

1 Patrice L. Bishop (182256)  
pbishop@ssbla.com  
2 STULL, STULL & BRODY  
9430 W. Olympic Blvd., Suite 400  
3 Beverly Hills, CA 90212  
Tel: 310-209-2468  
4 Fax: 310-209-2087

5 ***Local Counsel for Plaintiff***

6 ***Additional Counsel on Signature Page***

7

8

9

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

11

12

13 GREGORY COFFENG, MARK GLASER  
14 and JORDAN WILSON, individually and on  
behalf of all others similarly situated,

15

Plaintiffs,

16

v.

17

18 VOLKSWAGEN GROUP OF AMERICA,  
19 INC.,

19

Defendant.

20

21

22

23

24

25

26

27

28

Case No. 17-cv-01825-JD

**AMENDED COMPLAINT**

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Gregory Coffeng (“Coffeng”), Mark Glaser (“Glaser”) and Jordan Wilson  
2 (“Wilson”) (hereinafter collectively referred to as “proposed class representatives”) through their  
3 counsel, on behalf of themselves and all others similarly situated, allege as follows:

4 **INTRODUCTION**

5  
6 1. Plaintiffs allege on behalf of themselves and the proposed classes, defined below,  
7 that Volkswagen Group of America, Inc. (hereinafter “VWGoA”) withheld material disclosures  
8 concerning defective water pump components known to VWGoA and used in the following  
9 vehicles (hereinafter “Class Vehicle(s)”): (i) 2008 through and including 2014 model year Audi  
10 motor vehicles equipped with the 2.0L TSI or TFSI turbocharged engine; and (ii) 2008 through  
11 and including 2014 model year Volkswagen motor vehicles equipped with the 2.0L TSI  
12 turbocharged engine. Class Vehicles equipped with 2.0L EA888 TSI or TFSI turbocharged four  
13 cylinder multi-valve engines include, but are not limited to, engine codes CCTA, CAEB, CAED  
14 and CBFA (hereinafter “class engines” or “class engine”).<sup>1</sup> The proposed class representatives  
15 and members of the proposed classes request injunctive relief, monetary damages, including  
16 multiple damages where applicable, court costs and attorney fees against VWGoA based upon its  
17 breach of express warranty, breach of implied warranty, misrepresentation, unfair and deceptive  
18 business practices under the laws of California, New York and the Magnuson-Moss Warranty Act.

19 2. VWGoA introduced class engines in the United States market in late 2007 for the  
20 2008 model year. Class engines manufactured by Volkswagenwerk Aktiengesellschaft  
21 (hereinafter “VWAG”) and Audi Aktiengesellschaft (hereinafter “Audi AG”) are predisposed to  
22 premature engine water pump system failure.<sup>2</sup> This Amended Complaint concerns itself with the  
23 primary engine water pump driven off one of the balance shafts and not electric auxiliary water  
24 pumps. Within the context of this Amended Complaint, the “water pump” consists of the

25 \_\_\_\_\_  
26 <sup>1</sup> Class Vehicles include the Audi A3, A4, A5 and Q5 together with the Volkswagen CC, Beetle,  
27 EOS, Golf/GTI, Jetta, Passat, Sports Wagon and Tiguan, *inter alia*. Class Vehicles were  
distributed and warranted by VWGoA in the United States.

28 <sup>2</sup> The parties entered into a stipulation dismissing without prejudice foreign defendants VWAG  
and Audi AG, and entered into a separate tolling agreement.

1 thermoplastic water pump module that includes the water pump, thermostat and integrated  
2 sensors.

3 3. Class Vehicles are defective with respect to the water pump that subjects class  
4 engines to coolant loss and engine overheating and/or catastrophic engine failure. Class Vehicles  
5 are further defective since the vehicles were accompanied by an owner's manual and USA  
6 Warranty and Maintenance pamphlet that did not incorporate water pump inspection, maintenance  
7 and/or service intervals.

8 4. The water pump circulates engine coolant and, together with the thermostat, is  
9 responsible for managing coolant temperature that prevents engine and component overheating  
10 including the cylinder head and turbocharger. The water pump ensures the engine operates within  
11 a defined temperature range independent of ambient air temperature, vehicle load, engine RPMs  
12 and other conditions. The water pump is designed to prevent engine overheating.

13 5. Depending on the degree of overheating, class engines will operate poorly,  
14 resulting in sudden stalling and compromising the ability to accelerate or maintain vehicle speed.  
15 Excessive coolant loss caused by the defective class engine water pump also causes sudden and  
16 catastrophic engine self-destruction as overheated parts seize. Water pump failure and the  
17 resulting engine overheating pose a serious safety issue while the vehicle is being operated since  
18 there is loss of engine power without warning and the loss of power-assisted steering and reduced  
19 braking caused by lack of engine vacuum. In Class Vehicles equipped with manual transmissions,  
20 the drive wheels will lock and cause loss of directional stability and steering.

21 6. The USA Warranty and Maintenance pamphlet does not contain any maintenance  
22 recommendations for the water pump in Class Vehicles, through and including the 120,000-mile  
23 service. The water pump is reasonably expected by VWGoA, the proposed class representatives  
24 and proposed class members to last the serviceable life of the vehicle that is in excess of 120,000  
25 miles.<sup>3</sup> Despite this, the water pumps in Class Vehicles often fail at less than 50% of their  
26

---

27 <sup>3</sup> USA Warranty and Maintenance booklets for Class Vehicles have maintenance schedules that  
28 extend to 120,000 miles. There is no scheduled maintenance or replacement recommended for  
class engine water pumps during the entirety of this mileage or time period.

1 reasonably expected useful life. Moreover, after experiencing a failure of the water pump and  
2 engine overheating, other engine components such as the head gasket and cylinder head are  
3 damaged. Premature class engine water pump failures cost between \$900.00 and \$1,200.00 to  
4 remedy by installing a new water pump. Individuals who own or have owned Class Vehicles also  
5 sustained diminution of the resale value of their Class Vehicles since knowledge of problems with  
6 class engine water pumps eventually became public information.

#### 7 **JURISDICTIONAL AND VENUE STATEMENT**

8 7. Diversity jurisdiction exists under 28 U.S.C. § 1332(a), (d) and 28 U.S.C. § 1367.  
9 Class jurisdiction exists by virtue of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.  
10 §§ 1332(d), 1453 and 1711–1715, since there are in excess of 100,000 class members and the  
11 proposed class representative and proposed class members’ aggregate damages exceed  
12 \$5,000,000.00, exclusive of interest and costs. Minimal diversity exists between the parties with  
13 residency in different states. The jurisdictional requirements of the state Magnuson–Moss Act  
14 claims alleged herein as set out in 15 U.S.C. § 2310(d)(1)(A) are satisfied by CAFA diversity  
15 jurisdiction with respect to such state law claims.

16 8. VWGoA is a person under this jurisdiction’s long-arm statute. In the United States,  
17 VWGoA acts as the alter ego and/or agent of VWAG and Audi AG as well as the warrantor with  
18 respect to the Class Vehicles. *In personam* jurisdiction exists over VWGoA under this  
19 jurisdiction’s so-called “long arm statute.” VWGoA directly and through its agents regularly  
20 transacts business and otherwise derives substantial revenue in this jurisdiction and throughout the  
21 entire United States. VWGoA also maintains the following offices and/or facilities in California:  
22 Test Center California (Oxnard), Design Center California (Santa Monica), a parts distribution  
23 center (Ontario) and imports vehicles through the port of San Diego.<sup>4</sup> VWGoA also conducts  
24 continuous and systematic economic activities in this jurisdiction and throughout the United  
25 States. VWGoA intentionally and purposefully placed its vehicles and/or components in the  
26 stream of commerce in this jurisdiction and throughout the United States. Subjecting VWGoA to

27  
28 <sup>4</sup> See <http://www.volkswagengroupamerica.com/locations.html> (last checked February 14, 2017).

1 *in personam* jurisdiction in this jurisdiction does not violate VWGoA's due process rights and  
2 comports with requirements of fair play and substantial justice.

3 9. Venue is conferred by 28 U.S.C. § 1391 as VWGoA regularly and purposefully  
4 conducted business in this judicial district and a substantial part of the events giving rise to the  
5 claim occurred in this judicial district.

6 **THE PARTIES**

7 10. Plaintiff Coffeng is an adult individual who purchased a new 2011 Audi A4  
8 equipped with a 2.0L TFSI engine from an authorized California Audi dealer in or about  
9 December 2010. Coffeng purchased his Class Vehicle from VWGoA's authorized dealer, Audi  
10 Stevens Creek in San Jose, California. Coffeng resides in Redwood City, San Mateo County,  
11 California. Despite multiple complaints during the warranty period that he smelled engine coolant  
12 on cold starts, the authorized Audi dealer informed Coffeng that everything was fine and there  
13 were no leaks. However, on or about August 29, 2014, when the vehicle had approximately  
14 67,016 miles, Plaintiff Coffeng's Class Vehicle required premature replacement of the engine  
15 water pump due to engine coolant leaking from the pump. As a result thereof, Coffeng spent more  
16 than \$1,100.00 in connection with replacement of the defective water pump.

17 11. Plaintiff Glaser is an adult individual who purchased a 2010 VW Tiguan equipped  
18 with a 2.0L TSI engine in or about January 2013 while the vehicle was still under warranty.  
19 Glaser resides in San Francisco, California. In or about May 2016, when the vehicle had  
20 approximately 71,733 miles, the water pump started leaking coolant and required immediate  
21 replacement. As a result of the failure of his Class Vehicle's water pump, Plaintiff Glaser spent  
22 approximately \$892.40 in connection with replacement of the defective water pump.

23 12. Plaintiff Jordan Wilson is an adult individual who purchased a 2011 Volkswagen  
24 CC equipped with a 2.0L TSI engine in or about July 2013 while still under warranty, from an  
25 authorized New York Volkswagen dealer. Plaintiff Wilson resides in Buffalo, New York. On or  
26 about October 23, 2017, when the vehicle had approximately 81,000 miles, Plaintiff Wilson's  
27 Class Vehicle required premature replacement of the engine water pump due to engine coolant  
28

1 leaking from the pump. As a result thereof, Plaintiff Wilson spent more than \$700.00 in  
2 connection with replacement of the defective water pump.

3 13. VWGoA is a duly organized New Jersey corporation with a principal place of  
4 business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VWGoA is the parent of  
5 Audi of America, Inc. and Volkswagen of America, Inc. VWGoA manufactures, imports,  
6 distributes and/or sells Volkswagen and Audi motor vehicles including all Class Vehicles and also  
7 acts as the authorized representative of VWAG and Audi AG in the United States. VWGoA  
8 drafted and published the owner's manual and USA Warranty and Maintenance manual that  
9 accompanied Class Vehicles and acted, and continues to act, as the warrantor of vehicles  
10 constructed by VWAG, Audi AG and Volkswagen of America, Inc. that are sold in the United  
11 States. At all relevant times, VWGoA acted as an authorized agent, representative, servant,  
12 employee and/or alter ego of VWAG and Audi AG performing activities concerning but not  
13 limited to advertising, warranties, warranty repairs, dissemination of technical information and  
14 monitoring the performance of Volkswagen and Audi vehicles in the United States, including  
15 substantial activities that occurred within this jurisdiction. VWAG is the parent company of  
16 VWGoA.

### 17 CLASS ACTION ALLEGATIONS

18 14. The proposed class representatives bring this proposed action pursuant to Fed. R.  
19 Civ. P. 23(b)(1), 23(b)(2) and 23(b)(3) on behalf of themselves and all members of the proposed  
20 Class and subclasses (or any other class authorized by the Court) defined as follows:

21 **Nationwide Class:** All owners and former owners, lessees and  
22 former lessees of Class Vehicles who sustained monetary loss and/or  
23 diminution of Class Vehicle value resulting from VWGoA's  
24 conduct as described in this Amended Complaint (hereinafter  
25 "proposed class members"). Excluded from the proposed class are  
26 VWGoA together with its officers, directors, employees, assigns,  
and successors, the Court, Court staff, VWGoA's counsel and all  
respective immediate family members of the excluded persons and  
entities described above. Also excluded from the proposed class are  
any and all claims involving personal injury.

27 **California Class:** All owners and former owners, lessees and  
28 former lessees of Class Vehicles who are (or were) California  
residents who sustained monetary loss and/or diminution of Class  
Vehicle value resulting from VWGoA's conduct as described in this  
Amended Complaint (hereinafter "proposed California subclass

1 members”). Excluded from the proposed class are VWGoA  
2 together with its officers, directors, employees, assigns, and  
3 successors, the Court, Court staff, VWGoA’s counsel and all  
4 respective immediate family members of the excluded entities  
5 described above. Also excluded from the proposed class are any  
6 and all claims involving personal injury.

7 **New York Class:** All owners and former owners, lessees and  
8 former lessees of Class Vehicles who are (or were) New York  
9 residents who sustained monetary loss and/or diminution of Class  
10 Vehicle value resulting from VWGoA’s conduct as described in this  
11 Amended Complaint (hereinafter “proposed New York subclass  
12 members”). Excluded from the proposed class are VWGoA  
13 together with its officers, directors, employees, assigns, and  
14 successors, the Court, Court staff, VWGoA’s counsel and all  
15 respective immediate family members of the excluded entities  
16 described above. Also excluded from the proposed class are any  
17 and all claims involving personal injury.

18 **Numerosity of the Class: Fed. R. Civ. P 23(a)(1).**

19 15. The proposed class is so numerous that individual joinder of all potential members  
20 is impracticable under Fed. R. Civ. P. 19 or 20. It is estimated there are in excess of  
21 approximately 250,000 Class Vehicles imported into and/or manufactured in the United States.  
22 Although the number, location and identity of all proposed class members cannot be presently  
23 ascertained, this information is obtainable through discovery from VWGoA.

24 **Existence of Common Questions of Law and Fact: Fed. R. Civ. P. 23(a)(2) and 23(b)(3).**

25 16. Common questions of law and fact exist as to all members of the proposed class  
26 and predominate any and all issues of law and fact affecting individual members of the proposed  
27 class. These issues include but are not limited to:

28 (a) Whether water pumps in class engines were defective in materials,  
workmanship, manufacture, or design, so as to subject the engine to premature failure of  
the water pump;

(b) Whether class engines sustained damage directly or indirectly by premature  
failure of the water pump;

(c) Whether Class Vehicles were sold with an owner’s manual and/or USA  
Warranty and Maintenance manual that incorporated incorrect inspection and service  
intervals for the water pump;

1 (d) Whether VWGoA breached its express warranties (including but not limited  
2 to the powertrain limited warranty) in that Class Vehicles were defective with respect to  
3 water pump materials, workmanship or manufacture;

4 (e) Whether VWGoA breached its implied warranties in that Class Vehicles  
5 were defective with respect to materials, workmanship, manufacture, or design;

6 (f) Whether VWGoA intentionally or negligently misrepresented material facts  
7 concerning the characteristics of the water pump in class engines;

8 (g) Whether VWGoA committed unfair and deceptive business act practices by  
9 failing to inform owners of Class Vehicles prior to purchase and/or during the post-sale  
10 express warranty period that the water pump was defective and would fail shortly after the  
11 warranty period expired and cause damage to the engine, and that this defect posed a  
12 significant unreasonable safety hazard;

13 (h) Whether proposed class members are entitled to injunctive relief pursuant to  
14 Rule 23(b)(2);

15 (i) Whether the Court should establish a constructive trust funded by the  
16 benefits conferred upon VWGoA by wrongful and unlawful conduct VWGoA engaged in  
17 or imputed as a matter of law to it; and,

18 (j) Whether proposed class members are able to economically afford individual  
19 litigation against VWGoA.

20 **Typicality of Claims or Defenses of a Definable Class: Fed. R. Civ. P. 23(a)(3).**

21 17. The proposed class representatives' claims and defenses are typical of the claims  
22 and defenses of proposed class members. Class claims arise out of ownership or lease of Class  
23 Vehicles as defined in ¶ 1. VWGoA in this proposed action has no claims or defenses unique to or  
24 different from the proposed class representatives.

25 **Adequate Representation: Fed. R. Civ. P. 23(a)(4).**

26 18. The proposed class representatives currently have no conflicting interests with any  
27 other proposed class member. The proposed class representatives will fairly and adequately  
28 protect the interests of the proposed subclasses. The proposed class representatives' claims and



1 the proposed class members' claims are so interrelated that the interests of the proposed class  
2 members will be fairly and adequately protected in their absence. Proposed class counsel have, in  
3 aggregate, over 60 years of experience concentrating in complex automotive products liability, and  
4 both have been appointed class counsel in other proceedings.

5 **Superiority of a Class Action: Fed. R. Civ. P. 23(b)(3).**

6 19. Maintenance of a class action in one court is the most economical procedural  
7 device to litigate the Class Vehicle and class engine claims for Class Vehicle owners and  
8 VWGoA. Prosecution of separate actions by individual members of the class could create risk of  
9 inconsistent or varying adjudications with respect to individual members of the class which would  
10 establish incompatible standards of conduct for the party opposing the class as recognized by Fed.  
11 R. Civ. P. 23(b)(1)(A).

12 20. Prosecution of separate actions by individual members of the class could create risk  
13 of adjudications with respect to individual members of the class which would, as a practical  
14 matter, be dispositive of the interests of the other members of the class who are not parties to the  
15 adjudications or substantially impair or impede their ability to protect their interests as recognized  
16 by Fed. R. Civ. P. 23(b)(1)(B).

17 21. There is a substantial likelihood that VWGoA will oppose this class action and will  
18 further act or refuse to act on grounds generally applicable to the class, thereby making  
19 appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a  
20 whole impractical as recognized by Fed. R. Civ. P. 23(b)(2).

21 22. Questions of law and fact common to members of the class predominate over any  
22 questions affecting any individual members and a class action is superior to other available  
23 methods for the fair and efficient adjudication of the controversy as recognized by Fed. R. Civ. P.  
24 23(b)(3).

25 **CLASS VEHICLES' WATER PUMP DEFECT**

26 23. Passenger motor vehicle engine water pumps should last a minimum of 120,000  
27 miles in a modern automobile such as Class Vehicles. This is demonstrated by the VWGoA's  
28 USA Warranty and Maintenance pamphlet accompanying Class Vehicles, other engines

1 manufactured and/or warranted by VWGoA incorporating a water pump and the performance of  
2 comparable competitor vehicles.

3 24. The water pumps in Class Vehicles have been subject to constant materials and  
4 manufacture upgrades since the initial introduction of Class Vehicles for sale in late 2007. The  
5 initial water pumps have been assigned the following part numbers: 06J121026DD,  
6 06H121026CQ, 06H121026BG, 06H121026BA, 06H121026CF and 06H121026AF together with  
7 other part numbers. Prior to Class Vehicle purchase by the class representatives (the first of which  
8 was made by Plaintiff Coffeng in December 2010) and during the respective warranty period(s)  
9 for the class representatives, class engine water pumps had been subjected to service campaigns  
10 for particular specific vehicle models over a several year period where certain defective pumps  
11 that were leaking were replaced without charge by VWGoA for a limited time period that has now  
12 lapsed.

13 25. Prior to manufacturing and then distributing a new part, VWGoA and its affiliated  
14 companies perform substantial field inspections and quality review of vehicles in service to  
15 determine the root cause and diagnosis of a problem, and then prepare draft and final  
16 specifications and bid the parts out. All of this takes at least twelve months of lead-time under  
17 normal circumstances. Based on the aggregation of this testing, information, redesign, and  
18 substitution of materials, VWGoA knew or should have known at least in 2009 or early 2010 that  
19 the water pumps in class engines were defective and would prematurely fail. Consequently,  
20 VWGoA had knowledge of the defective water pumps incorporated in class engines prior to time  
21 of the purchase of Class Vehicles by class representatives (the first of which was made by Plaintiff  
22 Coffeng in December 2010) and during the class representatives' respective warranty period(s).

23 **COMPLAINTS TO THE NATIONAL HIGHWAY TRAFFIC SAFETY**  
24 **ADMINISTRATION**

25 26. The National Highway Traffic Safety Administration ("NHTSA") Office of  
26 Defects Investigation ("ODI") maintains a database of complaints filed by consumers concerning  
27 defects in their respective motor vehicles and vehicle equipment monitored by VWGoA's quality  
28 assurance employees. The NHTSA-ODI website allows consumers to "identify and report

1 problems you might be having with your vehicle, tires, equipment or car seats.” See [https://www-](https://www-odi.nhtsa.dot.gov/ivoq/)  
2 [odi.nhtsa.dot.gov/ivoq/](https://www-odi.nhtsa.dot.gov/ivoq/) (last accessed December 1, 2016) (“If you think you have a problem, we  
3 want you to tell us about it.”). A sampling of the numerous complaints submitted by owners of  
4 one model of Class Vehicles and reported to the NHTSA demonstrates that the Class Vehicle  
5 water pump defect is widespread and constitutes an unreasonable safety hazard:<sup>5</sup>

6 (a) Date Complaint Filed: November 9, 2014; Date of Incident: November 6,  
7 2014; NHTSA ID Number: 10653680; Manufacturer: Volkswagen Group of America,  
8 Inc.; Summary:

9 CAME OUTSIDE TO A FAILED WATER PUMP. THIS IS A  
10 COMMON PROBLEM WITH VARIOUS VOLKSWAGENS.  
11 MANY SHOP TECHS ARE VERY FAMILIAR WITH THIS  
12 ISSUE. IT IS UNSAFE FOR THE DRIVER AND OTHER CARS.  
13 THERE IS A CHANCE THE PUMP COULD FAIL WHILE  
14 DRIVING OR A PERSON MAY NOT NOTICE THE COOLANT  
15 ON THE GROUND. THAT CAN LEAD TO THE CAR  
16 OVERHEATING AND CAUSING EXPENSIVE DAMAGE. YOU  
17 COULD ALSO BE LEFT STRANDED ON THE SIDE OF THE  
18 ROAD. ANY INSTANCE WHEN A PERSON OR CAR ARE  
19 LEFT ON THE SIDE OF THE ROAD IS A ROAD AND HEALTH  
20 RISK. ALSO WHEN THESE PUMPS FAIL THEY OFTEN LEAK  
21 COOLANT. THE COOLANT IS NOT SAFE FOR THE  
22 ENVIRONMENT. WHEN THE PUMPS DO GET REPLACED  
23 THE ISSUE OFTEN COMES BACK REPEATEDLY. THIS IS  
24 PARTLY DUE TO THE POOR DESIGN OF THE SYSTEM. A  
REVISION OF THE WATERPUMP SHOULD BE MADE. ALSO  
AN EXTENSION ON THE WARRANTY OF SAID PART  
SHOULD BE MADE FOR OWNERS. THIS IS A SIGNIFICANT  
PROBLEM THAT NEEDS TO BE TAKEN CARE OF. FOR  
PERSONAL AND ENVIRONMENTAL RISKS. \*TR

20 (b) Date Complaint Filed: May 28, 2015; Date of Incident: May 22, 2015;  
21 NHTSA ID Number: 10722036; Manufacturer: Volkswagen Group of America, Inc.;

22 Summary:

23 TL\* THE CONTACT OWNS A 2011 VOLKSWAGEN GTI.  
24 WHILE THE VEHICLE WAS AT THE DEALER FOR ROUTINE

25 <sup>5</sup> NHTSA-ODI does not share complainants’ personal information with the general public. A  
26 complaint is only added to a public NHTSA database only after it removes all information from  
27 complaint fields that personally identify a complainant. NHTSA-ODI complaints are made by  
28 individuals who must identify themselves, enter detailed contact information and vehicle  
information (including an accurate VIN) before the complaints are reviewed and analyzed by  
NHTSA. There are penalties for submitting false statements.

1 MAINTENANCE, THE TECHNICIAN DISCOVERED THAT  
2 THE WATER PUMP FAILED. THE VEHICLE WAS NOT  
3 REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE  
4 FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS  
5 76,000.

6 (c) Date Complaint Filed: October 16, 2015; Date of Incident: October 10,  
7 2013; NHTSA ID Number: 10782604; Manufacturer: Volkswagen Group of America,  
8 Inc.; Summary:

9 MY 2013 VW GTI HAS HAD DEFECTIVE WATER (COOLANT)  
10 PUMP. I HAVE ALREADY HAD THREE (3!) MAJOR REPAIRS  
11 TO REPLACE THE FAULTY WATER PUMP AND FIX THE  
12 LEAK OF COOLANT. THE ISSUE FIRST STARTED AT  
13 ABOUT 10,000 MILES AND REOCCURED AT 15,000 MILES  
14 AND THEN AT 25,000. I ALWAYS MAINTAINED AND  
15 REPAIRED MY CAR AT VW DEALERSHIPS. THE ISSUE  
16 WITH THE WATER PUMP USUALLY STARTED WHILE THE  
17 CAR WAS IN MOTION ON A MAJOR ROAD OR A FREEWAY  
18 WITH MY FAMILY (INCLUDING 2 CHILDREN) INSIDE. THE  
19 LIGHT WOULD USUALLY TURN ON ON THE DASHBOARD.  
20 FORTUNATELY, IN ALL THE INSTANCES, WE'VE BEEN  
21 NOT FAR FROM THE HOME OR A SAFE LOCATION TO  
22 PARK AND REQUEST ROADSIDE ASSISTANCE. THESE  
23 INCIDENTS WITH WATER PUMP, WHILE THE CAR IS IN  
24 MOTION CAN LEAD TO CRASH OR OTHER SERIOUS  
25 CONSEQUENCES.

26 (d) Date Complaint Filed: January 27, 2015; Date of Incident: August 1, 2014;  
27 NHTSA ID Number: 10679323; Manufacturer: Volkswagen Group of America, Inc.;

28 Summary:  
29 TL\* THE CONTACT OWNS A 2010 VOLKSWAGEN TIGUAN.  
30 AFTER STARTING THE ENGINE, THE RADIATOR WARNING  
31 LIGHT ILLUMINATED. THE CONTACT DISCOVERED THAT  
32 THE COOLANT FROM THE RADIATOR WAS PRESENT IN  
33 THE ENGINE COMPARTMENT. THE VEHICLE WAS TOWED  
34 TO THE DEALER WHO DIAGNOSED THAT THE WATER  
35 PUMP FAILED. THE VEHICLE WAS REPAIRED, BUT THE  
36 FAILURE RECURRED. THE MANUFACTURER WAS  
37 NOTIFIED OF THE FAILURE. THE VIN WAS NOT  
38 AVAILABLE. THE FAILURE MILEAGE WAS 45,000.

39 (e) Date Complaint Filed: December 17, 2013; Date of Incident: August 29,  
40 2013; NHTSA ID Number: 10556440; Manufacturer: Volkswagen Group of America,  
41 Inc.; Summary:

1 TODAY IS THE 17TH OF DECEMBER AND FOR THE 2ND  
2 TIME IN 4 MONTHS THE COOLANT LIGHT HAS GONE OFF  
3 IN THE CAR. THE FIRST TIME IT HAPPENED WAS  
4 TOWARDS THE END OF AUGUST (I JUST PURCHASED THE  
5 VEHICLE A FEW WEEKS EARLIER). WHEN TAKEN TO THE  
6 DEALER SERVICE DEPARTMENT THE PROBLEM WAS THE  
7 WATER PUMP WENT BAD. AFTER THE MECHANIC SAID IT  
8 WAS STILL COVER UNDER WARRANTY THEY REPLACED  
9 IT. TODAY THE COOLANT LIGHT WENT OFF AGAIN, SAME  
10 ISSUE HAS BEFORE. AFTER CHECKING THE CAR FAX THE  
11 FIRST TIME IT HAPPENED, THIS IS THE 5TH WATER PUMP  
12 REPLACED IN THE CAR IN 2 YEARS. TODAY CALLING THE  
13 DEALERSHIP, THE PERSON AT THE DEALERSHIP HAS SAID  
14 THERE ARE QUITE FEW TIGUANS THAT HAVE COME IN  
15 WITH THE SAME ISSUE THE LAST FEW WEEKS.  
16 RESEARCHING THE ISSUE ONLINE THERE ARE  
17 INDICATIONS THAT THIS IS A PROBLEMATIC ISSUE THAT  
18 HAS NOT BEEN ADDRESSED BY VOLKSWAGEN. THE  
19 WARRANTY FOR THE PART ONLY COVERS A YEAR AND  
20 12000 MILES. \*TR

21 **TOLLING OF THE LIMITATIONS PERIOD**

22 27. VWGoA's fraudulent conduct tolls any applicable statutes of limitations since the  
23 fraudulent misrepresentations concerning the true cause of failures in Class Vehicles was an  
24 inherently unknowable fact given the technical nature of the Class Vehicle design and  
25 manufacturing defects, including materials and workmanship.

26 28. Class vehicle owners do not possess the requisite technical skills in automotive  
27 engineering to discern the design, manufacture, materials and workmanship defects in their  
28 vehicles or the requisite technical skills to surmise the proper vehicle maintenance and  
29 maintenance intervals for Class Vehicles.

30 29. Under the so-called "discovery rule," the proposed class representatives' claims  
31 accrued upon their respective discovery that the water pumps that VWGoA sold, distributed and  
32 warranted in the Class Vehicles suffered from defects leading to failures. VWGoA knew and  
33 omitted to timely and properly disclose the fact that class engine water pumps suffered from a  
34 material defect that caused premature failure. As a result, proposed class representatives and class  
35 members could not and did not discover this fact through reasonable diligent investigation until  
36 the time that their respective class vehicle engines experienced water pump failure, reasonably  
37 excluded other potential causes of the failures, and first learned of the pump defect concealed by  
38 VWGoA.

1            30.     The statutory and case law of California and New York, together with the doctrine  
2 of equitable tolling and/or the discovery rule, toll the applicable statutes of limitations for all Class  
3 Vehicles because of VWGoA's fraudulent conduct, including but not limited to concealment of  
4 Class Vehicle defects and omission of material facts.

5            31.     Proposed class members relied on VWGoA's fraudulent misrepresentations  
6 concerning the cause of class engine water pump failures and therefore delayed bringing suit  
7 against VWGoA. These misrepresentations relate to the fact that, in reality, class engine water  
8 pumps were failing due to design, manufacture, materials and/or workmanship defects. VWGoA,  
9 however, fraudulently attributed the failings of Class Vehicle water pumps to other factors and/or  
10 exculpating conditions for which VWGoA had no responsibility.

11            32.     VWGoA is estopped from asserting that statutes of limitations were running for the  
12 duration of time class members relied on VWGoA's fraudulent representations and material  
13 omissions.

14            33.     VWGoA is equitably estopped from asserting the statutes of limitations have run  
15 against the claims of class members.

16    **FURTHER ALLEGATIONS**

17            34.     VWGoA fraudulently, intentionally, negligently and/or recklessly concealed from  
18 the proposed class representative and proposed class members the defects in class engines even  
19 though VWGoA knew or would have known of design and manufacturing defects in Class  
20 Vehicles if VWGoA had adequately tested class engines.

21            35.     VWGoA had actual knowledge that defects were causing extensive irreversible  
22 premature performance degradation in class engine water pumps shortly after production of the  
23 Class Vehicles commenced. VWGoA engaged in extensive field research and quality assurance  
24 investigations and analysis before revising the specifications for the original defective water  
25 pump, rebidding the new water pump for production and manufacturing and distributing the new  
26 water pump.

27            36.     For example, VWGoA maintains quality assurance engineers, such as its  
28 designated TSC Workshop Technicians, who have the responsibility to test, maintain and monitor

1 warranty work as well as evaluate returned parts and timely analyze failure modes in the relevant  
2 models. Similarly, Audi, *inter alia*, maintains a Quality Assurance Parts Tracing System online  
3 which contemporaneously records failures and complaints in the field concerning defective parts  
4 and components, including those from its dealers, and analyzes the data to determine the cause of  
5 such failures

6 37. VWGoA has a legal obligation and continues to be under this obligation pursuant  
7 to federal law to monitor defects that can cause a safety issue and report them to the Department of  
8 Transportation within five (5) days of learning of learning of the safety related defect. VWGoA  
9 therefore assiduously monitors the NHTSA-ODI website and the complaints filed therein in order  
10 to comply with its reporting obligations under federal law.

11 38. Despite its prior knowledge of the water pump defect, VWGoA failed to inform  
12 Class Vehicle owners prior to purchase or during the express warranty period that their engine  
13 water pump was defective and would fail shortly after the express warranty period expired.  
14 VWGoA misrepresented by affirmative conduct and/or by omission and/or by fraudulent  
15 concealment the existence of defects in the class engine water pump.

16 39. VWGoA also failed to inform Class Vehicle owners at the time of purchase that the  
17 water pump in their Class Vehicle's engine had been inadequately tested prior to placing the car in  
18 production and the time of vehicle sale.

19 40. Despite its prior knowledge of the defect, VWGoA also failed to inform Class  
20 Vehicle owners that there had been several significant subsequent water pump materials and  
21 manufacturing improvements as described in this Amended Complaint that reduced and/or  
22 eliminated premature failure while purchasers' vehicles were within the durational limitation of  
23 the express warranty period, including the powertrain limited warranty.<sup>6</sup> Specifically covered by  
24 this powertrain limited warranty were "all internal [engine] parts" including the engine water  
25 pump. This warranty promised to repair or replace covered defective class engine components

26 \_\_\_\_\_  
27 <sup>6</sup> Volkswagen vehicles were covered by including the powertrain limited warranty of "5 years or  
28 60,000 miles whichever occurs first, from the date the vehicle was first placed in service." Audi  
vehicles were covered by a general vehicle warranty of "4 years or 50,000 miles, whichever  
occurs first."

1 arising out of defects in materials and/or workmanship for a period of 5 years or 60,000 miles,  
2 whichever occurs first for non-commercial purchasers of the Volkswagen models utilizing the  
3 class engines (and defective water pumps). Audi Class Vehicles were covered for a period of 4  
4 years or 50,000 miles.

5 41. VWGoA knew at least one year prior to 2010 (the date the original water pump was  
6 assigned a new part number indicative of a design and/or manufacture change) that class engines  
7 were experiencing premature engine water pump failures. Despite this knowledge, VWGoA  
8 continued to sell Class Vehicles with an engine water pump that was defective. This knowledge is  
9 imputed to VWGoA because VWGoA was monitoring warranty claims and Class Vehicle  
10 performance in the United States, and reporting back to its parent companies located in Germany.

11 42. The proposed class representatives and proposed class members had valid and  
12 binding warranties and contracts with VWGoA and were reasonably expected by VWGoA to use  
13 their respective Class Vehicles in the manner in which passenger motor vehicles were used.

14 43. The proposed class representatives and proposed class members complied with all  
15 warranty and contractual obligations including all warranty, breach of warranty notices,  
16 maintenance and product use obligations for their respective Class Vehicles. The proposed class  
17 representatives and proposed class members operated their Class Vehicles under normal  
18 anticipated conditions in non-commercial environments.

19 44. VWGoA timely received the proposed class representatives' breach of warranties  
20 notice through authorized representatives and suffered no resulting prejudice. The proposed class  
21 representatives contacted VWGoA through an authorized dealership and/or VWGoA's customer  
22 care office.

23 45. The proposed class representatives and proposed class members were informed by  
24 representatives of VWGoA that VWGoA would not provide assistance in repairing class engines  
25 because their vehicles were outside of the express warranty period.

26 46. VWGoA refused to fully reimburse or compensate the proposed class  
27 representatives for vehicle water pump repair expenses or provide a suitable substitute or  
28 replacement vehicles. Although their respective vehicles' water pump failures occurred outside



1 the unilateral express warranty period (which was not bargained for prior to purchase), the  
2 proposed class representatives' respective Class Vehicles exhibited unmistakable symptoms  
3 (known only by VWGoA and its related and affiliated entities) of degradation and impending  
4 premature failure within the express warranty period as described in this Amended Complaint.

5 47. Despite actual and constructive knowledge of Class Vehicle defects as described in  
6 this Amended Complaint, VWGoA failed to cure Class Vehicle defects within the express  
7 warranty period and thereby breached the terms of the express warranty.

8 48. Through no fault of their own, the proposed class representatives and proposed  
9 class members did not possess sufficient technical expertise to recognize symptoms of impending  
10 water pump failure. This information, however, was well known to VWGoA, but not revealed.

11 49. The proposed class representatives relied upon material misrepresentations,  
12 fraudulent statements and/or material omissions of employees and agents of VWGoA at the time  
13 of purchase, including but not limited to the useful and expected life of Class Vehicles and the  
14 recommended Class Vehicle maintenance program.

15 50. VWGoA's misrepresentations, omissions and fraudulent statements were received  
16 by the proposed class representatives and proposed class members prior to and at the point of their  
17 Class Vehicle purchase. These representations, omissions and fraudulent were made by  
18 Volkswagen dealers referencing publications concerning Class Vehicles including the owner's  
19 manual and the USA Warranty and Maintenance pamphlets. The representations created a  
20 reasonable belief that the useful life expectancy of the water pump in the Class Vehicles without a  
21 major failure was in excess of 120,000 miles. These representations specifically related that the  
22 engine water pump was a non-maintenance engine component.

23 51. VWGoA actively concealed the true reasonably expected duration of Class Vehicle  
24 water pumps from the proposed class representatives and all Class Vehicle purchasers. VWGoA  
25 intentionally failed to inform Class Vehicle purchasers that Class Vehicles incorporated a  
26 defective and/or improperly tested water pump that would prematurely fail within the reasonably  
27 expected durational operating period.

1           52. VWGoA intentionally failed to inform Class Vehicle purchasers that the water  
2 pump incorporated in Class Vehicles results in higher operational costs than alternative  
3 conventional water pumps or other competitive technology because the water pump prematurely  
4 fails within the reasonably expected useful life of the pump.

5           53. VWGoA actively and fraudulently concealed the existence of the water pump  
6 defects (including defects covered under Class Vehicle warranties concerning materials and  
7 workmanship) and that the owner's manual accompanying Class Vehicles incorporated improper  
8 maintenance recommendations and maintenance intervals.

9           54. The proposed class representatives and class members did not learn that their  
10 respective Class Vehicle water pump was defective until after their water pumps failed.

11           55. VWGoA's customer service telephone representatives made false and fraudulent  
12 representations to class members as to the cause and existence of defects in Class Vehicles  
13 although the service representatives received hundreds of consumer complaints that the water  
14 pumps in Class Vehicles prematurely failed. VWGoA's employees falsely represented that certain  
15 pretexts for which VWGoA was not responsible as the basis for the failures that were in fact  
16 caused by an otherwise warranted material defect in the water pumps. They falsely stated that  
17 VWGoA was not responsible for the resulting Class Vehicle water pump failures and/or denied  
18 the existence of known Class Vehicle defects.

19           56. Volkswagen and Audi dealers (who also had a vested financial interest in  
20 concealing and suppressing the actual cause of Class Vehicle failures) improperly blamed  
21 premature water pump failures on certain conditions for which VWGoA would not be responsible  
22 and/or denied the existence of defects in the water pump.

23           57. VWGoA had actual knowledge, constructive knowledge and/or should have known  
24 upon proper inquiry and testing that Class Vehicles were defective with respect to the water pump,  
25 and that the pump suffered from extensive and serious irreversible premature performance  
26 degradation during the warranty period and did not have a normal and/or reasonable useful life  
27 before sales of Class Vehicles commenced in the United States. This information was technical in  
28 nature, proprietary and not known by the ordinary consumer or the public, including the proposed

1 class representatives and proposed class members. The proposed class representatives and  
2 proposed class members were ignorant of this technical information through no fault of their own.

3 58. VWGoA acted to conceal water pump defects during the warranty period so that  
4 repair costs would be shifted to the proposed class representatives and proposed class members  
5 once the warranty expired and the water pump failed.

6 59. VWGoA's knowledge of Class Vehicle defects was derived from warranty claims,  
7 claims supervisors, customer complaints and monitoring of performance of Class Vehicles by  
8 VWGoA quality assurance employees. Additionally, the number of replacement water pumps and  
9 subsequent pump revisions would have placed VWGoA on notice of water pump defects.  
10 VWGoA elected to place into the stream of commerce Class Vehicles that they knew would be  
11 adversely affected by the failure to adequately design and manufacture the water pump.

12 60. Additional information supporting allegations of fraud and fraudulent conduct is in  
13 the control of VWGoA. This information includes but is not limited to technical root cause  
14 analyses, communications with Class Vehicle owners, remedial measures, warranty claims and  
15 internal corporate communications concerning how to deal with consumers who claim their class  
16 engines' water pump was defective.

17 61. Material information fraudulently concealed and/or actively suppressed by  
18 VWGoA includes but is not limited to Class Vehicle defects described in the preceding paragraphs  
19 and throughout this Amended Complaint.

20 62. Material information was fraudulently concealed and/or actively suppressed in  
21 order to sell Class Vehicles to uninformed consumers (including the proposed class representative  
22 and proposed class members) premised on affirmations and representations of reliable, high  
23 quality, long-life vehicles with low maintenance, inexpensive operating costs, superior  
24 performance and durability. In fact, Class Vehicles actually contained a known water pump defect  
25 that would increase vehicle operating costs by thousands of dollars.

26 63. VWGoA (and particularly the sales and marketing executives at VWGoA)  
27 advertised and otherwise created the reasonable expectation (including but not limited to  
28

1 scheduled class engine maintenance recommendations) that Class Vehicles would last over  
2 120,000 miles or ten years before experiencing water pump failure.

3 64. Material information was fraudulently concealed and/or actively suppressed in  
4 order to protect VWGoA's (and authorized vehicle dealers') corporate profits from loss of sales  
5 from adverse publicity, to reduce warranty repair costs and to limit VW and Audi's brand  
6 disparagement.

7 65. VWGoA had a duty to disclose to Class Vehicle owners that there were material  
8 and manufacture defects in Class Vehicles that created safety issues and that the owner's manuals  
9 set forth the wrong maintenance recommendations and maintenance intervals.

10 66. This duty arose because VWGoA knew that there were defects in the vehicles and  
11 inaccuracies in the owner's manuals that affected vehicle operation, operating costs and safety  
12 while Class Vehicle owners were not, and could not reasonably be, cognizant of these defects and  
13 dangers.

14 67. VWGoA continuously and affirmatively concealed the actual characteristics of  
15 Class Vehicles from the proposed class representatives and other purchasers. VWGoA breached  
16 their affirmative duty of disclosure to Class Vehicle owners (and particularly to owners who  
17 inquired as to the cause of Class Vehicle water pump failures).<sup>7</sup>

18 68. VWGoA breached express and implied warranties and actively and affirmatively  
19 misrepresented, fraudulently concealed and suppressed the existence of defects in Class Vehicles  
20 and omissions in accompanying owner's manual and USA Warranty and Maintenance pamphlet.

21 69. The warranties accompanying Class Vehicles were procedurally and substantively  
22 unconscionable under Uniform Commercial Code § 2-302 and other applicable state warranty  
23 laws, such as California Civil Code §1670.5(b) (which parallels UCC §2-302),<sup>8</sup> because of the  
24

---

25 <sup>7</sup> Since unexpected engine failure is a serious safety issue, VWGoA had an affirmative duty to  
26 disclose the vehicle defects together with associated risks.

27 <sup>8</sup> California Civil Code §1670.5(b) reads in pertinent part: "When it is claimed or appears to the  
28 court that the contract or any clause thereof may be unconscionable the parties shall be afforded a  
reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid  
the court in making the determination."

1 disparity in bargaining power of the parties, the purchasers' lack of knowledge that Class Vehicles  
2 were defective, the inability of Class Vehicle purchasers to bargain with VWGoA to increase  
3 durational warranties, their lack of knowledge, their lack of meaningful alternatives, disparity in  
4 sophistication of the parties, unfair terms in the warranty (including but not limited to durational  
5 warranties that unfairly favored VWGoA particularly where there were Class Vehicle defects  
6 known only to VWGoA and the warranty unfairly shifted repair costs to consumers when Class  
7 Vehicles prematurely fail during their reasonably expected life), absence of effective warranty  
8 competition and the fact that Class Vehicles fail with substantially fewer miles of operation than  
9 competitor vehicles from other manufacturers or other models manufactured and/or sold by  
10 VWGoA.

11 70. Purchasers of Class Vehicles reasonably expect vehicles to function well in excess  
12 of the Class Vehicles' durational warranties before requiring extensive expensive repairs. This is  
13 particularly true where the purchasers of Class Vehicles were led to believe by VWGoA's  
14 representations and typical consumer expectations in a commercial context that the useful  
15 expected life of the vehicles was in excess of 120,000 miles and there was no scheduled inspection  
16 or maintenance for the water pump within this period.

17 71. Given the conduct of VWGoA and the design, manufacture, materials and  
18 workmanship defects in Class Vehicles (that VWGoA knew were inherently defective prior to the  
19 time of sale), the durational limitations of the warranties are oppressive, unreasonable and  
20 unconscionable because the warranty disclaimers of the proposed class representatives and  
21 proposed class members were neither knowing nor voluntary.

22 72. In particular, the class engine water pump defect manifests during and/or shortly  
23 after the warranty period expires, but prior to the end of the Class Vehicles' useful lives. VWGoA  
24 had superior knowledge regarding the water pump defect. Moreover, Plaintiffs had no meaningful  
25 choice in determining the temporal and/or mileage limits of VWGoA's warranty, which warranties  
26 were drafted by VWGoA, without any input, let alone meaningful input, from Plaintiffs. As such,  
27 there was a gross disparity in bargaining power in favor of VWGoA because the terms of the  
28

1 respective warranties unreasonably favored VWGoA. This is particularly true since VWGoA was  
2 aware of the defect at the time of sale.

3 73. The proposed class representatives and proposed class members had an absence of  
4 any meaningful choice in the purchase of Class Vehicles and the contractual terms were  
5 unreasonably favorable to VWGoA since VWGoA was fully aware of defects in the Class  
6 Vehicles that substantially increased Class Vehicle operating costs. The proposed class  
7 representatives and proposed class members were unaware of defects in the Class Vehicles at the  
8 time of purchase.

9 74. The bargaining position of VWGoA for the sale of Class Vehicles was grossly  
10 disproportionate and vastly superior to that of individual vehicle purchasers, including the  
11 proposed class representatives and proposed class members. This is because VWGoA knew there  
12 were defects in Class Vehicles affecting vehicle operating costs.

13 75. VWGoA included unfair contractual provisions concerning the length and coverage  
14 of the express warranty when it knew that Class Vehicles were inherently defective and dangerous  
15 and had been inadequately tested.

16 76. VWGoA knew defects in Class Vehicle components would cause certain expensive  
17 repair failures within one-half of the useful expected life of the Class Vehicle's water pump.  
18 VWGoA artificially limited the duration of the warranty period to avoid performing water pump  
19 warranty repairs in order to maximize profits through the sale of defective vehicles.

20 77. VWGoA unconscionably sold defective Class Vehicles to the proposed class  
21 representatives and proposed class members without informing these purchasers that the Class  
22 Vehicles were defective. In the alternative, VWGoA failed to notify the proposed class  
23 representatives and proposed class members after the time of sale that the water pump had been  
24 modified and that the water pump in their respective vehicles should be replaced prior to the  
25 expiration of the warranty.

26 78. VWGoA's conduct renders the vehicle purchase contract so one-sided as to be  
27 unconscionable under the circumstances existing at the formation of the vehicle purchase contract.

28

1           79. The durational limitation of the express warranties accompanying the Class  
2 Vehicles is unreasonable and unconscionable since VWGoA actively concealed known vehicle  
3 defects and issued incorrect maintenance recommendations and maintenance intervals. The  
4 proposed class representatives and proposed class members had no notice of or ability to detect the  
5 defects.

6           80. VWGoA restricted the warranty provisions for Class Vehicles in an effort to avoid  
7 the cost of repairs because they were cognizant of Class Vehicle defects that existed at the time of  
8 sale.

9           81. Water pumps in engines in competitor vehicles manufactured and sold at the time  
10 the Class Vehicles were manufactured and sold ordinarily last longer than warranted by the  
11 warranty accompanying Class Vehicles.

12           82. VWGoA engaged in unconscionable fraudulent commercial practices and  
13 attempted to conceal Class Vehicle materials defects, workmanship defects, manufacturing defects  
14 and improperly recommended maintenance.

15           83. VWGoA engaged in a continuing fraud concerning the true underlying cause of  
16 Class Vehicle water pump failures.

17           84. VWGoA failed to adequately test Class Vehicles in appropriate consumer  
18 environments prior to marketing, distribution and sale.

19           85. VWGoA's unconscionable conduct precludes any exclusion of incidental and  
20 consequential damages or any other limitation of remedies. VWGoA's upper level management  
21 orchestrated this wrongful conduct.

22           86. The proposed class representatives and proposed class members operated and  
23 maintained their Class Vehicles in conformity with the respective owner's manuals and provided  
24 the requisite notice to VWGoA's authorized agents for warranty repair after their Class Vehicle  
25 water pumps failed.

26           87. Class vehicle owners sustained an ascertainable financial loss, including but not  
27 limited to increased maintenance costs for water pump inspections and/or premature replacement  
28 of the water pump and/or substantially reduced engine performance. Individuals who own or have

1 owned Class Vehicles also sustained diminution of the resale value of their Class Vehicles since  
2 knowledge of problems with Class Vehicle's water pumps became public information after the  
3 time of their purchase.

4 88. The proposed class representatives and proposed class members have not received  
5 the benefit of their bargain concerning their respective purchase of Class Vehicles.

6 89. VWGoA is a person within the context of the consumer protection laws of  
7 California and New York and committed wrongful conduct described in this Amended Complaint  
8 including conduct that caused ascertainable financial harm and/or economic loss and/or a  
9 consumer-oriented injury to the proposed class representatives and proposed class members.

10 90. VWGoA created an over-all misleading impression through their failure to disclose  
11 material information concerning the fact that Class Vehicles incorporated defective water pumps  
12 and were accompanied by an owner's manual and USA Warranty and Maintenance pamphlet that  
13 incorporated incorrect engine service and maintenance recommendations. The proposed class  
14 representatives and proposed class members were deceived by VWGoA's conduct as described in  
15 this Amended Complaint with respect to their purchase of Class Vehicles.

16 91. VWGoA violated the consumer protection laws of California and New York with  
17 its oppressive and unconscionable conduct described in this Amended Complaint including but not  
18 limited to VWGoA's failure to disclose material information that caused ascertainable financial  
19 harm and/or a consumer-oriented injury to the proposed class representatives and proposed class  
20 members.

21 92. VWGoA was under a duty to disclose unreasonable safety defects in Class  
22 Vehicles as described in this Amended Complaint but failed to disclose to the proposed class  
23 representatives and proposed class members the material characteristics of Class Vehicles with  
24 respect to defects in violation of the consumer protection laws of California and New York.  
25 VWGoA's omissions (that water pumps were defective and that this defect constituted an  
26 unreasonable safety hazard) deceived purchasers (including but not limited to the proposed class  
27 representative and proposed class members). Those material disclosure omissions include the fact  
28 that Class Vehicle water pump defects had a significant impact on operating costs, maintenance,



1 durability and future care of Class Vehicles. This failure to disclose additional information  
2 concerning Class Vehicle defects had the capacity to, and in fact did, deceive purchasers  
3 (including but not limited to the proposed class representative and proposed class members) in a  
4 material respect.

5 93. The proposed class representatives relied on the misrepresentations and material  
6 omissions of VWGoA in that if the proposed class representatives and proposed class members  
7 had been made aware of the defects in their respective Class Vehicles and the attendant  
8 ramifications of value, durability, maintenance expenses, safety and care, they would not have  
9 purchased the Class Vehicles or would have paid less for their vehicles since class members were  
10 led to believe that they were purchasing a vehicle that was free of major defects and were not fully  
11 informed of the true characteristics and attributes of Class Vehicles.

12 94. VWGoA fraudulently, intentionally, negligently and/or recklessly concealed from  
13 the proposed class representatives and proposed class members defects in Class Vehicles even  
14 though VWGoA knew information concerning these defects was material and central to the  
15 marketing and sale of Class Vehicles to prospective purchasers including the proposed class  
16 representatives and proposed class members.

17 95. VWGoA violated the consumer protection laws of California and New York by  
18 failing to inform Class Vehicles owners at the time of purchase that Class Vehicles had known  
19 defects, that the vehicles would prematurely require major engine repairs and/or prematurely fail  
20 with resulting catastrophic consequences and/or would have a significant effect on the vehicle's  
21 value.

22 96. As a direct result of these omissions, the proposed class representatives and  
23 proposed class members purchased Class Vehicles and sustained economic harm since they paid a  
24 price premium in purchasing Class Vehicles worth considerably less than represented. These  
25 misrepresentations and omissions diminished the vehicle value, increased the cost of vehicle  
26 ownership while also increasing risk of injury that was not disclosed to or reasonably anticipated  
27 by consumers at the time of purchase.

1           97.     The wrongful conduct of VWGoA in violation of the consumer protection laws of  
2 California and New York occurred within the limitations period set out in the respective statutes  
3 and/or the limitations period is tolled by VWGoA's conduct.

4 **How and What the Omissions Were:**

5           98.     VWGoA fraudulently omitted to disclose material facts basic to both the purchase  
6 and warranty service concerning Class Vehicles, including information concerning class engine  
7 water pump defects, in an effort to deceive purchasers as described in this Amended Complaint.  
8 At the time of purchase, VWGoA fraudulently omitted to disclose material facts regarding the  
9 defects in Class Vehicles, including their impact on future repairs, operating costs and vehicle  
10 reliability as described in this Amended Complaint.

11           99.     VWGoA fraudulently concealed from the proposed representatives and proposed  
12 class members defects in Class Vehicles even though VWGoA knew that information concerning  
13 these defects was material and central to the marketing and sale of Class Vehicles to prospective  
14 purchasers, including the proposed class representatives and proposed class members.

15           100.    VWGoA concealed from proposed representatives and proposed class members  
16 during their warranty periods that a defect existed with the water pump which could have and  
17 should have been fixed during the warranty period, particularly as it was a safety issue, and  
18 VWGoA's withholding of this material information deprived proposed representatives and  
19 proposed class members of the right to have such defective part replaced for free under the  
20 warranty.

21 **Who: The Person(s) Responsible for the Failure to Disclose:**

22           101.    The proposed class representatives and proposed class members are entitled to the  
23 reasonable inference that VWGoA's sales, marketing, engineering and warranty departments and  
24 their executives, as well as those of VWGoA's affiliates and related entities, were involved in the  
25 omissions. This is particularly true given VWGoA's recent conduct involving compliance  
26 certification and pollution control defeat devices involved in the sale of diesel powered passenger  
27 vehicles world-wide.

1 **What: The Context of the Omissions and the Manner in Which They Misled:**

2 102. Material information was fraudulently concealed and/or actively suppressed in  
3 order to sell Class Vehicles to uninformed consumers (including the proposed class representative  
4 and proposed class members) premised on affirmations and representations as described in this  
5 Amended Complaint.

6 103. If the proposed class representatives and proposed class members had been  
7 informed of defects in their Class Vehicles, they would not have purchased their respective Class  
8 Vehicles or would have paid substantially less. If the proposed class representatives and proposed  
9 class members had been made aware of the defects in their respective Class Vehicles and the  
10 attendant ramifications of their respective vehicle's diminution in value, future cost of repairs,  
11 durability and care, they would not have purchased the Class Vehicles since each class member  
12 believed they were purchasing vehicles without major defects and were not fully informed of true  
13 characteristics and attributes of Class Vehicles. If the proposed class representatives and proposed  
14 class members had been informed of the defect during the warranty period, they would have had  
15 the defective part replaced under warranty. VWGoA's conduct that violated the consumer fraud  
16 statutes alleged herein deprived proposed class representatives and proposed class members of that  
17 remedy.

18 **What VWGoA Obtained through the Fraud:**

19 104. Material information concerning Class Vehicles was concealed and/or actively  
20 suppressed in order to protect VWGoA's corporate profits from loss of sales, purchase refunds,  
21 warranty repairs, adverse publicity and limit brand disparagement. Purchasers believed they were  
22 obtaining vehicles as having different attributes than described and purchased and were  
23 accordingly deprived of economic value and paid a price premium for their Class Vehicles.  
24 VWGoA had a uniform policy of not properly disclosing Class Vehicle defects in order to  
25 promote sales and increase profits as described in this Amended Complaint.

26 105. As a proximate and direct result of VWGoA's unfair and deceptive business trade  
27 practices, the proposed class representatives and proposed class members purchased Class  
28

1 Vehicles and sustained an ascertainable loss, including but not limited to financial harm and/or a  
2 consumer-oriented injury as described in this Amended Complaint.

3 **COUNT I**

4 **BREACH OF UNIFORM COMMERCIAL CODE § 2-313:**  
5 **EXPRESS WARRANTY OF MERCHANTABILITY BY**  
6 **VWGoA RESULTING IN FINANCIAL HARM**

7 **(On Behalf of the Nationwide Class or,**  
8 **Alternatively, the California and New York State Subclasses)**

9 106. The proposed class representatives and proposed class members incorporate by  
10 reference all allegations in the above preceding paragraphs as if set forth fully in this count.

11 107. VWGoA is a merchant with respect to passenger motor vehicles. Class Vehicles  
12 are goods within the meaning of the Uniform Commercial Code as adopted by California and New  
13 York.

14 108. VWoA is the Warrantor of the Vehicles.

15 109. VWGoA provided proposed class members an express powertrain limited warranty  
16 of “5 years or 60,000 miles whichever occurs first, from date the vehicle was first placed in  
17 service” (for the Volkswagen Class Vehicle models) or a comparable warranty of “4 years or  
18 50,000 miles” (for the Audi Class Vehicle models). Specifically covered by this powertrain  
19 limited warranty were “all internal [engine] parts” including the engine water pump. This  
20 warranty promised to repair or replace covered defective class engine components arising out of  
21 defects in materials and/or workmanship for the stated warranty period(s).

22 110. VWGoA expressly warranted to the general public, owners and lessees of Class  
23 Vehicles that Class Vehicles were merchantable and fit for the ordinary purposes for which  
24 passenger vehicles are used. The proposed class representatives and proposed class members  
25 purchased their respective vehicles for personal, family, and/or household use and did not engage  
26 in commercial use of their vehicles.

27 111. VWGoA extensively advertised that Class Vehicles were superior in construction  
28 and extolled the quality and virtues of these vehicles including superior design and manufacture,  
safety, durability, reliability, economy and performance. But, in fact, Class Vehicle engines

1 contained defects in the water pump that severely increased the cost of ownership and  
2 maintenance of Class Vehicles that was not contemplated by Class Vehicle owners at the time of  
3 purchase because VWGoA did not disclose the water pump defects.

4 112. VWGoA represented that Class Vehicles were of a particular standard or quality, as  
5 described in this Amended Complaint, when they in fact were not. Water pumps in class engines  
6 are failing far short of the expected useful life.

7 113. VWGoA received adequate notice of its breach of the express warranties and failed  
8 to cure the warranty breaches. The proposed class representatives and class members reported to  
9 VWGoA the problems with and failings of the engine water pumps in their vehicles and requested  
10 that VWGoA cure the warranty breach by repair and/or replacement of the defective water pump.  
11 In the alternative, the proposed class representatives, as indirect purchasers, were not required to  
12 issue notice of the warranty breach to VWGoA and the lack of notice of warranty breach did not  
13 result in any prejudice to VWGoA.

14 114. The proposed class representatives and proposed class members complied with  
15 maintenance recommendations for their respective Class Vehicle.

16 115. VWGoA failed to repair or replace the proposed class representatives' and  
17 proposed class members' water pumps that were defective in materials and workmanship during  
18 the express warranty period although these defects were known to VWGoA at that time.<sup>9</sup>

19 116. Class Vehicles owned by the proposed class representatives and proposed class  
20 members also prematurely failed and/or experienced substantial performance diminution within  
21 their respective express warranty periods.

22 117. The proposed class representatives and proposed class members relied on the  
23 express warranties made by VWGoA regarding Class Vehicles when selecting to purchase their  
24 Audi and Volkswagen vehicles. As a result, the proposed class representatives and proposed class  
25 members sustained injury, damages and an ascertainable loss in the purchase price of their

---

26 <sup>9</sup> The USA Warranty and Maintenance booklet for Class Vehicles recites as follows: “[r]epairs  
27 under this warranty are made free of charge. Your authorized Audi dealer will repair the defective  
28 part or replace it with a new or remanufactured genuine Audi part.” The Volkswagen version of  
this warranty guarantee is identical except Volkswagen is inserted in place of Audi.

1 vehicles and other financial injury including the cost for premature water pump repairs that  
2 resulted from VWGoA's warranty breach.

3 118. Class Vehicles are not reliable because of the water pump defect and owners of  
4 these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe  
5 reliable transportation.

6 119. The proposed class representatives and proposed class members could not have  
7 reasonably discovered the defective condition of their Class Vehicle engine's water pump prior to  
8 failure.

9 120. The express warranty remedy set out in the warranty provisions for Class Vehicles  
10 fails of its essential purpose under Uniform Commercial Code § 2-719(2) and the limitation of  
11 consequential damages is unconscionable under § 2-719(3) because of the conduct of VWGoA  
12 described in this Amended Complaint.

13 121. VWGoA breached the express warranties in that Class Vehicles were defective  
14 with respect to engine water pump materials, workmanship, and manufacture.

15 122. VWGoA further breached the express warranties in that Class Vehicles were  
16 accompanied by an owner's manual and USA Warranty and Maintenance pamphlet that  
17 incorporated no inspection and service intervals for the water pump although VWGoA knew these  
18 components were defective and required periodic inspection, service and/or replacement.

19 123. VWGoA further breached the express warranties by failing to remedy the defective  
20 water pump caused by defects in materials and workmanship as required by the warranty that  
21 accompanied the respective Class Vehicles. Class Vehicles were not of merchantable quality and  
22 were unfit for the ordinary purposes for which passenger vehicles are used because of materials,  
23 workmanship, design and manufacture defects which cause the engine not to perform as  
24 warranted.

25 124. The proposed class representatives and proposed class members relied on express  
26 warranties made by VWGoA concerning the Class Vehicles and sustained financial injury  
27 resulting from the breach of those warranties by VWGoA.

1 125. VWGoA's express warranty is a "repair and replace" warranty for future  
2 performance, as it promises to provide any repairs necessary to correct defects in materials or  
3 workmanship of the vehicle's internal parts at no charge to the owner or lessee.

4 126. Under California Commercial Code §2725 and the counterpart New York code,  
5 where a warranty extends to future performance, as the warranties here do, the claim accrues  
6 "when breach is or should have been discovered."

7 127. The date(s) of discovery of Plaintiffs Coffeng, Glaser and Wilson are the dates  
8 upon which their respective defective water pumps failed and required replacement, which are  
9 August 28, 2014, May 27, 2016 and October 23, 2017, respectively.

10 128. By virtue of VWGoA's breach of express warranty, the proposed class  
11 representatives and proposed class members demand judgment against VWGoA for multiple  
12 damages, interest, costs and attorneys' fees.

13 **COUNT II**

14 **BREACH OF IMPLIED WARRANTY PURSUANT TO**  
15 **SONG-BEVERLY CONSUMER WARRANTY ACT,**  
16 **(California Civil Code §§ 1792 and 1791.1, et seq.)**

17 **(On Behalf of the California State Subclass)**

18 129. Proposed California class representatives Coffeng and Glaser, and proposed  
19 California class members, incorporate by reference all allegations in the above preceding  
20 paragraphs as if set forth fully in this count.

21 130. Proposed California class representatives Coffeng and Glaser, and proposed  
22 California class members, are "buyers" within the meaning of the Song-Beverly Consumer  
23 Warranty Act, California Civil Code § 1791(a).

24 131. VWGoA is a "manufacturer" within the meaning of the Song-Beverly Consumer  
25 Warranty Act, California Civil Code § 1791(j).

26 132. Class Vehicles are "consumer goods" within the meaning of the Song-Beverly  
27 Consumer Warranty Act, California Civil Code § 1791(a).

1           133. VWGoA Warranty is an “express warrant[y]” within the meaning of the Song-  
2 Beverly Consumer Warranty Act, California Civil Code § 1791.2.

3           134. At all relevant times, VWGoA manufactured, distributed, warranted, and/or sold  
4 the Class Vehicles. VWGoA knew or had reason to know of the specific use for which the Class  
5 Vehicles were purchased or leased.

6           135. VWGoA provided an implied warranty to proposed California class representatives  
7 Coffeng and Glaser, and proposed California class members, which warranted that the Class  
8 Vehicles, including the components parts, are merchantable and fit for the ordinary purposes for  
9 which they were sold. However, *inter alia*, the water pumps in the Class Vehicles suffer from an  
10 inherent defect at the time of sale and, thereafter, are not fit for their ordinary purpose of providing  
11 reasonably safe and reliable transportation.

12           136. VWGoA impliedly warranted that the Class Vehicles are of merchantable quality  
13 and fit for such use. The implied warranty includes, among other things: (i) a warranty that the  
14 class vehicles manufactured, supplied, distributed, and/or sold by VWGoA are safe and reliable  
15 for providing transportation; and (ii) a warranty that the class vehicles are fit for their intended.

16           137. Contrary to the applicable implied warranties, the Class Vehicles, at the time of  
17 sale and thereafter, were not, fit for their ordinary and intended purpose of providing proposed  
18 California class representatives Coffeng and Glaser, and proposed California class members, with  
19 reliable, durable, and safe transportation. Instead, the water pumps in Class Vehicles are defective  
20 and suffer from failures that compromise the reliability, durability, and safety of Class Vehicles.

21           138. As a result of VWGoA’s breach of the implied warranties, owners and/or lessees  
22 of Class Vehicles, have suffered an ascertainable loss of money, property, and/or value of their  
23 class vehicles. Additionally, as a result of the water pump defect, proposed California class  
24 representatives Coffeng and Glaser, and proposed California class members, were harmed and  
25 suffered actual damages in that the Class Vehicles’ water pumps are substantially certain to fail or  
26 have failed before their expected useful life has run. The water pump failures create a significant  
27 risk of accidents, injuries, and even death.

28



1 139. VWGoA's acts described in this Amended Complaint breached the implied  
2 warranty that Class Vehicles were of merchantable quality and fit for such use, in violation of  
3 California Civil Code §§ 1792 and 1791.1, *et seq.*

4 140. Proposed California class representatives Coffeng and Glaser, and proposed  
5 California class members, seek full compensatory damages allowable by law, attorneys' fees,  
6 costs, the repair or replacement of all class vehicles the refund of money paid to own or lease all  
7 class vehicles, and any other relief to which Plaintiffs and the California Subclass may be entitled.

8 141. By virtue thereof, the proposed class representatives and proposed class members  
9 demand judgment against VWGoA including multiple damages, interest, costs and attorneys' fees.

10 **COUNT III**

11 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**  
12 **15 U.S.C. § 2310(d)(1)(A)**

13 **(Brought Under State Law on Behalf of the Nationwide Class or,**  
14 **Alternatively, the California and New York State Subclasses)**

15 142. The proposed class representatives and proposed class members incorporate by  
16 reference all allegations in the above preceding paragraphs as if set forth fully in this count.

17 143. This count is brought as a state law claim under 15 U.S.C. §2310(d)(1)(A) and is  
18 before this Court as a supplemental state court claim for each of the state subclasses pursuant to  
19 diversity jurisdiction under CAFA.

20 144. The proposed class representatives and proposed class members are consumers  
21 within the context of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

22 145. Class Vehicles are consumer products within the context of the Magnuson-Moss  
23 Warranty Act, 15 U.S.C. § 2301(1).

24 146. VWGoA is a supplier and/or warrantor within the context of the Magnuson-Moss  
25 Warranty Act, 15 U.S.C. § 2301(4)-(5).

26 147. VWGoA's express warranties are written warranties within the context of the  
27 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Class vehicle implied warranties created by  
28 operation of state law are incorporated into the Magnuson-Moss Warranty Act as modified by §  
2308.

1 148. VWGoA breached the express and implied warranties accompanying Class  
2 Vehicles as described in this Amended Complaint.

3 149. The Magnuson-Moss Warranty Act provides a claim for any consumer who is  
4 damaged by the failure of a warrantor to comply with a written or implied warranty.

5 150. VWGoA's breach of the express and implied warranties was the direct and  
6 proximate cause of the proposed class representatives' and proposed class members' financial  
7 harm as more fully set out in the preceding warranty counts and constitutes a violation of the  
8 Magnuson-Moss Warranty Act.

9 151. VWGoA is the warrantor of Class Vehicles.

10 152. Affording VWGoA a reasonable opportunity to cure their breach of written  
11 warranties for Class Vehicles would be unnecessary and futile. The proposed class representatives  
12 and proposed class members have already attempted to secure warranty coverage for their water  
13 pump replacement and related repairs without success and sent notice in writing in the form of  
14 Plaintiff Coffeng's pre-suit communication to VWGoA which failed to resolve the matter or  
15 secure the requested remedy.

16 153. At the time of sale or lease of each Class Vehicle, VWGoA knew, should have  
17 known and/or was reckless in not knowing of the misrepresentations and material omissions  
18 concerning the Class Vehicles' inability to perform as warranted but nonetheless failed to rectify  
19 the situation and/or disclose the defects as described in this Amended Complaint. Under the  
20 circumstances, the remedies available under any informal settlement procedure would be  
21 inadequate and any requirement that Class Vehicles resort to an informal dispute resolution  
22 procedure and/or afford VWGoA a reasonable opportunity to cure the breach of warranties is  
23 excused and thereby deemed satisfied.

24 154. The proposed class representatives and proposed class members would suffer  
25 economic hardship if they returned their Class Vehicles but did not receive the return of all  
26 payments made by them.

1 155. By virtue thereof, the proposed class representatives and proposed class members  
2 demand judgment against VWGoA including multiple monetary damages, interest, costs and  
3 attorney's fees.

4 **COUNT IV**

5 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,  
6 CAL. BUS. AND PROFESSIONS CODE §§ 17200 *ET SEQ.***

7 **(On Behalf of the California Subclass)**

8 156. Proposed California subclass representatives Coffeng and Glaser and proposed  
9 California Class members incorporate by reference all allegations in the above preceding  
10 paragraphs as if set forth fully in this count.

11 157. Proposed California Class representatives Coffeng and Glaser assert this count on  
12 behalf of themselves and members of the proposed California Class.

13 158. California's Unfair Competition Law ("UCL") prohibits all unlawful, unfair or  
14 deceptive business practices. VWGoA's conduct as described in this Amended Complaint  
15 constitutes unlawful, unfair and deceptive business practices.

16 159. VWGoA's breach of the express and implied warranties as described in this  
17 Amended Complaint violates § 2313 of California's Commercial Code and Cal. Civ. Code §§  
18 1792 *et seq.* of the Song-Beverly Consumer Warranty Act. VWGoA's conduct as described in  
19 this Amended Complaint further violates the Consumers Legal Remedies Act, Cal. Civ. Code §§  
20 1770 *et seq.* These violations are independent and unlawful unfair and deceptive business  
21 practices.

22 160. VWGoA's sale of Class Vehicles without disclosing the existence of defective  
23 engine water pumps while misrepresenting the supposed quality and reliability attributes of these  
24 vehicles is an unlawful, unfair and deceptive business practice within the context of the UCL.  
25 This conduct was unlawful, unfair and deceptive because it was intended to, and did in fact,  
26 mislead and deceive proposed California subclass representatives Coffeng and Glaser and  
27 proposed California Class members. If VWGoA disclosed to proposed California Class  
28 representatives Coffeng and Glaser, and to proposed California Class members, that Class  
Vehicles incorporated a defective water pump or that the system had been inadequately tested,

1 they would not have purchased their respective vehicles or paid less for their respective Class  
2 Vehicle.

3 161. VWGoA knew that if defects in the engine water pump or inadequate testing of the  
4 water pump were disclosed to the consumer public prior to purchase, consumers at large would  
5 react similarly and elect to not to purchase Class Vehicles. As a result, VWGoA intentionally  
6 concealed their knowledge of the water pump defects and inadequate testing of the pump.

7 162. As a direct, proximate and foreseeable result of VWGoA's unlawful, unfair and  
8 deceptive business practices, proposed California Class representatives Coffeng and Glaser and  
9 proposed California Class members sustained an ascertainable loss and actual damages in that they  
10 expended tens of thousands of dollars to purchase the defective Class Vehicles and then were  
11 required to spend additional sums to have their defective water pumps repaired or replaced.  
12 Moreover, because of the undisclosed defects, proposed California Class representatives Coffeng  
13 and Glaser, and the proposed California Class members, sustained a loss and/or diminution in the  
14 value of their vehicles. Proposed California Class representatives Coffeng and Glaser, and the  
15 proposed California Class members, have or will incur incidental damages attributable to the loss  
16 of use of their Class Vehicles while the vehicles were or will be repaired.

17 163. VWGoA's unlawful, unfair and/or deceptive business practices caused proposed  
18 California class representatives Coffeng and Glaser, and members of the proposed California  
19 Class, to convey money and benefits to VWGoA including but not limited to the purchase price or  
20 lease payments for their vehicles together with water pump repair or replacement costs.

21 164. Proposed California Class representatives Coffeng and Glaser, and the proposed  
22 California Class members, request an order of restitution forcing VWGoA to restore to them the  
23 benefits and monies they conveyed in connection with their purchase of the Class Vehicles and  
24 repair costs related to the defective water pump.

25 165. By virtue thereof, California Class representatives Coffeng and Glaser, and the  
26 proposed California Class members, demand judgment against VWGoA for multiple damages,  
27 interest, costs and attorneys' fees.

**COUNT V**

**VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,  
CAL. CIV. CODE §§ 1750 *ET SEQ.***

**(On Behalf of the California Subclass)**

166. Proposed California Class representatives Coffeng and Glaser, and proposed California Class members, incorporate by reference all allegations in the above preceding paragraphs as if set forth fully in this count.

167. Proposed California Class representatives Coffeng and Glaser assert this count on behalf of themselves and members of the proposed California Class.

168. VWGoA violated Cal. Civ. Code § 1770(a)(5) by representing that Class Vehicles have characteristics, uses, benefits and/or quantities they do not possess.

169. VWGoA violated Cal. Civ. Code § 1770(a)(7) by representing that Class Vehicles are of a particular standard, quality or grade, when they are not, and in particular, by supplying vehicles that contain a defect that involves an unreasonable safety issue.

170. VWGoA violated Cal. Civ. Code § 1770(a)(9) by advertising Class Vehicles with the intent not to sell them as advertised.

171. VWGoA violated Cal. Civ. Code § 1770(a)(16) by representing that the subject of a transaction has been supplied in accordance with a previous representation when it was not.

172. VWGoA conducted the above-described acts or practices in transactions intended to result, or that did result, in the sale of Class Vehicles to customers for personal, family or household use.

173. Plaintiffs Coffeng and Glaser, and the proposed California Class members, relied on VWGoA's affirmative representations that no maintenance would be required for the subject water pumps for a duration of at least 120,000 miles and upon VWGoA's material omissions as to the defect, in that if the proposed class representatives and proposed class members had been informed of class engine water pump defects, they would not have purchased their respective Class Vehicles or would have paid substantially less. Moreover, if the proposed class representatives and proposed class members had been made aware of the defects in their

1 respective Class Vehicles and the attendant ramifications of their respective vehicle's diminution  
2 in value, future cost of repairs, durability and care, they would not have purchased the Class  
3 Vehicles since each class member believed they were purchasing vehicles without major defects  
4 and were not fully informed of true characteristics and attributes of Class Vehicles. If the  
5 proposed class representatives and proposed class members had been informed of the defect  
6 during the warranty period, they would have had the defective part replaced under warranty.

7 174. As a result of VWGoA's conduct, proposed class representatives, Coffeng and  
8 Glaser, and the proposed California Class members, were harmed and suffered actual damages and  
9 compensatory damages in that the Class Vehicles experienced failure and required replacement  
10 and repair at the expense of Plaintiffs and proposed class members and may continue to  
11 experience the aforementioned water pump failures as a result of the defect. As a direct and  
12 proximate result of VWGoA's unfair or deceptive acts or practices, Plaintiffs Coffeng and Glaser,  
13 and the proposed California Class members, suffered and will continue to suffer actual damages.

14 175. Plaintiff Coffeng sent VWGoA a letter on March 31, 2017, by United States Postal  
15 Service Certified Mail, Return Receipt Requested that provided VWGoA with notice of its  
16 specific violations of the CLRA pursuant to California Civil Code § 1782(a). VWGoA failed to  
17 provide an appropriate response or relief for the violations of the CLRA within thirty (30) days of  
18 such notice, as required by the statute.

19 176. The time that the CLRA claims commenced to run for proposed class  
20 representatives and the proposed California class members, were no earlier than the date(s) of  
21 discovery by Plaintiffs Coffeng and Glaser of the failure of their respective water pumps as a  
22 result of the concealed defect and that the defective water pumps required replacement at their cost  
23 and expense, which dates are August 28, 2014 and May 27, 2016, respectively. In addition, due to  
24 VWGoA's knowing concealment described in this Amended Complaint, and the material  
25 omissions of VWGoA, which VWGoA was under a duty to disclose since the water pump defect  
26 created a safety risk, Plaintiffs could not have discovered the alleged defect earlier despite  
27 reasonable diligence.

28

1 177. Therefore, Plaintiffs Coffeng and Glaser, and the proposed California Class  
2 members, seek full compensatory and punitive damages allowable by law, including the expense  
3 of the repair or replacement of the defective water pumps and/or refund of money paid to own or  
4 lease all Class Vehicles and such other monetary, injunctive and equitable relief, along with any  
5 other remedies, including costs and attorneys fees, available by law.

6 **COUNT VI**

7 **VIOLATION OF THE NEW YORK CONSUMER**  
8 **FRAUD STATUTE GBL §349**  
9 **(On Behalf of the New York State Subclass)**

10 178. Proposed New York class representative Wilson and proposed New York class  
11 members hereby incorporate by reference all allegations in the preceding paragraphs as if set forth  
12 fully in this count.

13 179. Proposed New York class representative Wilson asserts this count on behalf of  
14 himself and members of the proposed New York Class.

15 180. VWGoA sold and/or leased the Class Vehicles knowingly concealing class engine  
16 water pump defects described in this Amended Complaint.

17 181. VWGoA's acts are and were deceptive acts or practices which are and/or were,  
18 likely to mislead a reasonable consumer purchasing the Class Vehicles. VWGoA's  
19 aforementioned deceptive acts and practices are material, in part, because they concern an  
20 essential facet of the Class Vehicles' functionality and safety. The sale and distribution of the  
21 Class Vehicles in New York was a consumer oriented act and thereby falls under the New York  
22 deceptive acts and practices statute, General Business Law Section 349.

23 182. VWGoA's practices, acts, policies and course of conduct violated New York's  
24 General Business Law Section 349 Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349  
(McKinney), *et seq.*, in that:

25 (a) At the time of sale, VWGoA knowingly misrepresented and intentionally  
26 omitted and concealed material information regarding the Class Vehicles by failing to  
27 disclose to Plaintiff Wilson and proposed New York class members known defects in the  
28 water pump and known risks associated therewith.

1           (b)     Thereafter, VWGoA failed to disclose the defects to Plaintiff Wilson and  
2           proposed New York class members, either through warnings or recall notices, and/or  
3           actively concealed from them the fact that the Class Vehicle water pumps were defective,  
4           despite the fact that VWGoA knew of such defects: (1) at the time of manufacturing,  
5           during pre-market testing; (2) at the point where VWGoA and its affiliates and related  
6           entities redesigned the water pumps and bid the redesigned pumps out; (3) when VWGoA  
7           determined through field inspections, warranty claims and customer complaints that the  
8           pumps were defective; (4) when NHTSA began to record complaints about the defect; or  
9           (5) from its own Technical Service Bulletins.

10           (c)     VWGoA forced Plaintiff Wilson and proposed New York class members to  
11           expend sums of money at its dealerships to repair and/or replace the defective water  
12           pumps, despite the fact that VWGoA had prior knowledge of the defects at the time of  
13           Wilson's purchase.

14           (d)     Additionally, VWGoA, in administering the Warranty, engaged in  
15           materially misleading deceptive acts and practices by not informing owners and lessees  
16           during the warranty, by not inspecting defective water pumps during the warranty and by  
17           denying the existence of and refusing to repair the widely known problems with non-  
18           defective water pumps during the warranty.

19           (e)     Furthermore, VWGoA engaged in materially misleading and deceptive acts  
20           by continuing to sell the Class Vehicles to the consuming public and to represent that these  
21           vehicles were in good working order, merchantable, and not defective, despite VWGoA's  
22           knowledge that the vehicles would not perform as intended, represented, and warranted  
23           and that the above described defects would cause purchasers to incur significant out-of-  
24           pocket costs and expenses.

25           183.    The aforementioned conduct is and was deceptive and false and constitutes and  
26           unconscionable, unfair, and deceptive act or practice in that VWGoA has, through knowing,  
27           intentional, and material omissions, concealed the true, defective nature of the water pumps in the  
28           Class Vehicles.



1           184. By making these misrepresentations of fact and/or material omissions to  
2 prospective customers while knowing such representations to be false, VWGoA has  
3 misrepresented and/or knowingly and intentionally concealed material facts and breached its duty  
4 not to do so.

5           185. VWGoA's misrepresentations of fact and/or material omissions caused injury and  
6 actual damages to Plaintiff Wilson and proposed New York class members.

7           186. Members of the public were deceived by VWGoA's failure to disclose and could  
8 not discover the defect themselves before suffering their injuries. As a direct and proximate result  
9 of these unconscionable, unfair, and deceptive acts or practices, Plaintiff Wilson and proposed  
10 New York class members have been injured as alleged herein, and are entitled to recover actual  
11 damages to the extent permitted by law, including class action rules, in an amount to be proven at  
12 trial.

13           187. Plaintiff Wilson and proposed New York class members seek restitution of the  
14 substantial sums of money they expended to replace their water pumps in the defective Class  
15 Vehicles, which VWGoA knew about prior to the sale of the Class Vehicles and further seek  
16 statutory damages or actual damages, whichever is greater for their consumer-related injuries. The  
17 actual damages of Plaintiff Wilson and proposed New York class members include their cost and  
18 expenses of repair and replacement of the defective water pumps, the diminution of value of the  
19 Class Vehicles due to the defect, the purchase of Class Vehicles at a price more than they would  
20 have paid had they known of the defect or alternatively, that they would not have purchased their  
21 Class Vehicles but for material omissions by VWGoA.

22           188. Plaintiff Wilson and proposed New York class members also seek appropriate  
23 equitable relief, including an order requiring VWGoA to adequately disclose and remediate the  
24 water pump defect.

25  
26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**RELIEF DEMANDED**

WHEREFORE, the proposed class representatives and proposed class members request:

A. An Order pursuant to Fed. R. Civ. P. 23(c) certifying the class and/or subclasses as defined in ¶ 14 with such modifications, if any, to the proposed certification as required by the Court for the efficient and equitable administration of justice in this proceeding;

B. An Order appointing the proposed class representatives as representatives of the proposed class and designating the law firms of Thomas P. Sobran P.C. and Kantrowitz, Goldhamer & Graifman, P.C. as class counsel for the proposed class pursuant to Fed. R. Civ. P. 23(g);

C. Judgment for the proposed class representatives and proposed class members against VWGoA on all issues and counts;

D. Damages for the proposed class representatives and proposed class members, including but not limited to damages, together with interest, prejudgment interest, costs and attorneys’ fees;

E. Restitution for all water pump repair costs incurred by the proposed class representatives and proposed class members resulting from the defectively designed and manufactured water pumps and incorrect maintenance and service intervals as set forth in the Class Vehicles’ owner’s manuals;

F. Restitution of incidental expenses incurred by the proposed class representative and proposed class members, including but not limited to rental vehicles and other substitute transportation;

G. A Court issued declaratory judgment declaring that all Class Vehicle claims caused by their defective water pumps are within the scope of the Class Vehicles’ warranty coverage; and,

189. Any other relief deemed necessary by the Court.

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**REQUEST FOR JURY TRIAL**

The proposed class representative and proposed class members request trial by jury on all issues and counts.

STULL, STULL & BRODY

Dated: November 22, 2017

By: s/ Patrice L. Bishop  
Patrice L. Bishop  
STULL, STULL & BRODY  
9430 West Olympic Blvd., Suite 400  
Beverly Hills, CA 90212  
Tel: (310) 209-2468  
Fax: (310) 209-2087  
Email: [pbishop@ssbla.com](mailto:pbishop@ssbla.com)

*Local Counsel for Plaintiff Gregory Coffeng*

Gary S. Graifman (admitted *pro hac vice*)  
Jay I. Brody  
KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.  
747 Chestnut Ridge Road  
Chestnut Ridge, NY 10977  
Tel: (845) 356-2570  
Fax: (845) 356-4335  
Email: [ggraifman@kgglaw.com](mailto:ggraifman@kgglaw.com)  
[jbrody@kgglaw.com](mailto:jbrody@kgglaw.com)

Thomas P. Sobran (admitted *pro hac vice*)  
THOMAS P. SOBRAN, P.C.  
7 Evergreen Lane  
Hingham, MA 02043  
Tel: (781) 741-6075  
Fax: (781) 741-6074  
Email: [tsobran@sobranlaw.com](mailto:tsobran@sobranlaw.com)

*Counsel for Plaintiff Gregory Coffeng*