal. Com. Code §§ 2313 and 10210
(By Plaintiffs May and Sharma on Behalf of the California Sub-Class)

270. Plaintiffs May and Sharma incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

271. Plaintiffs May and Sharma bring this cause of action on behalf of themselves and on behalf of the California Sub-Class.

272. VWGoA provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, VWGoA's express warranty is an express warranty under California law.

273. The AEB Systems were installed and calibrated in the VWGOA Class Vehicles by and are covered by the express warranty.

274. As set forth *supra* and incorporated by reference, VWGoA provided a 72,000 mile or 6 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to consumers. These warranties were transferable to subsequent purchasers.

275. VWGoA breached the express warranties by selling and leasing Class Vehicles with the AEB System Defect, requiring repair or replacement of the Class Vehicles within the warranty period, and refusing to honor the express warranty by repairing or replacing, free of charge, the Class Vehicles.

276. Plaintiffs May and Sharma and members of the California Sub-Class have had sufficient direct dealings with either VWGoA or its agents (dealerships and technical support) to establish privity of contract between VWGoA, on one hand, and Plaintiffs May and Sharma and each of the other California Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiffs May and Sharma and each of the other California Sub-Class Members are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

277. Any attempt by Defendant VWGoA to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because VWGoA knowingly sold or leased a defective product without informing consumers about the Defect. The time limits are unconscionable and inadequate to

protect Plaintiff May and members of the California Sub-Class. Among other things, Plaintiffs May and Sharma and members of the California Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which unreasonably favored Defendant. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the Defect, existed between Defendant VWGoA and members of the California Sub-Class.

278. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to make Plaintiffs May and Sharma and the members of the California Sub-Class whole, because, on information and belief, Defendant VWGoA has failed and/or has refused to adequately provide the promised remedies, i.e. a repair, within a reasonable time.

279. Plaintiffs May and Sharma and members of the California Sub-Class were not required to notify VWGoA of the breach or were not required to do so because affording VWGoA a reasonable opportunity to cure its breach of written warranty would have been futile. VWGoA was also on notice of the AEB System Defect from VWGoA's own pre-production testing, from the early complaints and service requests it received from Class Members, from repairs and/or replacements of AEB system and other related system components, and from other internal sources.

280. VWGoA was further provided notice of its breach of express warranties by Plaintiffs May and Sharma by letter dated May 29, 2020 and October 1, 2019, respectively. Plaintiff May also provided notice of express warranties when he took his Class Vehicle to Pohanka Volkswagen, a VWGoA-authorized provider of warranty repairs. Despite these notices, VWGoA failed to cure the breach of express warranties within an adequate time.

281. As a direct and proximate cause of VWGoA's breach of express warranties, Plaintiffs May and Sharma and the other California Sub-Class Members have suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiffs May and Sharma and the other California Sub-Class Members have incurred or will incur economic damages at the point of repair in the form of the cost of repair to the AEB system, the related systems, and/or any collisions caused in whole or in part by the AEB System Defect.

282. Plaintiffs May and Sharma and the other California Sub-Class Members are entitled to legal and equitable relief against VWGoA, including actual damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

COUNT EIGHT
Violation of California Business & Professions
Code § 17200, *et seq.*
(On Behalf of Plaintiffs May and Sharma and the California Sub-Class)

283. Plaintiffs May and Sharma incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

284. Plaintiffs May and Sharma bring this cause of action on behalf of themselves and the California Sub-Class.

285. To the extent required by law, this claim is pled in the alternative to legal claims, as permitted under Federal Rule of Civil Procedure 8.

286. Because of their reliance on VWGoA's misstatements and omissions, owners and/or lessees of the Class Vehicles, including Plaintiffs May and Sharma, members of the California Sub-Class suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, because of the AEB System Defect, Plaintiffs May and Sharma and California Sub-Class Members were harmed and suffered actual damages in that that they overpaid

for the Class Vehicles, the Class Vehicles suffer a diminution in value, and/or they were involved in collisions.

287. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

288. Plaintiffs May and Sharma and California Sub-Class Members are reasonable consumers who do not expect their AEB systems to exhibit the symptoms of the AEB System Defect.

289. VWGOA knew the Class Vehicles and their AEB systems would be defective in workmanship and were not suitable for their intended use.

290. In failing to disclose the AEB System Defect, VWGOA has knowingly and intentionally concealed material facts and breached its duty not to do so.

291. VWGOA was under a duty to Plaintiffs May and Sharma and California Sub-Class Members to disclose the defective nature of the Class Vehicles and their AEB systems because:

- (a) VWGOA was in a superior position to know the true state of facts about the AEB System Defect in the Class Vehicles;
- (b) The AEB System Defect poses a safety risk to Plaintiffs May and Sharma and the California Sub-Class; and
- (c) VWGOA actively concealed the defective nature of the Class Vehicles from Plaintiffs May and Sharma and the California Sub-Class.

292. The facts VWGoA misstated, concealed from, or failed to disclose to Plaintiffs May and Sharma and California Sub-Class Members are material in that a reasonable person would have considered them to be important in deciding whether to purchase or lease Class Vehicles.

Had they known of the AEB System Defect, Plaintiffs May and Sharma and the other California Sub-Class Members would have paid less for the Class Vehicles or would not have purchased or leased them at all.

293. VWGOA continued to deny and conceal the AEB System Defect in Class Vehicles even after Class Members began to report problems.

294. VWGoA's conduct was and is likely to deceive consumers.

295. VWGoA's acts, conduct, and practices were unlawful, in that they constituted:

- (a) Violations of California's Consumers Legal Remedies Act;
- (b) Violations of the Song-Beverly Consumer Warranty Act;
- (c) Violations of the Magnuson-Moss Warranty Act; and
- (d) Breach of Express Warranty under California Commercial Code § 2313.

296. By its conduct, VWGOA has engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

297. VWGoA's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business and were capable of deceiving a substantial portion of the purchasing public, and were contrary to public policy and/or the benefits associated with VWGoA's actions were outweighed by the costs to the public and the Sub-Class members.

298. As a direct and proximate result of VWGoA's unfair and deceptive practices, Plaintiffs May and Sharma and California Sub-Class Members have suffered and will continue to suffer actual damages.

299. VWGOA has been unjustly enriched and should be required to make restitution to Plaintiffs May and Sharma and the California Sub-Class pursuant to §§ 17203 and 17204 of the Business & Professions Code.

Florida Causes of Action

COUNT NINE

**Violation of the Florida Deceptive and Unfair Trade Practices Act, (“FDUTPA”),
Fla. Stat. §§ 501.201, *et seq.*
(By Plaintiff Oweis on Behalf of the Florida Sub-Class)**

300. Plaintiff Omar Oweis incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

301. Plaintiff Oweis brings this Count on behalf of himself and members of the Florida Sub-Class.

302. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1). Defendant engaged in unfair and deceptive practices that violated the FDUTPA as described above.

303. Defendant engaged in “trade or commerce” in Florida within the meaning of the FDUTPA. *See* Fla. Stat. § 501.203(8).

304. In the course of their businesses, Defendant failed to disclose and actively concealed the Defect contained in the VW Class Vehicles and the corresponding dangers and risks posed by the VW Class Vehicles, as described above and otherwise engaged in activities with a tendency or capacity to deceive.

305. In violation of the FDUTPA, Defendant employed unfair and deceptive acts or practices, fraud, false pretense, misrepresentation, or concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale and/or lease of VW Class Vehicles. Defendant knowingly concealed, suppressed and omitted materials facts regarding the AEB System Defect and associated safety

hazard and misrepresented the standard, quality, or grade of the VW Class Vehicles, which directly caused harm to Plaintiff Oweis and the Florida Sub-Class.

306. Defendant actively suppressed the fact that that VW Class Vehicles contain the Defect and present a safety hazard because of materials, workmanship, design, and/or manufacturing defects. Further, Defendant employed unfair and deceptive trade practices by failing to provide repairs of the Defect, repairs of VW Class Vehicles damaged due to the Defect, or replacement of destroyed VW Class Vehicles due to the Defect within a reasonable time in violation of the FDUTPA. Defendant also breached its warranties as alleged above in violation of the FDUTPA.

307. As alleged above, Defendant have known of the AEB System Defect contained in the VW Class Vehicles for well over a decade. Prior to selling and leasing the VW Class Vehicles, Defendant knew or should have known the VW Class Vehicles contained the Defect due to pre-production testing, quality control audits, and failure mode analysis. Defendant also should have known of the Defect from the early complaints and service requests it received from VW Class Members and dealers, from its own investigation and issuance of service bulletins, technical tips and recalls, from repairs and/or replacements of AEB System components, and from other internal sources. Defendant, nevertheless, failed to disclose and actively concealed the dangers and risks posed by the VW Class Vehicles and the Defect.

308. By failing to disclose and by actively concealing the Defect in the VW Class Vehicles, by marketing them as safe, reliable, and of high quality, and by presenting themselves as reputable manufacturers or distributors for a reputable manufacturer that values safety, Defendant engaged in unfair or deceptive business practices in violation of the FDUTPA. Defendant deliberately withheld the information about the propensity of the Defect to activate the

AEB System despite there being no obstacles in front of the vehicle and to fail to activate when a person or object crosses in front of the vehicle while in motion, despite commercials showing this kind of functionality. Further, Defendant knew, or should have known, that such incidents could cause the VW Class Vehicles to severely injure vehicle operators, passengers and other motorists and for the vehicles to become involved in collisions or other accidents. Defendant deliberately concealed and failed to disclose this material information to ensure that consumers would purchase the VW Class Vehicles.

309. In the course of Defendant's businesses, they willfully failed to disclose and actively concealed the dangerous risks posed by the Defect. Defendant compounded the deception by repeatedly asserting that the VW Class Vehicles were safe, reliable, and of high quality despite containing the Defect, and by claiming to be reputable manufacturer or a reputable distributor for a reputable manufacturer that values safety.

310. Defendant's unfair and deceptive trade practices were likely intended to deceive a reasonable consumer. Plaintiff Oweis and members of the Florida Sub-Class had no reasonable way to know that the VW Class Vehicles contained the Defect, were defective in workmanship and/or manufacture, and posed a serious and significant safety risk. Defendant possessed superior knowledge as to the quality and characteristics of the VW Class Vehicles, including the Defect within their vehicles and its associated safety risks, and any reasonable consumer would have relied on Defendant's misrepresentations and omissions, as Plaintiff Oweis and members of the Florida Sub-Class did.

311. Defendant intentionally and knowingly misrepresented material facts and omitted material facts regarding the VW Class Vehicles and the Defect present in VW Class Vehicles with an intent to mislead Plaintiff Oweis and the Florida Sub-Class.

312. Defendant knew or should have known that their conduct violated the FDUTPA.

313. Defendant made material statements and/or omissions about the safety and reliability of the VW Class Vehicles and/or the defective AEB Systems installed in them that were either false or misleading. Defendant's misrepresentations, omissions, statements, and commentary have included selling and marketing VW Class Vehicles as safe and reliable, despite their knowledge of the Defect and its corresponding safety hazard.

314. To protect their profits, avoid remediation costs and public relation problems, and increase their profits by having consumers pay for component parts and expensive repairs to remedy the Defect, Defendant concealed the defective nature and safety risk posed by the VW Class Vehicles and existing Defect at the time of sale or lease. Defendant allowed unsuspecting new and used car purchasers and lessees to continue to buy or lease the VW Class Vehicles and continue to drive them, despite the safety risk they pose.

315. Defendant owed Plaintiff Oweis and the Florida Sub-Class a duty to disclose the true safety and reliability of the VW Class Vehicles and the existence of the Defect because Defendant:

- (a) Possessed exclusive knowledge of the Defect and its associated safety hazard;
- (b) Intentionally concealed the foregoing from Plaintiff Oweis and the Florida Sub-Class; and/or
- (c) Made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiff Oweis and the Florida Sub-Class that contradicted these

representations, inter alia, that a Defect existing at the time of sale or lease with the associated safety risks.

316. Because Defendant fraudulently concealed the Defect in the VW Class Vehicles, and now that the Defect has been disclosed, the value of the VW Class Vehicles has greatly diminished, and they are now worth significantly less than they otherwise would be. Further, Plaintiff Oweis and the Florida Sub-Class were deprived of the benefit of the bargain they reached at the time of purchase or lease.

317. Defendant's failure to disclose and active concealment of the Defect in the VW Class Vehicles were material to Plaintiff Oweis and the Florida Sub-Class. A vehicle made by an honest and reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a dishonest and disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly reports on and remedies them.

318. Plaintiff Oweis the Florida Sub-Class suffered ascertainable losses caused by Defendant's misrepresentations and their failure to disclose material information. Had Plaintiff Oweis and the Florida Sub-Class members been aware of the Defect that existed in the VW Class Vehicles and Defendant's complete disregard for the safety of its consumers, Plaintiff Oweis and the Florida Sub-Class either would not have paid as much for their vehicles or would not have purchased or leased them at all. Plaintiff Oweis and the Florida Sub-Class did not receive the benefit of their bargain as a result of Defendant's misconduct.

319. Plaintiff Oweis and the Florida Sub-Class risk loss of use of their vehicles as a result of Defendant's act and omissions in violation of the FDUTPA, and these violations present a continuing risk to Plaintiff Oweis, the Florida Class, and the public in general. Defendant's unlawful acts and practices complained of above affect the public interest.

320. As a direct and proximate result of Defendant's violations of the FDUTPA, Plaintiff Oweis and the Florida Sub-Class have suffered injury-in-fact and/or actual damage, including the complete loss of their vehicles and the possessions inside of them.

321. Plaintiff Oweis and the Florida Sub-Class are entitled to recover their actual damages, under Fla. Stat. § 501.211(2), and attorneys' fees under Fla. Stat § 501.2105(1).

322. Plaintiff Oweis and the Florida Sub-Class also seek an order enjoining Defendant's unfair, unlawful, and deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the FDUTPA.

COUNT TEN
Breach of Implied Warranty
Fla. Stat. §§ 672.314 and 680.212
(By Plaintiff Oweis on Behalf of the Florida Sub-Class)

323. Plaintiff Omar Oweis incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

324. Plaintiff Oweis brings this Count on behalf of himself and members of the Florida Sub-Class.

325. VWGOA was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the VW Class Vehicles through their authorized agents for retail sales.

326. VWGOA provided Plaintiff Oweis and Florida Sub-Class Members with an implied warranty that the VW Class Vehicles and their components and parts are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the VW Class Vehicles are not merchantable because they are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the VW Class Vehicles suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose

of providing safe and reliable transportation. The VW Class Vehicles would not pass without objection in the trade, are not adequately labeled and do not comfort the promises and affirmations on the label because the VW Class Vehicles have AEB systems that are prone to forcing the vehicle to brake when there are not obstacles ahead and also fail to engage as described when there are obstacles ahead.

327. VWGOA impliedly warranted that the VW Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the VW Class Vehicles, which were manufactured, supplied, distributed, and/or sold by VW, would provide safe and reliable transportation; (ii) a warranty that the VW Class Vehicles would be fit for their intended use; (iii) that the VW Class Vehicles would pass without objection in the trade; (iv) that VW Class Vehicles are adequately labeled; and (v) that VW Class Vehicles would conform the promises and affirmations on their labels.

328. Contrary to the applicable implied warranties, the VW Class Vehicles and their AEB systems at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff Oweis and Florida Sub-Class Members with reliable, durable, and safe transportation, would not pass without objection in the trade, were not adequately labeled, and did not conform to the promises and affirmation on their labels, Instead, the VW Class Vehicles are defective due to the AEB System Defect.

329. Plaintiff Oweis and members of the Florida Sub-Class have had sufficient direct dealings with either VWGOA or its agents (dealerships and technical support) to establish privity of contract between VW, on one hand, and Plaintiff Oweis and each of the other Florida Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Oweis and each of the other Florida Sub-Class Members are intended third-party beneficiaries of contracts

between VWGOA and its distributors and dealers, and specifically, of VWGoA's implied warranties. The dealers were not intended to be the ultimate consumers of the VW Class Vehicles and have no rights under the warranty agreements provided with the VW Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

330. The alleged AEB System Defect is inherent and was present in each VW Class Vehicle at the time of sale.

331. Because of VWGoA's breach of the applicable implied warranties, owners and/or lessees of the VW Class Vehicles suffered an ascertainable loss of money, property, and/or value of their VW Class Vehicles. Additionally, because of the AEB System Defect, Plaintiff Oweis and the Florida Sub-Class Members were harmed and suffered actual damages in that the VW Class Vehicles are defective, that they overpaid for defective vehicles, and that the VW Class Vehicles' AEB Systems increase their chances of being involved in a collision by activating without cause and failing to activate when they should.

332. VWGoA's actions, as complained of herein, breached the implied warranty that the VW Class Vehicles were of merchantable quality and fit for such use in violation of Fla. Stat. §§ 672.314 and 680.212.

333. As a direct and proximate result of Defendant's breach of the implied warranties of merchantability, Plaintiff Oweis and members of the Florida Sub-Class have been damaged in an amount to be proven at trial.

COUNT ELEVEN
Breach of Express Warranty
Fla. Stat. §§ 672.313 and 680.21
(By Plaintiff Oweis on Behalf of the Florida Sub-Class)

334. Plaintiff Oweis incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

335. Plaintiff Omar Oweis brings this cause of action on behalf of himself and members of the Florida Sub-Class.

336. VWGoA provided all purchasers and lessees of the VW Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, VWGoA's express warranty is an express warranty under Florida law.

337. The AEB systems were installed in the VW Class Vehicles by VW and are covered by the express warranty.

338. As set forth *supra* and incorporated by reference, VWGoA provided a 72,000 mile or 6 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to consumers. These warranties were transferable to subsequent purchasers.

339. VWGoA breached the express warranties by selling and leasing VW Class Vehicles with the AEB System Defect, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by repairing or replacing, the defective Class Vehicles.

340. Plaintiff Oweis and members of the Florida Sub-Class have had sufficient direct dealings with either VWGoA or its agents (dealerships and technical support) to establish privity of contract between VWGoA, on one hand, and Plaintiff Oweis and each of the other Florida Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Oweis and each of the other Florida Sub-Class Members are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties. The dealers were not intended to be the ultimate consumers of the VW Class Vehicles and have no rights under the warranty agreements provided with the VW Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

341. Any attempt by Defendant VWGoA to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because Defendant VWGoA knowingly sold or leased a defective product without informing consumers about the Defect. The time limits are unconscionable and inadequate to protect Plaintiff Oweis and members of the Florida Sub-Class. Among other things, Plaintiff Oweis and members of the Florida Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which unreasonably favored Defendant VWGoA. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the Defect, existed between Defendant VWGoA and members of the Florida Sub-Class.

342. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to make Plaintiff Oweis and the members of the Florida Sub-Class whole, because, on information and belief, Defendant VWGoA has failed and/or has refused to adequately provide the promised remedies, i.e. a repair, within a reasonable time.

343. Plaintiff Oweis was not required to notify VWGoA of the breach or were not required to do so because affording VWGoA a reasonable opportunity to cure its breach of written warranty would have been futile. VWGoA was also on notice of the AEB System Defect from its own pre-production testing, from the early complaints and service requests it received from VW Class Members, from repairs and/or replacements of VW Class Vehicles, and from other internal sources.

344. VWGoA was further provided notice of its breach of express warranties when he took his Class Vehicle to his local VWGOA dealership, a VW-authorized provided of warranty

repairs in 2019 and on or about August 31, 2020. Despite these notices, VWGoA failed to cure the breach of express warranties within an adequate time.

345. As a direct and proximate cause of VWGoA's breach of express warranties, Plaintiff Oweis and Florida Sub-Class have suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiff Oweis and the Florida Sub-Class have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

346. Plaintiff Oweis and the Florida Sub-Class Members seek full compensatory damages allowable by law, attorneys' fees, costs, punitive damages, restitution, the repair or replacement of all class vehicles, the refund of money paid to own or lease all class, and appropriate equitable relief including injunctive relief, a declaratory judgment, and a court order enjoining VWGoA's wrongful acts and practices, and any other relief to which Plaintiff Oweis and the Florida Sub-Class Members may be entitled.

Georgia Causes of Action

COUNT TWELVE

Violation of Georgia's Fair Business Practices Act, GA. Code Ann. § 10-1-390, *et seq.* (On Behalf of Plaintiff Pieras and the Georgia Sub-Class)

347. Plaintiff Pieras incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

348. Plaintiff Pieras brings this cause of action on behalf of himself and the Georgia Sub-Class.

349. Georgia's Fair Business Practices Act ("GFBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful. Ga. Code Ann. § 10-1-393(a).

350. Unfair or deceptive acts or practices are defined to include, “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have,” “[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another,” and [a]dvertising goods or services with intent not to sell them as advertised.” Ga. Code Ann. § 10-1-393(b).

351. In the course of their business, Defendant concealed and suppressed material facts concerning the Audi Class Vehicles. By failing to disclose and actively concealing that the Audi Class Vehicles contained the AEB System Defect, by marking their Audi Class Vehicles as safe and of high quality, and by presenting themselves as reputable manufacturers and distributors that value safety and stand behind their vehicles after they were sold, Defendant engaged in unfair business practices as defined by the GFBPA.

352. Defendant failed to disclose information about the propensity of the AEB System Defect to cause the vehicle to unnecessarily warn the driver or apply the brakes despite the lack of an obstacle, or fail to respond as intended and advertised when an obstacle does suddenly appear. Further, Defendant knew, or should have known, that sudden, unnecessary braking or a failure to brake when necessary could cause the Audi Class Vehicles to become involved in collisions or other accidents, putting vehicle operators, passengers and other motorists at risk for injury. Defendant deliberately concealed and failed to disclose this material information to ensure that consumers would purchase the Audi Class Vehicles and spend money on useless remedies and repairs.

353. Instead, Defendant marketed the Class Vehicles as being safe and reliable transportation, and having fully functional and reliable AEB systems. In fact, the Audi Class

Vehicles are not safe and reliable transportation, and the AEB systems do not react predictably, apply the brakes unnecessarily, and/or fail to activate when an obstacle is present.

354. Defendant violated the GFBPA by: (1) representing that the Audi Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Audi Class Vehicles are of a particular standard, quality, and grade when they are not; and (3) advertising the Audi Class Vehicles with the intent not to sell them as advertised.

355. Defendant engaged in misleading, false, unfair, or deceptive practices, including, but not limited to, deception, fraud, false pretense, false promise, misrepresentation and the knowing concealment, suppression and omission of material facts concerning the Audi Class Vehicles' AEB System Defect and corresponding safety risk in connection with the sale and/or advertisement of Audi Class Vehicles. This includes denying the existence of the AEB System Defect to consumers, even when investigating the causes of why the Class Vehicles would brake unnecessarily and/or fail to brake, failing to provide repairs under the express warranties provided with the sale of the Audi Class Vehicles for the AEB System Defect, and by presenting themselves as reputable manufacturers that valued safety and stood behind their vehicles after they were sold.

356. Defendant fraudulently, intentionally, negligently and/or recklessly misrepresented to Plaintiff Pieras and the members of the Georgia Sub-Class the characteristics of the Audi Class Vehicles with respect to materials, manufacture, safety, and reliability.

357. Defendant intended that Plaintiff Pieras and members of the Georgia Sub-Class would, in the course of their decision to expend money in purchasing, leasing and/or repairing Audi Class Vehicles, reasonably rely upon misrepresentations, misleading characterizations and material omissions concerning the quality of the Audi Class Vehicles and their components with respect to materials, workmanship, and manufacture.

358. Information regarding the AEB System Defect as described herein is material to consumers in that the AEB System Defect can cause an Audi Class Vehicle to brake abruptly while being driven without cause, and as such, poses a safety risk.

359. If Defendant had not concealed the AEB System Defect from Plaintiff Pieras and members of the Georgia Sub-Class within the express warranty period, the AEB System Defect could have been repaired without cost to purchasers as promised under the original warranty.

360. Defendant intentionally and knowingly misrepresented material facts regarding the Class Vehicles' ability to provide safe and reliable transportation with the intent to mislead Plaintiff Pieras and members of the Georgia Sub-Class.

361. Defendant knew or should have known that their conduct violated the GFBPA.

362. Defendant owed Plaintiff Pieras and members of the Georgia Sub-Class a duty to disclose the existence of the AEB System Defect and its corresponding safety risk because Defendant:

- (a) Possessed exclusive knowledge that they were manufacturing, distributing, and selling vehicles throughout the United States that possessed the AEB System Defect;
- (b) Intentionally concealed the existence of the AEB System Defect from Plaintiff Pieras and members of the Georgia Sub-Class; and/or
- (c) Made incomplete and misleading representations about the Audi Class Vehicles' ability to provide safe, reliable transportation while purposefully withholding material facts that contradicted these representations.

363. As a proximate and direct result of Defendant's unfair and deceptive trade practices, Plaintiff Pieras and members of the Georgia Sub-Class purchased or leased the Audi Class

Vehicles and suffered an ascertainable loss and financial harm in the form of actual damages in the amount of overpaying for defective Audi Class Vehicles, the diminution of value for the Audi Class Vehicles, the costs of ineffectual repairs, and other substantial monetary damages and inconvenience.

364. Defendant had an ongoing duty to all Audi customers to refrain from unfair and deceptive practices under the GFBPA. Defendant's violations present a continuing risk to Plaintiff Pieras and members of the Georgia Sub-Class, as well as to the general public. Defendant's unlawful acts and practices complained of here affect the public interest.

365. Pursuant to statute, Plaintiff Pieras provided notice of his claim by letter dated October 21, 2020. Plaintiff Pieras and members of the Georgia Sub-Class seek all damages and relief to which they are entitled to because VWGOA failed to remedy its unlawful conduct within the requisite time period.

366. Plaintiff Pieras and members of the Georgia Sub-Class seek monetary relief against Defendant in the amount of damages, exemplary damages for intentional violations, injunctive relief, attorneys' fees, and any other just and proper relief available under Ga. Code Ann. § 10-1-399(a).

COUNT THIRTEEN

**Violation of the Georgia Uniform Deceptive Trade Practices Act,
GA. CODE ANN. § 10-1-370, et seq.
(On Behalf of Plaintiff Pieras and the Georgia Sub-Class)**

367. Plaintiff Pieras incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

368. Plaintiff Pieras brings this cause of action on behalf of himself and the Georgia Sub-Class.

369. The Georgia Uniform Deceptive Trade Practices Act (“GUDTPA”) prohibits “deceptive trade practices,” which include the “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” Ga. Code Ann. § 10-1-372(a). Defendant engaged in unfair and deceptive practices that violated the GUDTPA as described above.

370. Defendant, Plaintiff Pieras, and the members of the Georgia Sub-Class are “persons” within the meaning of the GUDTPA, GA. Code Ann. § 10-1-471(5).

371. Defendant participated in the misleading, false, or deceptive practices that violated the GUDTPA. By failing to disclose and actively concealing that the Audi Class Vehicles contained the AEB System Defect, by marketing their Audi Class Vehicles as safe and of high quality, and by presenting themselves as reputable manufacturers that valued safety and stood behind their vehicles after they were sold, Defendant engaged in deceptive business practices prohibited by the GUDTPA.

372. In the course of their business, Defendant willfully failed to disclose and actively concealed the AEB System Defect discussed herein and other engaged in activities with a tendency or capacity to deceive. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale of the Class Vehicles.

373. Defendant knew or should have known about the AEB System Defect in the Audi Class Vehicles but failed to disclose that the Audi Class Vehicles contained the AEB System Defect. Defendant also knew they were manufacturing, selling, and distributing Audi Class Vehicles that did not perform as advertised and jeopardized the safety of the Vehicle’s occupants,

but failed to disclose this information to Plaintiff Pieras and the members of the Georgia Sub-Class. Defendant failed to disclose information about the propensity of the AEB System Defect to cause the vehicle unnecessarily warn the driver or apply the brakes despite the lack of an obstacle, or fail to respond as intended and advertised when an obstacle does suddenly appear. Further, Defendant knew, or should have known, that sudden, unnecessary braking or a failure to brake when necessary could cause the Audi Class Vehicles to become involved in collisions or other accidents, putting vehicle operators, passengers and other motorists at risk for injury. Defendant deliberately concealed and failed to disclose this material information to ensure that consumers would purchase the Audi Class Vehicles and spend money on useless remedies and repairs.

374. Defendant committed unconscionable, deceptive and unfair trade practices, including, but not limited to, deception, fraud, false pretense, false promise, misrepresentation and the knowing concealment, suppression and omission of material facts concerning the AEB System Defect in Audi Class Vehicles and the corresponding safety risk in connection with the sale and/or advertisement of Audi Class Vehicles.

375. Defendant fraudulently, intentionally, negligently and/or recklessly misrepresented to Plaintiff Pieras and members of the Georgia Sub-Class the characteristics of the Audi Class Vehicles with respect to operating costs, materials, manufacture, durability, design, functionality, and reliability.

376. Defendant intended that Plaintiff Pieras and members of the Georgia Sub-Class would, in the course of their decision to expend money in purchasing, leasing, and/or repairing the Audi Class Vehicles, reasonably rely upon misrepresentations, misleading characterizations and

material omissions concerning the quality, functionality, and reliability of the Audi Class Vehicles with respect to material, workmanship, design, and manufacture.

377. Information regarding the AEB System Defect as described herein is material to consumers in that the AEB System Defect results in making the AEB System nonfunctional and/or unpredictable. Further, Defendant knew, or should have known, that sudden, unnecessary braking or a failure to brake when necessary could cause the Audi Class Vehicles to become involved in collisions or other accidents, putting vehicle operators, passengers and other motorists at risk for injury. As such that the AEB System Defect poses a safety risk.

378. If Defendant had not concealed the AEB System Defect from Plaintiff Pieras and members of the Georgia Sub-Class within the express warranty period, the AEB System Defect could have been repaired without cost to purchasers as promised under the original warranty.

379. Defendant violated the GUDTPA by failing to inform Audi Class Vehicle owners and/or lessees prior to purchase and/or lease during the warranty period that Class Vehicles were defectively designed and/or manufactured, contained the AEB System Defect, and/or were not capable of being repaired.

380. Defendant intentionally and knowingly misrepresented material facts regarding the Audi Class Vehicles with intent to mislead Plaintiff Pieras and the members of the Georgia Sub-Class.

381. Defendant owed Plaintiff Pieras and members of the Georgia Sub-Class a duty to disclose the existence of the AEB System Defect and its corresponding safety risk because they:

- (a) Possessed exclusive knowledge that they were manufacturing, distributing, and selling vehicles throughout the United States that possessed the AEB System Defect;

- (b) Intentionally concealed the existence of the AEB System Defect from Plaintiff Pieras and members of the Georgia Sub-Class; and/or
- (c) Made incomplete and misleading representations about the Audi Class Vehicles' ability to provide safe, reliable transportation while purposefully withholding material facts that contradicted these representations.

382. Defendant's concealment of the true characteristics of the Audi Class Vehicles was material to Plaintiff Pieras and the members of the Georgia Sub-Class.

383. As a proximate and direct result of Defendant's unfair and deceptive trade practices, Plaintiff Pieras and members of the Georgia Sub-Class purchased or leased Audi Class Vehicles and suffered an ascertainable loss and financial harm.

384. Plaintiff Pieras and members of the Georgia Sub-Class experienced ascertainable losses in the form of actual damages in the amount of the cost to attempt to repair the AEB System Defect, replacement of the damaged related system components, diminution of Audi Class Vehicle resale value, increased repair and maintenance costs, and other substantial monetary damages and inconvenience.

385. Plaintiff Pieras provided notice of his claims by letter dated October 21, 2020.

386. Plaintiff Pieras and members of the Georgia Sub-Class seek monetary relief against Defendant in the amount of actual damages, injunctive relief, attorneys' fees, and any other just and proper relief available under Ga. Code Ann. § 10-1-373.

COUNT FOURTEEN
Breach of Express Warranty
Ga. Code Ann. §§ 11-2-104(1)
(On Behalf of Plaintiff and the Georgia Sub-Class)

387. Plaintiff Pieras incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

388. Plaintiff Pieras brings this cause of action against VWGoA on behalf of himself and the Georgia Sub-Class.

389. VWGoA is and was at all relevant times a “merchant” with respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles under § 11-2-103(1)(d).

390. With respect to leases, VWGoA is and was at all relevant times a “lessor” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

391. The Audi Class Vehicles are and were at all relevant times goods within the meaning of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

392. VWGoA provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, VWGoA’s express warranty is an express warranty under Georgia law.

393. The AEB Systems were installed and calibrated in the Audi Class Vehicles by VW and are covered by the express warranty.

394. As set forth *supra* and incorporated by reference, VWGoA provided a 50,000 mile or 4 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to Audi consumers. These warranties were transferable to subsequent purchasers.

395. VWGoA breached the express warranties by selling and leasing Audi Class Vehicles with the AEB System Defect, requiring repair or replacement of the Audi Class Vehicles within the warranty period, and refusing to honor the express warranty by repairing or replacing, free of charge, the Audi Class Vehicles.

396. Plaintiff Pieras and members of the Georgia Sub-Class have had sufficient direct dealings with either VWGoA or its agents (dealerships and technical support) to establish privity

of contract between VWGoA, on one hand, and Plaintiff Pieras and each of the other Georgia Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Pieras and each of the other Georgia Sub-Class Members are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties. The dealers were not intended to be the ultimate consumers of the Audi Class Vehicles and have no rights under the warranty agreements provided with the Audi Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

397. Any attempt by VWGoA to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because VWGoA knowingly sold or leased a defective product without informing consumers about the AEB System Defect. The time limits are unconscionable and inadequate to protect Plaintiff Pieras and members of the Georgia Sub-Class. Among other things, Plaintiff and members of the Georgia Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which unreasonably favored VWGoA. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the AEB System Defect, existed between VWGoA and members of the Georgia Sub-Class.

398. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to make Plaintiff Pieras and the members of the Georgia Sub-Class whole, because, on information and belief, VWGoA has failed and/or has refused to adequately provide the promised remedies, i.e. a repair, within a reasonable time.

399. Plaintiff Pieras and members of the Georgia Sub-Class were not required to notify VWGoA of the breach or were not required to do so because affording VWGoA a reasonable opportunity to cure its breach of written warranty would have been futile. VWGoA was also on notice of the AEB System Defect from its own pre-production testing, from the early complaints and service requests it received from Audi Class Members, from repairs and/or replacements of AEB system and other related system components, and from other internal sources.

400. VWGoA was further provided notice of its breach of express warranties by Plaintiff Pieras by letter dated October 21, 2020. Plaintiff Pieras also provided notice of express warranties when he took his Class Vehicle to Audi South Atlanta, a VWGoA-authorized provider of warranty repairs. Despite these notices, VWGoA failed to cure the breach of express warranties within an adequate time.

401. As a direct and proximate cause of VWGoA's breach of express warranties, Plaintiff Pieras and the other Georgia Sub-Class Members have suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiff Pieras and the other Audi Class Members have incurred or will incur economic damages at the point of repair in the form of the cost of repair to the AEB system, the related systems, and/or any collisions caused in whole or in part by the AEB System Defect.

402. Plaintiff Pieras and the other Georgia Sub-Class Members are entitled to legal and equitable relief against VWGoA, including actual damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

COUNT FIFTEEN
Breach of Implied Warranty
Ga. Code Ann. §§ 11-2-104(1)
(By Plaintiff Pieras on Behalf of the Georgia Sub-Class)

403. Plaintiff Pieras incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

404. Plaintiff Pieras brings this Count on behalf of himself and members of the Georgia Sub-Class.

405. Defendant is and was at all relevant times a “merchant” with respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles under § 11-2-103(1)(d).

406. With respect to leases, Defendant is and was at all relevant times a “lessor” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

407. The Audi Class Vehicles are and were at all relevant times goods within the meaning of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

408. VWGoA provided Plaintiff Pieras and Georgia Sub-Class Members with an implied warranty that the Audi Class Vehicles and their components and parts are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the Audi Class Vehicles are not merchantable because they are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Audi Class Vehicles suffered from an inherent defect at the time of sale and thereafter. The Audi Class Vehicles would not pass without objection in the trade, are not adequately labeled and do not conform to the promises and affirmations on the label because the Audi Class Vehicles have AEB systems that are prone to

forcing the vehicle to brake when there are not obstacles ahead and also fail to engage as described when there are obstacles ahead.

409. VWGoA impliedly warranted that the Audi Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Audi Class Vehicles, which were manufactured, supplied, distributed, and/or sold by VWGoA, would provide safe and reliable transportation; (ii) a warranty that the Audi Class Vehicles would be fit for their intended use; (iii) that the Audi Class Vehicles would pass without objection in the trade; (iv) that Audi Class Vehicles are adequately labeled; and (v) that the Audi Class Vehicles would conform the promises and affirmations on their labels.

410. Contrary to the applicable implied warranties, the Audi Class Vehicles and their AEB systems at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff Pieras and Georgia Sub-Class Members with reliable, durable, and safe transportation, would not pass without objection in the trade, were not adequately labeled, and did not conform to the promises and affirmation on their labels. Instead, the Audi Class Vehicles are defective due to the AEB System Defect.

411. Plaintiff Pieras and members of the Georgia Sub-Class have had sufficient direct dealings with either VWGoA or its agents (dealerships and technical support) to establish privity of contract between VWGoA, on one hand, and Plaintiff Pieras and each of the other Georgia Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Pieras and each of the other Georgia Sub-Class Members are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's implied warranties. The dealers were not intended to be the ultimate consumers of the Audi Class Vehicles

and have no rights under the warranty agreements provided with the Audi Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

412. Plaintiff Pieras and members of the Georgia Sub-Class were not required to notify VWGoA of the breach or were not required to do so because affording VWGoA a reasonable opportunity to cure its breach of implied warranty would have been futile. VWGoA was also on notice of the AEB System Defect from its own pre-production testing, from the early complaints, service requests, and replacement part orders it received from its network of dealerships and Class Members, from repairs and/or replacements of the starter and other related system components under warranty, and from other internal sources, including communications and complaints from its network of dealerships.

413. Plaintiff Pieras provided notice to VWGoA of its breach of implied warranties by letter dated October 21, 2020. Plaintiff Pieras and members of the Georgia Sub-Class also provided notice of the breach of implied warranties when they took their Audi Class Vehicle to Audi dealerships which are VWGoA -authorized provider of warranty repairs. In addition, Defendant was provided with notice of these issues by numerous NHTSA and consumer complaints filed against VWGoA, including the instant Complaint and similar legal proceedings, and has actual knowledge of the AEB System Defect.

414. The alleged AEB System Defect is inherent and was present in each Audi Class Vehicle at the time of sale.

415. Because of VWGoA's breach of the applicable implied warranties, owners and/or lessees of the Audi Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Audi Class Vehicles. Additionally, because of the AEB System Defect, Plaintiff Pieras and Georgia Members were harmed and suffered actual damages in that the Audi Class Vehicles'

are defective, that they overpaid for defective vehicles, and that the Audi Class Vehicles' AEB Systems increase their chances of being involved in a collision by activating without cause and failing to activate when they should.

416. As a direct and proximate result of Defendant's breach of the implied warranties of merchantability, Plaintiff Pieras and members of the Georgia Sub-Class have been damaged in an amount to be proven at trial.

Kansas Causes of Action

COUNT SIXTEEN **Violation of Kansas Consumer Protection Act** **(Kan. Stat. Ann. § 50-623 *et seq.*)** **(Brought by Plaintiff Emily Dack)**

417. Plaintiff Dack incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

418. Defendant is a "supplier" under the Kansas Consumer Protection Act ("Kansas CPA"), Kan. Stat. Ann. § 50-624(1).

419. Plaintiff Dack and Kansas Class members are "consumers," within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Class Vehicles.

420. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that "(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;" and "(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;" "(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;" and "(3) the willful failure to state a

material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).

421. Defendant willfully violated the Kansas CPA by selling the Class Vehicles without disclosing the AEB System Defect.

422. Defendant stated that “Forward Collision Warning and Autonomous Emergency Braking (included in Front Assist) has a sensor in the front to help monitor traffic and can alert you to a potential collision. If the driver brakes too lightly in response to an audible and visual warning, Autonomous Emergency Braking (included in Front Assist) can increase braking pressure to help avoid or mitigate the impact of an impending collision. If the driver does not break at all, the car can apply the brakes automatically.”

423. This statement is false and misleading because Defendant sold and leased the Class Vehicles without disclosing that the Front Assist feature does not work as stated.

424. Defendant also failed to disclose to consumers the existence of the AEB System Defect, which they had an obligation to do because the AEB System Defect is a safety issue. Defendant's misrepresentations and omissions as set forth in this complaint are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff.

425. In violation of the Kansas CPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Class Vehicles.

426. Plaintiff Dack and the Class suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein.

427. Had Plaintiff Dack known the truth about the vehicle, she would not have purchased the vehicle, or would not have paid as much.

428. Ms. Dack seeks damages, attorneys' fees and all other appropriate relief under the Kansas CPA.

COUNT EIGHTEEN
Breach of Express Warranty Under Kansas Law
Kan. Stat. §§ 84-2-314 and 84-2A-210
(Brought by Plaintiff Emily Dack)

429. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

430. Defendant is a “merchant,” “seller,” and “lessor” under Kan. Stat. §§ 84-2-103(1)(d), 103(1)(p), 103(3) and 104(1).

431. Defendant expressly warranted that that the Front Assist feature “can help monitor traffic and can alert you acoustically and visually to a potential rear-end collision with the vehicle moving ahead. If it senses that a frontal collision is imminent, Autonomous Emergency Braking (included in Front Assist) can support the driver with increased brake pressure or, if the driver does not react at all, it can apply the brakes automatically. The Pedestrian Monitoring (included in Front Assist) feature can warn of pedestrians crossing in front of the vehicle and, under certain circumstances, can brake automatically to help mitigate the outcome of a collision with a pedestrian if the driver doesn't respond to the warnings.”

432. Defendant also expressly warranted that the Class Vehicles, including the Front Assist feature, were safe, high quality, and, at a minimum, would work properly.

433. Defendant also expressly warranted that it would repair and/or replace defects in material and/or workmanship free of charge that occurred during the New Vehicle Limited Warranty periods (“NVLW”) for a period of 6 years or 72,000 miles, whichever occurs first. This

NVLW covers repairs or defects and is applicable to the Front Assist Defect.

434. Defendant breached these warranties by selling to Plaintiff and Class members the Class Vehicles with the known AEB System Defect.

435. As a result of the Defendant's actions, Plaintiff and Class members have suffered economic damages including but not limited to loss of vehicle use while their vehicles are undergoing examination at repair facilities, substantial loss in value and resale value of the vehicles, and other related damage.

436. Defendant's attempt to disclaim or limit these express warranties is unconscionable and unenforceable under the circumstances here. Specifically, Defendant's warranty limitations are unenforceable because it knowingly sold or leased Class Vehicles without informing consumers about the AEB System Defect. Furthermore, Defendant has failed to repair the Defect.

437. A gross disparity in bargaining power existed between Defendant and Class members, and Defendant knew or should have known that the Class Vehicles were defective at the time of sale and would fail well before their useful lives.

438. Plaintiff and Class members have complied with all obligations under the warranties, or otherwise have been excused from performance of said obligations as a result of Defendant's conduct described herein.

439. Defendant was notified of their breach by numerous consumer complaints and communications by Class Members.

440. As a direct and proximate result of the breach, Plaintiff and the Class Members have been damaged in an amount to be determined at trial.

COUNT SEVENTEEN
Breach of Implied Warranty of Merchantability Under Kansas Law
(Kan. Stat. §§84-2-314 and 84-2A-212)
(Brought by Plaintiff Emily Dack)

441. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

442. Defendant is a “merchant,” “seller,” and “lessor” under Kan. Stat. §§ 84-2-103(1)(d), 84-2-103(3), 84-2A-103(1)(p), and 84-2A-104(1).

443. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Kan. Stat. §§ 84-2-314 and 84-2A-212.

444. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently defective in that their Front Assist feature engages for no reason, making them not of high quality, and causing them to pose dangerous conditions for the Class Vehicles’ occupants and others on the roadway, and to fail prematurely and/or fail to function properly.

445. Defendant was provided notice of these issues by numerous complaints filed against them, including the instant Complaint.

446. As a direct and proximate result of the Defendant’s breach of the implied warranty of merchantability, Plaintiff and the Class Members have been damaged in an amount be determined at trial.

Massachusetts Causes of Action

COUNT EIGHTEEN

Violation of the Massachusetts Consumer Protection Act (“MCPA”)

Mass. Gen. Laws 93A, § 1, *et seq.*

(By Plaintiff Christian on Behalf of the Massachusetts Sub-Class)

447. Plaintiff Linda Christian incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

448. Plaintiff Christian brings this Count on behalf of herself and members of the Massachusetts Sub-Class.

449. Plaintiff Christian, members of the Massachusetts Sub-Class, and Defendant are “persons” within the meaning of Mass. Gen. Laws 93A, § 1(a).

450. Defendant engaged in “trade” or “commerce” within the meaning of Mass. Gen. Laws 93A, § 1(b).

451. The MCPA prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Mass. Gen. Laws 93A, § 2(a).

452. In the course of their business, Defendant violated the MCPA by mispresenting to Plaintiff Christian and members of the Massachusetts Sub-Class the true capabilities and functionality of the AEB Systems and failing to disclose that the Class Vehicles possessed the AEB System Defect and the corresponding safety risk. Defendant fraudulently, intentionally, negligently and/or recklessly misrepresented to Plaintiff Christian and the members of the Massachusetts Sub-Class the characteristics of the VW Class Vehicles and their AEB systems with respect to manufacture, workmanship, and functionality.

453. Defendant committed unconscionable, deceptive and unfair trade practices, including, but not limited to, deception, fraud, false pretense, false promise, misrepresentation and the knowing concealment, suppression and omission of material facts concerning the AEB System

Defect and corresponding safety risk with the intent that Plaintiff Christian and members of the Massachusetts Sub-Class would rely upon their misrepresentations and omissions in connection with the sale and/or advertisement of VW Class Vehicles.

454. Defendant violated the MCPA by: (i) representing that the VW Class Vehicles have characteristics, uses, benefits, or qualities they do not have; (ii) representing that the VW Class Vehicles are of a particular standard, quality, and grade when they are not; and/or (iii) advertising the VW Class Vehicles with the intent not to sell them as advertised.

455. Defendant intended that Plaintiff Christian and members of the Massachusetts Sub-Class would, in the course of their decision to expend money in purchasing, leasing and/or repairing VW Class Vehicles, reasonably rely upon misrepresentations, misleading characteristics and material omissions concerning the quality and functionality of the AEB system in VW Class Vehicles, with respect to their manufacture, workmanship, and the information in the owner's manuals.

456. Information regarding the AEB System Defect as described herein is material to consumers in that the Defect results in overpayment for a defective vehicle and poses a safety risk.

457. Defendant failed to disclose and omitted the existence of the AEB System Defect in the VW Class Vehicles. Defendant's omissions caused Plaintiff Christian and the members of the Massachusetts Sub-Class to be unaware at the time of their purchase of their VW Class Vehicles that the AEB System Defect and its corresponding safety risk existed.

458. Defendant owed a duty to disclose the material fact that the VW Class Vehicles contained the AEB System Defect to Plaintiff Christian and members of the Massachusetts Sub-Class, but failed to do so. Defendant had a duty to disclose the existence of the AEB System Defect and its corresponding safety risk due to their superior and exclusive knowledge gained

through pre-production testing, early consumer and dealer complaints, aggregate warranty data, and other sources not available to the general public. Defendant had a further duty to disclose the AEB System Defect and its corresponding safety risk because, having volunteering to provide information to Plaintiff Christian and the members of the Massachusetts Sub-Class regarding the safety and operation of the AEB systems in VW Class Vehicles, they had a duty to disclose not just the partial truth, but the entire truth: that contrary to Defendant's representations, the VW Class Vehicles contained an AEB System Defect and corresponding safety risk and the VW Class Vehicles were prone to routinely and autonomously applying brakes in mundane, non-hazardous situations.

459. Plaintiff Christian and members of the Massachusetts Sub-Class used Defendant's products and had business dealing with Defendant either directly or indirectly through Defendant's authorized dealers and other third parties, and were the intended recipients of the VW Class Vehicles designed, manufactured, and distributed by Defendant.

460. Defendant intentionally and knowingly failed to disclose and misrepresented material facts regarding the VW Class Vehicles with intent to mislead Plaintiff Christian and the members of the Massachusetts Sub-Class.

461. Defendant intentionally and knowingly failed to disclose and misrepresented material facts regarding the VW Class Vehicles with intent to mislead Plaintiff Christian and members of the Massachusetts Sub-Class.

462. Defendant's deceptive conduct was likely to deceive a reasonable consumer, and did in fact deceive reasonable consumers including Plaintiff Christian and members of the Massachusetts Sub-Class.

463. Plaintiff Christian and members of the Massachusetts Sub-Class reasonably relied upon Defendant's material omissions and misrepresentations. They had no way of knowing that Defendant's representations were false and misleading. Plaintiff Christian and members of the Massachusetts Sub-Class did not (and could not) unravel Defendant's deception on their own.

464. The facts misrepresented, concealed, and omitted by Defendant, including the existence of the AEB System Defect, are material in that had Plaintiff Christian and members of the Massachusetts Sub-Class known of them, they would not have purchased or leased their VW Class Vehicles, or would have paid less for their VW Class Vehicles.

465. Plaintiff Christian provided pre-suit notice to Defendant of her and the Massachusetts Sub-Class' claims under the MCPA by letter dated June 15, 2020.

466. Plaintiff Christian and members of the Massachusetts Sub-Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's conduct. Pursuant to Mass. Gen. Laws 93A, § 9, Plaintiff Christian and members of the Massachusetts Sub-Class seek monetary relief against Defendant measured as the greater of (a) actual damages in the amount to be determined at trial and (b) statutory damages in the amount of \$25 for each member of the Massachusetts Sub-Class, as well as costs and attorneys' fees. Because Defendant's conduct was committed willfully and knowingly, Plaintiff Christian and the members of the Massachusetts Sub-Class are entitled to recover, for each members of the Massachusetts Sub-Class, up to three times actual damages, but no less than two times actual damages.

COUNT NINETEEN
Breach of Implied Warranty
Mass. Gen. Laws 106 §§2-314 and 2A-212
(By Plaintiff Christian on Behalf of the Massachusetts Sub-Class)

467. Plaintiff Christian incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

468. Plaintiff Linda Christian brings this cause of action on behalf of herself and members of the Massachusetts Sub-Class.

469. Defendant was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the VW Class Vehicles through their authorized agents for retail sales.

470. Defendant provided Plaintiff Christian and Massachusetts Sub-Class Members with an implied warranty that the VW Class Vehicles and their components and parts are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the VW Class Vehicles are not merchantable because they are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the VW Class Vehicles suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation. The VW Class Vehicles would not pass without objection in the trade, are not adequately labeled and do not comfort the promises and affirmations on the label because the VW Class Vehicles have AEB systems that are prone to forcing the vehicle to brake when there are not obstacles ahead and also fail to engage as described when there are obstacles ahead.

471. Defendant impliedly warranted that the VW Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the VW Class Vehicles, which were manufactured, supplied, distributed, and/or sold by VW, would provide safe and reliable transportation; (ii) a warranty that the VW Class Vehicles would be fit for their intended use; (iii) that the VW Class Vehicles would pass without objection in the trade; (iv) that VW Class Vehicles are adequately labeled; and (v) that VW Class Vehicles would conform the promises and affirmations on their labels.

472. Contrary to the applicable implied warranties, the VW Class Vehicles and their AEB systems at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff Christian and Massachusetts Sub-Class Members with reliable, durable, and safe transportation, would not pass without objection in the trade, were not adequately labeled, and did not conform to the promises and affirmation on their labels. Instead, the VW Class Vehicles are defective due to the AEB System Defect.

473. Plaintiff Christian and members of the Massachusetts Sub-Class have had sufficient direct dealings with either Defendant or their agents (dealerships and technical support) to establish privity of contract between Defendant, on one hand, and Plaintiff Christian and each of the other Massachusetts Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Christian and each of the other Massachusetts Sub-Class Members are intended third-party beneficiaries of contracts between Defendant and their distributors and dealers, and specifically, of their implied warranties. The dealers were not intended to be the ultimate consumers of the VW Class Vehicles and have no rights under the warranty agreements provided with the VW Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

474. The alleged AEB System Defect is inherent and was present in each VW Class Vehicle at the time of sale.

475. Because of Defendant's breach of the applicable implied warranties, owners and/or lessees of the VW Class Vehicles suffered an ascertainable loss of money, property, and/or value of their VW Class Vehicles. Additionally, because of the AEB System Defect, Plaintiff Christian and Massachusetts Sub-Class Members were harmed and suffered actual damages in that the VW Class Vehicles' are defective, that they overpaid for defective vehicles, and that the VW Class

Vehicles' AEB Systems increase their chances of being involved in a collision by activating without cause and failing to activate when they should.

476. Defendant's actions, as complained of herein, breached the implied warranty that the VW Class Vehicles were of merchantable quality and fit for such use in violation of Mass. Gen. Laws 106 §§2-314 and 2A-212.

477. As a direct and proximate result of Defendant's breach of the implied warranties of merchantability, Plaintiff Christian and members of the Massachusetts Sub-Class have been damaged in an amount to be proven at trial.

COUNT TWENTY
Breach of Express Warranty
Mass. Gen. Laws 106 §§2-313 and 2A-210
(By Plaintiff Christian on Behalf of the Massachusetts Sub-Class)

478. Plaintiff Christian incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

479. Plaintiff Linda Christian brings this cause of action on behalf of herself and members of the Massachusetts Sub-Class.

480. VWGoA provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, VWGoA's express warranty is an express warranty under Massachusetts law.

481. The AEB systems were installed in the VW Class Vehicles by VW and are covered by the express warranty.

482. As set forth *supra* and incorporated by reference, VWGoA provided a 72,000 mile or 6 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to consumers. These warranties were transferable to subsequent purchasers.

483. VWGoA breached the express warranties by selling and leasing VW Class Vehicles with the AEB System Defect, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by repairing or replacing, the defective VW Class Vehicles.

484. Plaintiff Christian and members of the Massachusetts Sub-Class have had sufficient direct dealings with either VWGoA or its agents (dealerships and technical support) to establish privity of contract between VWGoA, on one hand, and Plaintiff Christian and each of the other Massachusetts Sub-Class Members on the other hand. Nonetheless, privity is not required here because Plaintiff Christian and each of the other Massachusetts Sub-Class Members are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties. The dealers were not intended to be the ultimate consumers of the VW Class Vehicles and have no rights under the warranty agreements provided with the VW Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

485. Any attempt by Defendant VWGoA to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because Defendant VWGoA knowingly sold or leased a defective product without informing consumers about the Defect. The time limits are unconscionable and inadequate to protect Plaintiff Christian and members of the Massachusetts Sub-Class. Among other things, Plaintiff Christian and members of the Massachusetts Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which unreasonably favored Defendant VWGoA. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the Defect, existed between Defendant VWGoA and members of the Massachusetts Sub-Class.

486. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to make Plaintiff Christian and the members of the Massachusetts Sub-Class whole, because, on information and belief, Defendant VWGoA has failed and/or has refused to adequately provide the promised remedies, i.e. a repair, within a reasonable time.

487. Plaintiff Christian was not required to notify VWGoA of the breach or were not required to do so because affording VWGoA a reasonable opportunity to cure its breach of written warranty would have been futile. VWGoA was also on notice of the AEB System Defect from its own pre-production testing, from the early complaints and service requests it received from VW Class Members, from repairs and/or replacements of VW Class Vehicles, and from other internal sources.

488. VWGoA was further provided notice of its breach of express warranties by Plaintiff Christian by letter dated June 15, 2020. Plaintiff Christian also provided notice of express warranties when she took her Class Vehicle to her local VWGOA dealership, a VW-authorized provided of warranty repairs. Despite these notices, VWGoA failed to cure the breach of express warranties within an adequate time.

489. As a direct and proximate cause of VWGoA's breach of express warranties, Plaintiff Christian and the Massachusetts Sub-Class have suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiff Christian and the Massachusetts Sub-Class have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

490. Plaintiff Christian and the Massachusetts Sub-Class Members seek full compensatory damages allowable by law, attorneys' fees, costs, punitive damages, restitution, the

repair or replacement of all VW Class Vehicles, the refund of money paid to own or lease all class, and appropriate equitable relief including injunctive relief, a declaratory judgment, and a court order enjoining VWGoA's wrongful acts and practices, and any other relief to which Plaintiff Christian and the Massachusetts Sub-Class Members may be entitled.

Claims on Behalf of the New Jersey Sub-Class

COUNT TWENTY-ONE

Violation of the New Jersey Consumer Fraud Act,

N.J. Stat. Ann. §§ 56:8-1, *et seq.*

(By Plaintiff Moonesar on Behalf of the New Jersey Sub-Class)

491. Plaintiff Stephan Moonesar incorporates by reference the allegations contained in paragraphs 1 through 184, *supra*.

492. Plaintiff Moonesar brings this cause of action on behalf of himself and on behalf of the members of the New Jersey Sub-Class.

493. Defendant, Plaintiff Moonesar, and the New Jersey Sub-Class Members "persons" within the meaning of the New Jersey Consumer Fraud Act ("New Jersey CFA"), N.J. Stat. Ann. § 56:8-1(d).

494. VWGoA engaged in "sales" of "merchandise" within the meaning of N.J. Stat. Ann. § 56:8-1(c), (d).

495. The New Jersey CFA makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentations, or the knowing concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby..." N.J. Stat. Ann. § 56:8-2. VWGoA engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the New Jersey CFA.

496. VWGoA participated in unfair or deceptive trade practices that violated the New Jersey CFA. As described below and alleged throughout the Complaint, by failing to disclose the AEB System Defect, by concealing the AEB System Defect, by marketing its vehicles as safe, reliable, well-engineered, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, performance and reliability, and stood behind its vehicles after they were sold, VWGoA knowingly and intentionally misrepresented and omitted material facts in connection with the sale or lease of the Class Vehicles. VWGoA systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Class Vehicles and the AEB System Defect in the course of its business.

497. VWGoA also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Class Vehicles.

498. VWGoA's unfair and deceptive acts or practices occurred repeatedly in VWGoA's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

499. VWGoA knew that the Class Vehicles suffered from an inherent defect, were defectively designed and/or manufactured, and were not suitable for their intended use.

500. VWGoA knew or should have known that its conduct violated the New Jersey CFA.

501. Defendant was under a duty to Plaintiff Moonesar and the New Jersey Sub-Class Members to disclose the defective nature of the Class Vehicles because:

- (a) Defendant was in a superior position to know the true state of facts about the safety defect in the Class Vehicles;

- (b) Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles; and
- (c) Defendant actively concealed the defective nature of the Class Vehicles from Plaintiff Moonesar and the New Jersey Sub-Class Members at the time of sale and thereafter.

502. By failing to disclose the AEB System Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

503. The facts concealed or not disclosed by Defendant to Plaintiff Moonesar and the New Jersey Sub-Class Members are material because a reasonable person would have considered them to be important in deciding whether or not to purchase or lease Defendant's Class Vehicles, or to pay less for them. Whether a AEB System is defective is a material safety concern. Had Plaintiff Moonesar and the New Jersey Sub-Class Members known that the Class Vehicles suffered from the AEB System Defect described herein, they would not have purchased or leased the Class Vehicles or would have paid less for them.

504. Plaintiff Moonesar and the New Jersey Sub-Class Members are reasonable consumers who do not expect that their vehicles will suffer from the AEB System Defect. That is the reasonable and objective consumer expectation for vehicles.

505. As a result of Defendant's misconduct, Plaintiff Moonesar and the New Jersey Sub-Class Members have been harmed and have suffered actual damages in that the Class Vehicles are defective and require repairs or replacement.

506. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff Moonesar and the New Jersey Sub-Class Members have suffered and will continue to suffer actual damages.

507. VWGoA's violations present a continuing risk to Plaintiff Moonesar and the New Jersey Sub-Class Members as well as to the general public. VWGoA's unlawful acts and practices complained of herein affect the public interest.

508. Pursuant to N.J. Stat. Ann. § 56:8-19, Plaintiff Moonesar and the New Jersey Sub-Class Members seek an order enjoining VWGoA's unlawful conduct, actual damages, treble damages, attorneys' fees, costs, and any other just and proper relief available under the New Jersey CFA.

COUNT TWENTY-TWO
Breach of the Implied Warranty of Merchantability
N.J. Stat. Ann. §§ 12A:2-314 and 2A-212
(By Plaintiff Moonesar on Behalf of the New Jersey Sub-Class)

509. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

510. Plaintiff Moonesar brings this count on behalf of himself and the New Jersey Sub-Class.

511. VWGoA is and was at all relevant times a "merchant" with respect to motor vehicles under N.J. Stat. Ann. § 12A:2-104(1) and a "seller" of motor vehicles under § 2-103(1)(d).

512. With respect to leases, VWGoA is and was at all relevant times a "lessor" of motor vehicles under N.J. Stat. Ann. § 12A:2A-103(1)(p).

513. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J. Stat. Ann. §§ 12A:2-105(1) and 2A-103(1)(h).

514. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under N.J. Stat. Ann. §§ 12A:2-314 and 2A-212.

515. VWGoA knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. VWGoA directly sold and marketed Class Vehicles to customers through authorized dealers, like those from whom Plaintiff Moonesar and members of the New Jersey Sub-Class bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. VWGoA knew that the Class Vehicles would and did pass unchanged from the authorized dealers to Plaintiff Moonesar and members of the New Jersey Sub-Class, with no modification to the defective Class Vehicles.

516. VWGoA provided Plaintiff Moonesar and members of the New Jersey Sub-Class with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, inter alia, the Class Vehicles and their front assist suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation.

517. This implied warranty included, among other things: (i) a warranty that the Class Vehicles that were manufactured, supplied, distributed, and/or sold by VWGoA were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles would be fit for their intended use while the Class Vehicles were being operated.

518. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles were and are defective at the time of sale or lease and thereafter as more fully described above. VWGoA knew of this defect at the time these sale or lease transactions occurred.

519. As a result of VWGoA's breach of the applicable implied warranties, Plaintiff Moonesar and members of the New Jersey Sub-Class suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the AEB System Defect, Plaintiff Moonesar and members of the New Jersey Sub-Class were harmed and suffered actual damages in that the Class Vehicles are substantially certain to fail before their expected useful life has run.

520. VWGoA's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use in violation of the Uniform Commercial Code and relevant state law.

521. Plaintiff Moonesar and members of the New Jersey Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of VWGoA's conduct described herein.

522. Privity is not required here because Plaintiff Moonesar and members of the New Jersey Sub-Class are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties, including the NVLW, the Powertrain Warranties, and any warranties provided with certified pre-owned vehicles. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

523. Plaintiff Moonesar and members of the New Jersey Sub-Class were not required to notify VWGoA of the breach because affording VWGoA a reasonable opportunity to cure its breach of warranty would have been futile. VWGoA was also on notice of the AEB System Defect

from the complaints and service requests it received from Plaintiff Moonesar and the Class Members and through other internal sources.

524. Nonetheless, Plaintiff Moonesar and members of the New Jersey Sub-Class provided notice to VWGoA of the breach of express warranties when they took their vehicles to VWGoA-authorized provider of warranty repairs. Plaintiff Moonesar also provided notice to VWGoA of its breach of express warranty by letter dated September 5, 2019.

525. As a direct and proximate cause of VWGoA's breach, Plaintiff Moonesar and members of the New Jersey Sub-Class suffered damages and continue to suffer damages, including economic damages at the point of sale or lease and diminution of value of their Class Vehicles. Additionally, Plaintiff Moonesar and members of the New Jersey Sub-Class have incurred or will incur economic damages at the point of repair in the form of the cost of repair as well as additional losses.

526. As a direct and proximate result of VWGoA's breach of the implied warranty of merchantability, Plaintiff Moonesar and members of the New Jersey Sub-Class have been damaged in an amount to be proven at trial.

COUNT TWENTY-THREE
Breach of Express Warranty
N.J Stat. Ann. §§ 12A:2-313 and 2A-210
(By Plaintiff Moonesar on Behalf of the New Jersey Sub-Class)

527. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

528. Plaintiff Moonesar brings this count on behalf of himself and the New Jersey Sub-Class.

529. VWGoA is and was at all relevant times a "merchant" with respect to motor vehicles under N.J. Stat. Ann. § 12A:2-104(1) and a "seller" of motor vehicles under § 2-103(1)(d).

530. With respect to leases, VWGoA is and was at all relevant times a “lessor” of motor vehicles under N.J. Stat. Ann. § 12A:2A-103(1)(p).

531. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.J. Stat. Ann. §§ 12A:2-105(1) and 2A-103(1)(h).

532. The AEB and Front Assist systems were manufactured and/or installed in the Class Vehicles by Defendant and are covered by the express warranty.

533. Defendant provided all purchasers and lessees of the Class Vehicles with an express warranty described herein, which became a material part of the bargain. Accordingly, VWGoA’s express warranty is an express warranty under New Jersey state law.

534. As set forth *supra* and incorporated by reference, VWGoA provided a 50,000 mile or 4 year, whichever is longer, New Vehicle Limited Warranty and Powertrain Limited Warranty to Audi consumers. These warranties were transferable to subsequent purchasers.

535. Defendant’s NVLW and other warranties regarding the Class Vehicles formed a basis of the bargain that was breached when Plaintiff Moonesar and members of the New Jersey Sub-Class purchased or leased the Class Vehicles with the defective AEB System and/or related components.

536. Plaintiff Moonesar and members of the New Jersey Sub-Class experienced defects within the warranty period. Despite the existence of the NVLW, Defendant failed to inform Plaintiff Moonesar and members of the New Jersey Sub-Class that the Class Vehicles were equipped with defective AEB System and related components. When providing repairs under the express warranty, these repairs were ineffective and incomplete and did not provide a permanent repair for the AEB System Defect.

537. VWGoA breached the express warranty through the acts and omissions described above, including by promising to repair or adjust defects in materials or workmanship of any part supplied by Defendant and then failing to do so. Defendant has not repaired or adjusted, and has been unable to repair or adjust, the Class Vehicles materials and workmanship defects.

538. Privity is not required here because Plaintiff Moonesar and members of the New Jersey Sub-Class are intended third-party beneficiaries of contracts between VWGoA and its distributors and dealers, and specifically, of VWGoA's express warranties, including the NVLW, the Powertrain Warranties, and any warranties provided with certified pre-owned vehicles. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

539. Any attempt by VWGoA to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because VWGoA knowingly sold or leased defective products without informing consumers about the AEB System Defect. The time limits are unconscionable and inadequate to protect Plaintiff Moonesar and the members of the New Jersey Sub-Class. Among other things, Plaintiff Moonesar and members of the New Jersey Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which were drafted by VWGoA and unreasonable favored VWGoA. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the Front Assist Defect existed between VWGoA and members of the New Jersey Sub-Class.

540. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to

make Plaintiff Moonesar and the members of the New Jersey Sub-Class whole, because VWGoA has failed and/or has refused to adequately provide the promised remedies, i.e., a permanent repair, within a reasonable time.

541. Plaintiff Moonesar was not required to notify VWGoA of the breach because affording VWGoA a reasonable opportunity to cure its breach of written warranty would have been futile. VWGoA was also on notice of the AEB System Defect from the complaints and service requests it received from Class Members, including those formal complaints submitted to NHTSA, and through other internal sources.

542. Nonetheless, Plaintiff Moonesar and members of the New Jersey Sub-Class provided notice to VWGoA of the breach of express warranties when they took their vehicles to VWGoA -authorized providers of warranty repairs. Plaintiff Moonesar also provided notice to VWGoA of its breach of express warranty by letter dated September 5, 2019.

543. As a result of VWGoA's breach of the applicable express warranties, owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an ascertainable loss of money, property, and/or value of their Class Vehicles.

544. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff Moonesar and members of the New Jersey Sub-Class have been damaged in an amount to be determined at trial.

545. As a result of VWGoA's breach of the express warranty, Plaintiff Moonesar and New Jersey Sub-Class Members are entitled to legal and equitable relief against VWGoA, including actual damages, specific performance, attorney's fees, costs of suit, and other relief as appropriate.

COUNT TWENTY-FOUR

Unjust Enrichment

(By Plaintiffs on Behalf of the VW and Audi Classes, or Alternatively on behalf of the California, Florida, Georgia, Kansas, Massachusetts, Missouri, and New Jersey Sub-Classes)

546. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 184, *supra*.

547. To the extent required by law, this claim is pleaded in the alternative to legal claims, as permitted under Federal Rule of Civil Procedure 8.

548. Plaintiffs bring this cause of action on behalf of themselves and the Class, or alternatively, Plaintiffs May and Sharma bring this cause of action on behalf of themselves and the California Sub-Class, Plaintiff Oweis brings this cause of action on behalf of himself and the Florida Sub-Class, Plaintiff Pieras brings this cause of action on behalf of himself and Georgia Sub-Class, Plaintiff Dack brings this cause of action on behalf of herself and the Kansas Sub-Class, Plaintiff Hensley-Hauser brings this cause of action on behalf of herself and the Missouri Sub-Class, Plaintiff Christian brings this cause of action on behalf of herself and the Massachusetts Sub-Class, Plaintiff Moonesar brings this cause of action on behalf of himself and the New Jersey Sub-Class.

549. As a direct and proximate result of VWGoA's misrepresentations about the AEB System and its functionality and safety of the Class Vehicles and failure to disclose known defects, VWGoA has profited through the sale and lease of the Class Vehicles. Although these vehicles are purchased through VWGoA's agents, the money from the vehicle sales flows directly back to VWGoA.

550. As a result of its wrongful acts, concealments, and omissions of the defect in its Class Vehicles, as set forth above, VWGoA charged higher price for their vehicles than the vehicles' true value. Plaintiffs and members of the Class paid that higher price for their vehicles

to VWGoA's authorized distributors and dealers, which are in VWGoA's control. VWGoA also reaps huge profits from the sale of its vehicles through its authorized distributors and dealers, with billions of dollars in sales revenue each year.

551. Additionally, as a direct and proximate result of VWGoA's failure to disclose known defects in the Class Vehicles, Plaintiffs and Class Members have vehicles that will require high-cost repairs that can and therefore have conferred an unjust substantial benefit upon VWGoA. VWGoA has been unjustly enriched due to the known defects in the Class Vehicles through the use money paid that earned interest or otherwise added to VWGoA's profits when said money should have remained with Plaintiffs and Class Members.

552. As a result of the VWGoA's unjust enrichment, Plaintiffs and Class Members have suffered damages.

RELIEF REQUESTED

553. Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendant, as follows:

- (a) An order certifying the proposed Classes and Sub-Classes, designating Plaintiffs Dack, Hensley-Hauser, May, Sharma, Oweis, Pieras, Moonesar, and Christian as representatives of the Classes, and designating the undersigned as Class Counsel;
- (b) A declaration that Defendant are financially responsible for notifying all Members of the Classes about the defective nature of the Class Vehicles and the existence of the AEB System Defect, including the need for repairs;
- (c) An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Defendant to

issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling Defendant to remove, repair, and/or replace the Class Vehicles' with suitable alternative product(s) that do not contain the defects alleged herein; enjoining Defendant from selling the Class Vehicles with the misleading information; and/or compelling VWGoA to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Members of the Classes that such warranty has been reformed;

- (d) A declaration requiring Defendant to comply with the various provisions of the Song-Beverly Act alleged herein and to make all the required disclosures;
- (e) An award to Plaintiffs and the Classes for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- (f) Any and all remedies provided pursuant to the state consumer protection statutes alleged herein;
- (g) Any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;
- (h) Any and all remedies provided pursuant to the Magnuson-Moss Warranty Act;
- (i) A declaration that Defendant must disgorge, for the benefit of the Classes, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles or make full restitution to Plaintiffs and Class Members;
- (j) An award of attorneys' fees and costs, as allowed by law;

- (k) An award of pre-judgment and post-judgment interest, as provided by law;
- (l) Leave to amend the Complaint to conform to the evidence produced at trial;
and
- (m) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues in this action so triable.

Respectfully submitted,

Dated: January 18, 2024

/s/ Bonner C. Walsh

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, the foregoing was filed via CM/ECF system and a copy was served via the same on all attorneys of record.

/s/ Bonner C. Walsh _____
Attorney for Plaintiffs