

Leland H. Belew (SBN 293096)
lbelew@milberg.com
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
227 West Monroe Street, Suite 2100
Chicago, Illinois 60606
Telephone: 312-224-8685
Facsimile: 865-522-0049

Attorney for Plaintiffs

[Additional counsel on signature page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT WRIGHT, JACQUELINE
WRIGHT, JENNIFER SEGARINI,
CATHERINE WILSON, EDWARD
NORRIS, ANDREAS ZEMBRZYCKI,
EDWARD PISHCHIK, OLGA NIKITINA,
and WAMIDH JAWAD, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

Case No.: 5:24-cv-02171-JGB-SHK
Hon. Jesus G. Bernal

**AMENDED CLASS ACTION
COMPLAINT**

Breach of Express Warranty

Breach of Implied Warranty of
Merchantability

Violation of the Song-Beverly
Consumer Warranty Act for
Breach of Express Warranties

Violation of the Song-Beverly
Consumer Warranty Act for
Breach of Implied Warranties

Violations of the
Consumer Legal Remedies Act

Violations of California's Unfair
Competition Law

Violations of New York General
Business Law § 349

Violations of New York General
Business Law § 350

Violations of Illinois Consumer
Fraud & Deceptive Practices Act

Fraud/Fraudulent Concealment

JURY TRIAL DEMANDED

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INTRODUCTION

1
2 1. Plaintiffs Robert and Jacqueline Wright, Jennifer Segarini, Catherine
3 Wilson, and Andreas Zembrzycki (the “California Plaintiffs”), Edward Norris,
4 Edward Pishchik and Olga Nikitina (the “New York Plaintiffs”), and Wamidh
5 Jawad (the “Illinois Plaintiff”; collectively with California Plaintiffs and New York
6 Plaintiffs, “Plaintiffs”) by and through counsel, bring this Class Action Complaint
7 against Defendant Volkswagen Group of America, Inc. (“Defendant,”
8 “Volkswagen,” or “VW”), individually and on behalf of all others similarly
9 situated, and allege, upon personal knowledge as to their own actions and their
10 counsel’s investigations, and upon information and belief as to all other matters, as
11 follows:

12 **I. NATURE OF THE CASE**

13 2. Plaintiffs bring this case individually and on behalf of all similarly
14 situated persons (“Class Members”) who purchased or leased Volkswagen’s 2021-
15 2024 Atlas and/or Atlas Cross Sport vehicles (“Class Vehicles” or “Vehicles”) that
16 were designed, manufactured, distributed, marketed, and sold or leased by
17 Defendant or Defendant’s parent, subsidiary, or affiliates thereof.

18 3. Defendant designed, manufactured, distributed, marketed, sold, and
19 leased 2021-2024 Atlas and/or Atlas Cross Sport vehicles equipped with defective
20 braking systems as described herein to Plaintiffs and Class Members.

21 4. Defendant knew or should have known that the Vehicles have one or
22 more defects manifesting when the brakes are applied during ordinary and intended
23 use, including but not limited to (1) a loud, high-pitched squealing, squeaking, or
24 screeching noise (the “Squealing Defect”), (2) a loud, grinding, scraping noise of
25 metal rubbing on metal which is occasionally accompanied by a vibrating and
26 scraping sensation that can be felt through the brake pedal (the “Grinding Defect”),
27 (3) an activation of the Vehicle’s proximity alert resulting from the Squealing
28 and/or Grinding Defects despite there being no objects within the Vehicle’s

1 immediate vicinity (the “Proximity Alert Defect”), and/or (4) slipping, “spongy,”
2 “grabby,” and otherwise inconsistent braking (the “Erratic Function Defect”;
3 collectively with the Squealing Defect, the Grinding Defect, and the Proximity
4 Alert Defect, the “Brake Defect”).

5 5. The Brake Defect presents numerous safety concerns.

6 6. One safety concern resulting from the Brake Defect is that the
7 Squealing Defect is distracting and startling given that it frequently, yet
8 intermittently, causes the Vehicle to emit a loud, high-pitched squealing noise
9 when the brakes are applied, surprising Plaintiffs and other Vehicle drivers, nearby
10 motorists, and nearby pedestrians. Further, due to its startling and distracting
11 nature, the Squealing Defect causes drivers to adjust their braking strategy to
12 minimize the volume and duration of the loud, high-pitched squealing; whether
13 this includes braking harder and shorter, or avoiding braking wherever possible, or
14 some other method, it interferes with the regular, expected, and safe operation of
15 the Vehicles, increasing the risk to all putative class members and their passengers,
16 as well as motorists and pedestrians in the Vehicles’ vicinity.

17 7. Another safety concern resulting from the Brake Defect is that the
18 Grinding Defect is distracting and startling because it unexpectedly produces a
19 loud sound of metal grinding on metal, surprising Plaintiffs and other Vehicle
20 drivers, nearby motorists, and nearby pedestrians. The Grinding Defect also causes
21 Plaintiffs and Class Members to question the viability of the Vehicles’ brakes as
22 the sound is often accompanied by a vibrating and grinding sensation felt through
23 the brake pedal. As with the Squeaking Defect, the loud sound caused by the
24 Grinding Defect has the added effect of adversely impacting Vehicle drivers’
25 braking habits and driving decisions.

26 8. A further safety concern resulting from the Brake Defect is that the
27 Proximity Alert Defect sets off the Vehicles’ loud and intentionally distracting
28 proximity alert—sometimes referred to as ‘parking aid sensors’—when the brakes

1 emit the loud squealing, squeaking, or grinding (in relation to the Squealing and
2 Grinding Defects). The Proximity Alert Defect occurs intermittently, exacerbating
3 its startling nature, and confusing drivers while they are in the midst of slowing
4 their Vehicles. In addition to surprising drivers and distracting them by incorrectly
5 indicating there is something near their Vehicle that they were not aware of, the
6 Proximity Alert Defect also introduces safety risks by causing drivers to disregard
7 their Vehicles' proximity alerts even when they may be triggering on an actual
8 person or object.

9 9. The Erratic Function Defect is another safety concern resulting from
10 the Brake Defect, as it also occurs unexpectedly—surprising and distracting
11 drivers—and requires that drivers focus excessively on braking, often at the
12 expense of other road hazards. The Erratic Function Defect also raises safety
13 concerns because it impacts the Vehicles' ability to brake consistently and reliably
14 by causing an uneven, harsh, and “grabbing” sensation as the Vehicles' brakes are
15 applied (which leads Vehicle drivers to reduce the pressure on the brake pedal or
16 otherwise adjust their braking strategy), and/or causing the brakes to feel “spongy”
17 or “squishy” (which leads Vehicle drivers to depress the brake pedal especially
18 hard to achieve the same braking effect).

19 10. Amongst the other safety concerns, the Brake Defect is dangerous
20 because it causes Vehicle drivers to disregard sounds and symptoms which are
21 typically affiliated with deteriorating and ineffective brakes. Thus, if Plaintiffs and
22 Class Members accept what they are told by Defendant and VW dealerships when
23 they present the Brake Defect—that it is “normal operation”—they are deprived of
24 the typical warning signs related to deteriorating brakes, namely squealing,
25 grinding, and erratic function.

26 11. Although the Vehicles' brakes were specifically and especially
27 designed, manufactured, and approved by Defendant to be installed on the Atlas
28 and Atlas Cross Sport, due to the Brake Defect they do not provide regular,

1 reliable, and safe braking and operation of the Vehicles when used as expected and
2 intended.

3 12. As evidenced by Plaintiffs’ experiences, and other complaints by
4 Vehicle owners that have been received by the National Highway Safety
5 Administration (“NHTSA”), the Vehicles’ Brake Defect manifests at different
6 mileages and under different driving conditions, including in both reverse and
7 forward and at different speeds. The loud, high-pitched squealing noise, as well as
8 the loud metal-on-metal grinding sound, emitted when the brakes are applied
9 creates a safety hazard due to their likelihood of startling the Vehicle drivers, and
10 thereby having an adverse impact on driving decisions and habits of the Vehicle
11 drivers. In addition, recommendations from Defendant and/or their distributors that
12 Vehicle drivers should alter their braking strategies to mitigate the noise being
13 emitted increases the risk of unsafe “underbraking” or “overbraking” when Vehicle
14 drivers follow Defendant’s and/or its authorized dealerships’ advice.

15 13. The Brake Defect distracts Class Members, other Vehicle drivers, and
16 third parties on the road, endangering their physical safety and well-being due to a
17 loss of concentration and focus while driving. Similarly, nearby pedestrians hear
18 the loud braking noise then pay attention to the noise rather than having their full
19 attention on other hazards in their path.

20 14. The unworn brakes on these large, family Vehicles—which had a
21 Manufacturer’s Suggested Retail Price beginning at over \$30,000, even in 2021—
22 should not squeal, screech, and make other jarring noises when applied as intended
23 and expected. Defendant and its authorized dealerships do not forewarn purchasers
24 despite their knowledge of the Brake Defect.

25 **II. PARTIES**

26 15. Plaintiffs Robert and Jacqueline Wright are married California
27 citizens who live in Menifee, in Riverside County, California. The Wrights
28

1 purchased a 2023 Atlas. This Vehicle was designed, manufactured, sold,
2 distributed, advertised, marketed, and/or warranted by Defendant.

3 16. Plaintiff Jennifer Segarini is a California citizen who lives in San Jose,
4 in Santa Clara County, California. Ms. Segarini leased a 2021 Atlas. This Vehicle
5 was designed, manufactured, sold, distributed, advertised, marketed, and/or
6 warranted by Defendant.

7 17. Plaintiff Catherine Wilson is a California citizen who lives in
8 Richmond in Contra Costa County, California. Ms. Wilson purchased a 2021 Atlas
9 Cross Sport. This Vehicle was designed, manufactured, sold, distributed,
10 advertised, marketed, and/or warranted by Defendant.

11 18. Plaintiff Andreas Zembrzycki is a California citizen who lives in San
12 Diego County, California. Mr. Zembrzycki purchased a 2021 Atlas. This Vehicle
13 was designed, manufactured, sold, distributed, advertised, marketed, and/or
14 warranted by Defendant

15 19. Plaintiff Edward Norris is a New York citizen who lives in
16 Smithtown, in Suffolk County, New York. Mr. Norris purchased a 2022 Atlas.
17 This Vehicle was designed, manufactured, sold, distributed, advertised, marketed,
18 and/or warranted by Defendant.

19 20. Plaintiffs Edward Pishchik and Olga Nikitina are married New York
20 citizens who live in Brooklyn, in Kings County, New York. Mr. Pishchik and
21 Ms. Nikitina leased a 2022 Atlas. This Vehicle was designed, manufactured, sold,
22 distributed, advertised, marketed, and/or warranted by Defendant.

23 21. Plaintiff Wamidh Jawad is an Illinois citizen who lives in
24 Lincolnwood, in Cook County, Illinois. Mr. Jawad purchased a 2024 Atlas Cross
25 Sport. This Vehicle was designed, manufactured, sold, distributed, advertised,
26 marketed, and/or warranted by Defendant.

27 22. Defendant Volkswagen Group of America, Inc., is a corporation
28 organized and in existence under the laws of the State of New Jersey with its

1 headquarters located in Herndon, Virginia. At all times relevant herein,
2 Volkswagen was engaged in the business of importing, advertising, marketing,
3 distributing, warranting, servicing, repairing and selling automobiles, including the
4 Vehicles and Vehicle components, throughout the United States of America.

5 **III. JURISDICTION AND VENUE**

6 23. The Court has subject matter jurisdiction over this action under the
7 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because the proposed
8 class has more than 100 members, the class contains at least one member of
9 diverse citizenship from Defendant, and the amount in controversy exceeds \$5
10 million.

11 24. The Court has personal jurisdiction over Defendant because
12 Defendant is authorized to, and conducts substantial business in California,
13 generally, and this District, specifically. Defendant has advertised, marketed,
14 promoted, distributed, and sold the Vehicles in California.

15 25. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2),
16 because a substantial part of the events and omissions giving rise to this action
17 occurred in this District as the Brake Defect in Plaintiffs’ Vehicles manifested
18 itself within this District.

19 26. To the extent there is any contractual or other impediment to pursuit
20 of these claims on a class action basis, Plaintiffs specifically allege, and will prove,
21 if necessary, that any bar to class action proceedings is unconscionable, unfair and
22 against public policy.

FACTUAL ALLEGATIONS

I. PLAINTIFFS' EXPERIENCES

A. California Plaintiffs

i. Plaintiffs Robert & Jacqueline Wright

27. The Wrights purchased a 2023 Atlas from VW Santa Monica, an authorized VW dealership in Santa Monica, California, in approximately January 2023.

28. The Wrights made their decision to purchase a VW Atlas, in part, in reliance on representations communicated through Defendant's advertisements and marketing campaigns emphasizing the quality, reliability, and safety of Defendant's Vehicles.

29. The Wrights' decision to purchase a VW Atlas was based on their understanding that it could be driven as a typical vehicle is expected to operate, including with brakes that can be engaged without distracting and concerning sounds or sensations, that engage with regular pressure and consistency, and which do not errantly trigger startling, distracting, and worrying alerts while the Vehicle is in motion.

30. The Wrights also decided to purchase a VW Atlas based on their understanding—under the terms of the accompanying warranty extended by Volkswagen—that they were the intended beneficiary of Volkswagen's agreement to cover repairs to address or correct defects, and that this agreement could be effectuated at any Volkswagen dealership, which would operate as an agent of Volkswagen for purposes of fulfilling the warranty.

31. At the time of Mr. and Mrs. Wright's purchase, on information and belief, Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither Volkswagen, nor Volkswagen's representatives, disclosed the Defect to the Wrights when advertising or discussing the features, components, and performance

1 of the Vehicle. Volkswagen was not only in a superior position regarding its access
2 to knowledge regarding the function of the Vehicle—including its braking system
3 and components—but also understood that a fundamental consideration for any
4 consumer in purchasing a vehicle is the reliable, unobtrusive, and non-distracting
5 function of the most basic functions in a vehicle, particularly including its ability to
6 slow-down and stop. Despite having this knowledge impacting the fundamental
7 safety of the Vehicle, Volkswagen withheld all information and made no
8 disclosures about the Braking Defect at the time of the Wrights’ purchase of their
9 Vehicle. In reliance on these material omissions and misrepresentations, the
10 Wrights purchased and operated the Vehicle on the belief that the Vehicle’s brakes
11 would operate as expected by a reasonable consumer.

12 32. Within days of their purchase, the Wrights’ Vehicle intermittently
13 began exhibiting various issues when they applied the brakes, including loud
14 squealing, squeaking, and screeching noises, as well as emitting a metal-on-metal
15 grinding or grating sound, occasionally triggering of the Vehicle’s proximity alert
16 sensors despite the absence of any objects in the Vehicle’s proximity (which sets
17 off audio and visual alerts in the car and on the instrument clusters.

18 33. The Wrights’ Vehicle also began demonstrating inconsistent function,
19 sometimes engaging too strongly or harshly.

20 34. The Vehicle began exhibiting the various symptoms of the Braking
21 Defect—whether Squealing, Grinding, Proximity Alert, Erratic Function, or a
22 combination of them—nearly every time it was driven. Thus, within their first year
23 of ownership, the Wrights brought the Vehicle to Volkswagen of Murrieta, an
24 authorized Volkswagen dealership in Murrieta, California, to seek a remedy.

25 35. A service advisor at Volkswagen of Murrieta acknowledged that the
26 Wrights’ concerns were “pretty common,” and that he even had personal
27 experience with this problem, but there was not any remedy other than purchasing
28

1 new and different brakes to replace those equipped on the Wrights' brand-new
2 Vehicle.

3 36. The Braking Defect continued to be such a concern that the Wrights
4 again raised it at a subsequent visit to Murrieta Volkswagen. After insisting that an
5 inspection at least be performed, service technicians at Volkswagen of Murrieta
6 verified the Wrights' concerns, informed the Wrights that the Brake Defect is
7 "normal operation" for the Vehicles, and attempted to address the problem with
8 sandpaper and a lubricant, despite explicitly acknowledging that this would be a
9 temporary, short-term solution. As anticipated, the Brake Defect was not resolved
10 and its symptoms reappeared within weeks.

11 37. Neither Volkswagen nor any of its agents, dealers, or representatives
12 informed the Wrights of the Brake Defect prior to their purchase of the Vehicle.

13 38. Had Mr. or Mrs. Wright been advised of the Brake Defect at or before
14 the point of sale, they would not have purchased their Vehicle or else would have
15 paid significantly less for the Vehicle.

16 39. The Wrights anticipate buying another vehicle in the future, and
17 would even consider purchasing another vehicle from Volkswagen if they were
18 confident that it had not only corrected the Braking Defect and disclosed the
19 Braking Defect to existing consumers, but also warned potential consumers about
20 the possibility of the Braking Defect in any affected vehicles.

21 40. The Wrights did not receive the benefit of their bargain.

22 **ii. Plaintiff Jennifer Segarini**

23 41. Ms. Segarini leased her 2021 Atlas from Capital Volkswagen, an
24 authorized VW dealership in San Jose, California, on or about November 13, 2021.

25 42. Ms. Segarini made her decision to lease a VW Atlas, in part, in
26 reliance on representations communicated through Defendant's advertisements and
27 marketing campaigns emphasizing the quality, reliability, and safety of
28 Defendant's Vehicles.

1 43. Ms. Segarini’s decision to lease a VW Atlas was based on her
2 understanding that it could be driven as a typical vehicle is expected to operate,
3 including with brakes that can be engaged without distracting and concerning
4 sounds or sensations, that engage with regular pressure and consistency, and which
5 do not errantly trigger startling, distracting, and worrying alerts while the Vehicle
6 is in motion.

7 44. Ms. Segarini also decided to lease a VW Atlas based on her
8 understanding—under the terms of the accompanying warranty extended by
9 Volkswagen—that she was the intended beneficiary of Volkswagen’s agreement to
10 cover repairs to address or correct defects, and that this agreement could be
11 effectuated at any Volkswagen dealership, which would operate as an agent of
12 Volkswagen for purposes of fulfilling the warranty.

13 45. At the time of Ms. Segarini’s lease, on information and belief,
14 Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither
15 Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to Ms.
16 Segarini when advertising or discussing the features, components, and performance
17 of the Vehicle. Volkswagen was not only in a superior position regarding its access
18 to knowledge regarding the function of the Vehicle—including its braking system
19 and components—but also understood that a fundamental consideration for any
20 consumer in purchasing a vehicle is the reliable, unobtrusive, and non-distracting
21 function of the most basic functions in a vehicle, particularly including its ability to
22 slow-down and stop. Despite having this knowledge impacting the fundamental
23 safety of the Vehicle, Volkswagen withheld all information and made no
24 disclosures about the Braking Defect at the time of Ms. Segarini’s lease of her
25 Vehicle. In reliance on these material omissions and misrepresentations, Ms.
26 Segarini leased and operated the Vehicle on the belief that the Vehicle’s brakes
27 would operate as expected by a reasonable consumer.
28

1 46. Before leasing her Vehicle, Ms. Segarini test drove it. At the time of
2 her test drive and purchase, she had no forewarning of the Brake Defect.

3 47. Beginning within the first three months of her lease, the brakes on Ms.
4 Segarini’s Vehicle began squeaking horribly, and emitting a metal-on-metal
5 grinding or “scraping” sound, whenever they were applied.

6 48. On some occasions, when applying the brakes during normal
7 operation, she has experienced the brakes skipping, and not braking firmly and
8 consistently, while emitting a loud metal-on-metal sound.

9 49. Further, occasionally, Ms. Segarini’s Vehicle has activated the
10 proximity alert when no objects have been present to trigger the alert.

11 50. Thus, beginning within her first year of ownership, Ms. Segarini has
12 taken her Vehicle to authorized VW dealerships on several occasions in an attempt
13 to address the various symptoms of the Brake Defect, whether Squealing,
14 Grinding, Erratic Function, or Proximity Alert. However, none of these visits
15 resolved the Brake Defect; to the contrary, Ms. Segarini has been told in various
16 ways that there is no resolution available.

17 51. Initially, Ms. Segarini was told by a VW service technician that her
18 issues were caused by the type of gasoline she used, and if she used more
19 expensive “premium” gasoline, she would not have the issues. Ms. Segarini
20 followed this advice, but it had no impact on the Brake Defect.

21 52. Ms. Segarini was subsequently informed that the “cheap gasoline”
22 diagnosis was just part of a “script” that VW service technicians are required to
23 use; that VW service technicians must propose “solutions” to the Brake Defect in a
24 certain sequence which forces customers to return multiple times to VW
25 dealerships, with repeated but unresolved complaints about noisy and defective
26 brakes.

27 53. On another occasion, Ms. Segarini was told by a VW service
28 technician that “VW went cheap” with the brake pads equipped in the Atlas, and

1 that if she had purchased “deluxe” it would have better brake pads which would
2 not squeak.

3 54. At one point a VW service technician advised that Ms. Segarini might
4 address some of the symptoms by pressing down especially hard on the brake in
5 order to misshape, deform, and “rough up” the brake rotors to provide greater grip.

6 55. Ultimately, VW service technicians have advised Ms. Segarini that
7 even if they were to replace the brake pads they would suffer from the same issues
8 and it would not resolve her concerns.

9 56. Neither Volkswagen nor any of its agents, dealers, or representatives
10 informed Ms. Segarini of the Brake Defect prior to her lease of the Vehicle.

11 57. Had Ms. Segarini been advised of the Brake Defect at or before the
12 point of sale, she would not have leased her Vehicle or else would have paid
13 significantly less for the Vehicle.

14 58. Ms. Segarini anticipates buying another vehicle in the future, and
15 would even consider purchasing another vehicle from Volkswagen if she was
16 confident that it had not only corrected the Braking Defect and disclosed the
17 Braking Defect to existing consumers, but also warned potential consumers about
18 the possibility of the Braking Defect in any affected vehicles.

19 59. Ms. Segarini did not receive the benefit of her bargain.

20 **iii. Plaintiff Catherine Wilson**

21 60. Ms. Wilson purchased her 2021 Atlas Cross Sport certified pre-owned
22 from Volkswagen of Newark, an authorized VW dealership in Newark CA,
23 California, on or about December 17, 2022.

24 61. Ms. Wilson made her decision to purchase a VW Atlas Cross Sport, in
25 part, in reliance on representations communicated through Defendant’s
26 advertisements and marketing campaigns emphasizing the quality, reliability, and
27 safety of Defendant’s Vehicles.
28

1 62. Ms. Wilson’s decision to purchase a VW Atlas Cross Sport was based
2 on her understanding that it could be driven as a typical vehicle is expected to
3 operate, including with brakes that can be engaged without distracting and
4 concerning sounds or sensations, that engage with regular pressure and
5 consistency, and which do not errantly trigger startling, distracting, and worrying
6 alerts while the Vehicle is in motion.

7 63. Ms. Wilson also decided to purchase a VW Atlas Cross Sport based
8 on her understanding—under the terms of the accompanying warranty extended by
9 Volkswagen—that she was the intended beneficiary of Volkswagen’s agreement to
10 cover repairs to address or correct defects, and that this agreement could be
11 effectuated at any Volkswagen dealership, which would operate as an agent of
12 Volkswagen for purposes of fulfilling the warranty.

13 64. At the time of Ms. Wilson’s purchase, on information and belief,
14 Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither
15 Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to Ms.
16 Wilson when advertising or discussing the features, components, and performance
17 of the Vehicle. Volkswagen was not only in a superior position regarding its access
18 to knowledge regarding the function of the Vehicle—including its braking system
19 and components—but also understood that a fundamental consideration for any
20 consumer in purchasing a vehicle is the reliable, unobtrusive, and non-distracting
21 function of the most basic functions in a vehicle, particularly including its ability to
22 slow-down and stop. Despite having this knowledge impacting the fundamental
23 safety of the Vehicle, Volkswagen withheld all information and made no
24 disclosures about the Braking Defect at the time of Ms. Wilson’s purchase of her
25 Vehicle. In reliance on these material omissions and misrepresentations, Ms.
26 Wilson purchased and operated the Vehicle on the belief that the Vehicle’s brakes
27 would operate as expected by a reasonable consumer.
28

1 65. Before purchasing her Vehicle, Ms. Wilson test drove it. At the time
2 of her test drive and purchase, she had no forewarning of the Brake Defect.

3 66. Shortly after her purchase, the brakes on Ms. Wilson’s Vehicle began
4 emitting a loud, high-pitched squealing noise, as well as the sound of metal-on-
5 metal grinding, when they were applied.

6 67. Additionally, Ms. Wilson felt that she needed to press especially hard
7 on her brakes to achieve an appropriate braking force, because they were
8 “squishy,” and sometimes it felt as though the brakes were not engaging
9 consistently, but were slipping, and grabbing harshly when they did apply.

10 68. Ms. Wilson’s Vehicle has also triggered the proximity alert when no
11 objects were present or within proximity.

12 69. Thus, beginning within her first year of ownership and while still
13 covered by the warranty accompanying the Vehicle at the time of purchase, Ms.
14 Wilson has taken her Vehicle to authorized VW dealerships on multiple occasions
15 in an attempt to address the Brake Defect. However, none of these visits resolved
16 the Brake Defect.

17 70. Initially, when presenting her Vehicle at Volkswagen of Newark for
18 its regular oil change, she mentioned her experiences of grinding sounds when
19 braking. However, the VW service technicians dismissed her concerns and said,
20 “everything is fine.”

21 71. Approximately three months later, when presenting her vehicle for
22 another regular oil change—this time at Volkswagen of Hayward, an authorized
23 VW dealership in Hayward, California—she was informed that the brakes were so
24 badly worn out that they had to be replaced immediately.

25 72. Therefore, as directed by the VW service technicians, in or around
26 April 2024, Ms. Wilson paid more than \$800 to have her brake pads replaced.
27 Despite this replacement, however, the brakes on Ms. Wilson’s Vehicle continues
28 to exhibit symptoms of the Brake Defect by emitting a loud, high-pitched squeal

1 when applied, and by requiring that Ms. Wilson press harder than usual to achieve
2 a regular braking force.

3 73. Neither Volkswagen nor any of its agents, dealers, or representatives
4 informed Ms. Wilson of the Brake Defect prior to her purchase of the Vehicle.

5 74. Had Ms. Wilson been advised of the Brake Defect at or before the
6 point of sale, she would not have purchased her Vehicle or else would have paid
7 significantly less for the Vehicle.

8 75. Ms. Wilson anticipates buying another vehicle in the future, and
9 would even consider purchasing another vehicle from Volkswagen if she was
10 confident that it had not only corrected the Braking Defect and disclosed the
11 Braking Defect to existing consumers, but also warned potential consumers about
12 the possibility of the Braking Defect in any affected vehicles.

13 76. Ms. Wilson did not receive the benefit of her bargain.

14 **iv. Plaintiff Zembrzycki**

15 77. Mr. Zembrzycki purchased his 2021 Atlas from Ontario Volkswagen,
16 an authorized VW dealership in Ontario, California, in February 2024.

17 78. Mr. Zembrzycki made his decision to purchase a VW Atlas, in part, in
18 reliance on representations communicated through Defendant's advertisements and
19 marketing campaigns emphasizing the quality, reliability, and safety of
20 Defendant's Vehicles.

21 79. Mr. Zembrzycki's decision to purchase a VW Atlas was based on his
22 understanding that it could be driven as a typical vehicle is expected to operate,
23 including with brakes that can be engaged without distracting and concerning
24 sounds or sensations, that engage with regular pressure and consistency, and which
25 do not errantly trigger startling, distracting, and worrying alerts while the Vehicle
26 is in motion.

27 80. Mr. Zembrzycki also decided to purchase a VW Atlas based on his
28 understanding—under the terms of the accompanying warranty extended by

1 Volkswagen—that he was the intended beneficiary of Volkswagen’s agreement to
2 cover repairs to address or correct defects, and that this agreement could be
3 effectuated at any Volkswagen dealership, which would operate as an agent of
4 Volkswagen for purposes of fulfilling the warranty.

5 81. At the time of Mr. Zembrzycki’s purchase, on information and belief,
6 Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither
7 Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to Mr.
8 Zembrzycki when advertising or discussing the features, components, and
9 performance of the Vehicle. Volkswagen was not only in a superior position
10 regarding its access to knowledge regarding the function of the Vehicle—including
11 its braking system and components—but also understood that a fundamental
12 consideration for any consumer in purchasing a vehicle is the reliable, unobtrusive,
13 and non-distracting function of the most basic functions in a vehicle, particularly
14 including its ability to slow-down and stop. Despite having this knowledge
15 impacting the fundamental safety of the Vehicle, Volkswagen withheld all
16 information and made no disclosures about the Braking Defect at the time of Mr.
17 Zembrzycki’s purchase of his Vehicle. In reliance on these material omissions and
18 misrepresentations, Mr. Zembrzycki purchased and operated the Vehicle on the
19 belief that the Vehicle’s brakes would operate properly as expected by a reasonable
20 consumer.

21 82. Before purchasing his Vehicle, Mr. Zembrzycki test drove it. At the
22 time of his test drive and purchase, he had no forewarning of the Brake Defect.

23 83. Shortly after the purchase, Mr. Zembrzycki’s Vehicle intermittently
24 began exhibiting various issues when he applied the brakes, including loud
25 squealing, squeaking, and screeching noise, as well as emitting a metal-on-metal
26 grinding or grating sound, both of which would trigger the Vehicle’s proximity
27 alert approximately 90% of the time a sound was made. Triggering of these sensors
28 means that a battery of audio and visual alerts are popping up and going off in the

1 car and on the instrument clusters and that on top of the obnoxious sounds from the
2 brakes, these events on aggregate create a very stressful and unsafe environment
3 when operating the car. What instead should happen is that a car simply should
4 decelerate when engaging its brakes. Every passenger in the car, as well as persons
5 outside of the car are able to notice this, which creates an unsafe, unsatisfactory,
6 and embarrassing driving experience.

7 84. On some occasions, the Vehicle’s proximity alert sensors triggered so
8 severely—indicating that a collision was extremely imminent—that the Vehicle’s
9 emergency brake applied automatically, despite no objects being in the vicinity.

10 85. Mr. Zembrzycki’s Vehicle also began demonstrating inconsistent
11 function, sometimes engaging too strongly or harshly, and other times feeling
12 “spongy” or less effective.

13 86. The Vehicle began exhibiting the various symptoms of the Braking
14 Defect—Squealing, Grinding, Proximity Alert, and Erratic Function—nearly every
15 time Mr. Zembrzycki drove until, within the first year of ownership, he brought the
16 Vehicle to Mission Bay Volkswagen, an authorized Volkswagen dealership in San
17 Diego, California.

18 87. Service technicians at Mission Bay Volkswagen first feigned
19 ignorance regarding the Brake Defect. However, after Mr. Zembrzycki insisted that
20 the dealership keep the Vehicle overnight for a test-drive, the dealership confirmed
21 the Brake Defect. Volkswagen’s service technicians nevertheless stated that
22 nothing could be done to resolve Mr. Zembrzycki’s concerns under warranty, and
23 that any replacement of brake components would have to be paid for by
24 Mr. Zembrzycki.

25 88. Service technicians at Mission Bay Volkswagen also asked for videos
26 demonstrating the Grinding, Squealing, and Proximity Alert Defects. But when
27 Mr. Zembrzycki provided the requested videos, they informed him that these were
28 normal operation for the Vehicles. Mr. Zembrzycki responded that this is not

1 normal operation, subsequently the dealership advised that any recourse would
2 have to be pursued with Defendant Volkswagen, directly.

3 89. Notably, although Mr. Zembrzycki described the Squealing Defect
4 and Proximity Alert Defect and the inadequately triggered emergency braking
5 occurrences to the Mission Bay Volkswagen service technicians at the same time
6 he raised the Grinding Defect (i.e., during his July 2024 visit), only his complaints
7 regarding the Grinding Defect were recorded in the service records.

8 90. At approximately the end of July, 2024, Mr. Zembrzycki attempted to
9 follow the dealership's directions and raise his concerns with VW's corporate
10 office. When he did, however, he faced similar barriers to any resolution. First, he
11 had trouble getting ahold of any service representative at all. Then, when he was
12 finally able to speak with someone he was only provided a generic statement
13 which, on information and belief, was read from a script or template developed to
14 respond to concerns about the Brake Defect. Ultimately, Mr. Zembrzycki was told
15 that his concerns were "within normal parameters" and no remedy would be
16 provided.

17 91. Mr. Zembrzycki requested VW's response in writing, which was
18 provided a couple of days later, confirming that Defendant VW would take no
19 action, but claiming that "[t]o provide you with the best service possible, it's
20 important that you respond to us by replying to this email." Mr. Zembrzycki did so
21 on the same day, August 9, explaining that the Brake Defect was not "within
22 acceptable normal range on what is to be expected from brakes," "that the noise
23 from the brakes is triggering the vicinity sensory all around the car in ~90% of
24 instances, although NO object is any way near the vehicle," and that this is "a
25 significant safety hazard." Mr. Zembrzycki has not received any response.

26 92. Neither Volkswagen nor any of its agents, dealers, or representatives
27 informed Mr. Zembrzycki of the Brake Defect prior to his purchase of the Vehicle.
28

1 93. Had Mr. Zembrzycki been advised of the Brake Defect at or before
2 the point of sale, he would not have purchased his Vehicle or else would have paid
3 significantly less for the Vehicle.

4 94. Mr. Zembrzycki anticipates buying another vehicle in the future, and
5 would even consider purchasing another vehicle from Volkswagen if he was
6 confident that it had not only corrected the Braking Defect and disclosed the
7 Braking Defect to existing consumers, but also warned potential consumers about
8 the possibility of the Braking Defect in any affected vehicles.

9 95. Mr. Zembrzycki did not receive the benefit of his bargain.

10 **B. New York Plaintiffs**

11 **i. Plaintiff Edward Norris**

12 96. Mr. Norris purchased his 2022 Atlas from Smithtown Volkswagen, an
13 authorized Volkswagen dealership in St. James, New York, on or about July 27,
14 2022.

15 97. Mr. Norris made his decision to purchase a VW Atlas, in part, in
16 reliance on representations communicated through Defendant's advertisements and
17 marketing campaigns emphasizing the quality, reliability, and safety of
18 Defendant's Vehicles.

19 98. Mr. Norris's decision to purchase a VW Atlas was based on his
20 understanding that it could be driven as a typical vehicle is expected to operate,
21 including with brakes that can be engaged without distracting and concerning
22 sounds or sensations, that engage with regular pressure and consistency, and which
23 do not errantly trigger startling, distracting, and worrying alerts while the Vehicle
24 is in motion.

25 99. Mr. Norris also decided to purchase a VW Atlas based on his
26 understanding—under the terms of the accompanying warranty extended by
27 Volkswagen—that he was the intended beneficiary of Volkswagen's agreement to
28

1 cover repairs to address or correct defects, and that this agreement could be
2 effectuated at any Volkswagen dealership, which would operate as an agent of
3 Volkswagen for purposes of fulfilling the warranty.

4 100. At the time of Mr. Norris’s purchase, on information and belief,
5 Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither
6 Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to Mr. Norris
7 when advertising or discussing the features, components, and performance of the
8 Vehicle. Volkswagen was not only in a superior position regarding its access to
9 knowledge regarding the function of the Vehicle—including its braking system
10 and components—but also understood that a fundamental consideration for any
11 consumer in purchasing a vehicle is the reliable, unobtrusive, and non-distracting
12 function of the most basic functions in a vehicle, particularly including its ability to
13 slow-down and stop. Despite having this knowledge impacting the fundamental
14 safety of the Vehicle, Volkswagen withheld all information and made no
15 disclosures about the Braking Defect at the time of Mr. Norris’s purchase of his
16 Vehicle. In reliance on these material omissions and misrepresentations, Mr. Norris
17 purchased and operated the Vehicle on the belief that the Vehicle’s brakes would
18 operate properly as warranted.

19 101. Before purchasing his Vehicle, Mr. Norris test drove it. At the time of
20 his test drive and purchase, he had no forewarning of the Brake Defect.

21 102. Shortly after purchasing the Vehicle, the brakes began emitting loud,
22 obnoxious, and distracting sounds of metal-on-metal grinding. Sometimes
23 accompanying these other sounds was the sound of gurgling.

24 103. As a result, beginning within his first year of ownership, Mr. Norris
25 has taken his Vehicle to authorized VW dealerships—both Smithtown Volkswagen
26 and Volkswagen of Huntington, in Huntington Station, New York—approximately
27 ten different times in an attempt to address the Brake Defect. However, none of
28

1 these visits resolved the Brake Defect; to the contrary, Mr. Norris has been told in
2 various ways that there is no resolution available.

3 104. On one occasion Mr. Norris was informed that the loud sounds
4 emitting from his brakes were “entirely normal” because “this is what happens
5 with a ceramic brakes system.”

6 105. On other occasions, however, VW service technicians have agreed
7 that it is not normal operation and have attempted resolutions including reserivicing
8 the brakes, soaking them in solution, and attempting to address premature rust.
9 None of these attempts have been successful.

10 106. Neither Volkswagen nor any of its agents, dealers, or representatives
11 informed Mr. Norris of the Brake Defect prior to his purchase of the Vehicle.

12 107. Had Mr. Norris been advised of the Brake Defect at or before the
13 point of sale, he would not have purchased his Vehicle or else would have paid
14 significantly less for the Vehicle.

15 108. Mr. Norris anticipates buying another vehicle in the future, and would
16 even consider purchasing another vehicle from Volkswagen if he was confident
17 that it had not only corrected the Braking Defect and disclosed the Braking Defect
18 to existing consumers, but also warned potential consumers about the possibility of
19 the Braking Defect in any affected vehicles.

20 109. Mr. Norris did not receive the benefit of his bargain.

21 **ii. Plaintiffs Edward Pishchik & Olga Nikitina**

22 110. Mr. Pishchik and Ms. Nikitina leased their 2022 Atlas from Douglas
23 Volkswagen, an authorized Volkswagen dealership in Summit, New Jersey, on or
24 about January 21, 2022.

25 111. Mr. Pishchik and Ms. Nikitina made their decision to lease a VW
26 Atlas, in part, in reliance on representations communicated through Defendant’s
27 advertisements and marketing campaigns emphasizing the quality, reliability, and
28 safety of Defendant’s Vehicles.

1 112. Mr. Pishchik and Ms. Nikitina’s decision to lease a VW Atlas was
2 based on their understanding that it could be driven as a typical vehicle is expected
3 to operate, including with brakes that can be engaged without distracting and
4 concerning sounds or sensations, that engage with regular pressure and
5 consistency, and which do not errantly trigger startling, distracting, and worrying
6 alerts while the Vehicle is in motion.

7 113. Mr. Pishchik and Ms. Nikitina also decided to purchase a VW Atlas
8 based on their understanding—under the terms of the accompanying warranty
9 extended by Volkswagen—that they were the intended beneficiary of
10 Volkswagen’s agreement to cover repairs to address or correct defects, and that
11 this agreement could be effectuated at any Volkswagen dealership, which would
12 operate as an agent of Volkswagen for purposes of fulfilling the warranty.

13 114. At the time of Mr. Pishchik and Ms. Nikitina’s lease, on information
14 and belief, Volkswagen knew that the Vehicles suffered from the Brake Defect, but
15 neither Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to
16 Mr. Pishchik or Ms. Nikitina when advertising or discussing the features,
17 components, and performance of the Vehicle. Volkswagen was not only in a
18 superior position regarding its access to knowledge regarding the function of the
19 Vehicle—including its braking system and components—but also understood that
20 a fundamental consideration for any consumer in purchasing a vehicle is the
21 reliable, unobtrusive, and non-distracting function of the most basic functions in a
22 vehicle, particularly including its ability to slow-down and stop. Despite having
23 this knowledge impacting the fundamental safety of the Vehicle, Volkswagen
24 withheld all information and made no disclosures about the Braking Defect at the
25 time of Mr. Pishchik and Ms. Nikitina’s lease of their Vehicle. In reliance on these
26 material omissions and misrepresentations, Mr. Pishchik and Ms. Nikitina leased
27 and operated the Vehicle on the belief that the Vehicle’s brakes would operate
28 properly as warranted.

1 115. Shortly after leasing his Vehicle, Mr. Pishchik and Ms. Nikitina
2 started experiencing the Braking Defect. Specifically, their vehicle would
3 regularly—but erratically—emit a loud, high-pitched squealing and squeaking, as
4 well as a grinding or grating sound of metal-on-metal. Accompanying these other
5 sounds was sometimes the sound of gurgling, or rushing water.

6 116. The sounds generated by the Brake Defect in Mr. Pishchik and Ms.
7 Nikitina’s Vehicle have caused other drivers on the road and pedestrians to hail
8 Ms. Nikitina while driving, to comment on the Vehicle’s braking issues and advise
9 her to have the brakes replaced.

10 117. Along with the incessant, distracting, and concerning sounds they
11 emit, the brakes on Mr. Pishchik and Ms. Nikitina’s Vehicle also requires an
12 unusual amount of force applied to achieve the same braking power, as though
13 they are “squishy.”

14 118. Further, Mr. Pishchik and Ms. Nikitina’s vehicle occasionally triggers
15 the proximity alert without warning, and without any object nearby.

16 119. Therefore, beginning within the first year of ownership, Mr. Pishchik
17 and Ms. Nikitina have taken their Vehicle to Bay Ridge Volkswagen, an
18 authorized VW dealership in Brooklyn, New York, several times in an attempt to
19 address the Brake Defect. The VW dealership has been unable to resolve the
20 issues, or address Mr. Pishchik and Ms. Nikitina’s concerns.

21 120. Despite raising their concerns about the Brake Defect every time they
22 bring the Vehicle in for service, VW does not record their comments or concerns in
23 the service records, repeatedly insisting there is nothing they can do to resolve the
24 Brake Defect.

25 121. In fact, a VW service technician stated that Mr. Pishchik and Ms.
26 Nikitina’s concerns regarding the brakes “seem to be normal with these models,”
27 and advised that the only avenue for relief would be to raise it with Volkswagen
28 directly or “send a letter to VW’s CEO.”

1 122. Neither Volkswagen nor any of its agents, dealers, or representatives
2 informed Mr. Pishchik or Ms. Nikitina of the Brake Defect prior to their purchase
3 of the Vehicle.

4 123. Had Mr. Pishchik or Ms. Nikitina been advised of the Brake Defect at
5 or before the point of sale, they would not have purchased their Vehicle or else
6 would have paid significantly less for the Vehicle.

7 124. Mr. Pishchik or Ms. Nikitina anticipate buying another vehicle in the
8 future, and would even consider purchasing another vehicle from Volkswagen if
9 they were confident that it had not only corrected the Braking Defect and disclosed
10 the Braking Defect to existing consumers, but also warned potential consumers
11 about the possibility of the Braking Defect in any affected vehicles.

12 125. Mr. Pishchik and Ms. Nikitina did not receive the benefit of their
13 bargain.

14 **C. Illinois Plaintiff**

15 **i. Plaintiff Wamidh Jawad**

16 126. Mr. Jawad purchased his 2024 Atlas Cross Sport from City
17 Volkswagen of Evanston in Evanston, Illinois, on or about March 30, 2024.

18 127. Mr. Jawad made his decision to purchase a VW Atlas Cross Sport, in
19 part, in reliance on representations communicated through Defendant's
20 advertisements and marketing campaigns emphasizing the quality, reliability, and
21 safety of Defendant's Vehicles.

22 128. Mr. Jawad's decision to purchase a VW Atlas Cross Sport was based
23 on his understanding that it could be driven as a typical vehicle is expected to
24 operate, including with brakes that can be engaged without distracting and
25 concerning sounds or sensations, that engage with regular pressure and
26 consistency, and which do not errantly trigger startling, distracting, and worrying
27 alerts while the Vehicle is in motion.
28

1 129. Mr. Jawad also decided to purchase a VW Atlas Cross Sport based on
2 his understanding—under the terms of the accompanying warranty extended by
3 Volkswagen—that he was the intended beneficiary of Volkswagen’s agreement to
4 cover repairs to address or correct defects, and that this agreement could be
5 effectuated at any Volkswagen dealership, which would operate as an agent of
6 Volkswagen for purposes of fulfilling the warranty.

7 130. At the time of Mr. Jawad’s purchase, on information and belief,
8 Volkswagen knew that the Vehicles suffered from the Brake Defect, but neither
9 Volkswagen, nor Volkswagen’s representatives, disclosed the Defect to Mr. Jawad
10 when advertising or discussing the features, components, and performance of the
11 Vehicle. Volkswagen was not only in a superior position regarding its access to
12 knowledge regarding the function of the Vehicle—including its braking system
13 and components—but also understood that a fundamental consideration for any
14 consumer in purchasing a vehicle is the reliable, unobtrusive, and non-distracting
15 function of the most basic functions in a vehicle, particularly including its ability to
16 slow-down and stop. Despite having this knowledge impacting the fundamental
17 safety of the Vehicle, Volkswagen withheld all information and made no
18 disclosures about the Braking Defect at the time of Mr. Norris’s purchase of his
19 Vehicle. In reliance on these material omissions and misrepresentations, Mr. Jawad
20 purchased and operated the Vehicle on the belief that the Vehicle’s brakes would
21 operate properly as warranted.

22 131. Before purchasing his Vehicle, Mr. Jawad test drove it. At the time of
23 his test drive and purchase, he had no forewarning of the Brake Defect.

24 132. However shortly after purchasing his Vehicle, a loud and high-pitched
25 squealing emitted whenever Mr. Jawad applied the brakes.

26 133. Mr. Jawad raised the issue with City Volkswagen of Evanston within
27 the first year of ownership in an attempt to address the Brake Defect. However,
28

1 Mr. Jawad was told only that these sounds were common in the Vehicles and
2 offered no resolution or relief.

3 134. Neither Volkswagen nor any of its agents, dealers, or representatives
4 informed Mr. Jawad of the Brake Defect prior to his purchase of the Vehicle.

5 135. Had Mr. Jawad been advised of the Brake Defect at or before the
6 point of sale, he would not have purchased his Vehicle or else would have paid
7 significantly less for the Vehicle.

8 136. Mr. Jawad anticipates buying another vehicle in the future, and would
9 even consider purchasing another vehicle from Volkswagen if he was confident
10 that it had not only corrected the Braking Defect and disclosed the Braking Defect
11 to existing consumers, but also warned potential consumers about the possibility of
12 the Braking Defect in any affected vehicles.

13 137. Mr. Jawad did not receive the benefit of his bargain.

14 **D. Putative Class Members**

15 **i. Volkswagen Atlas**

16 **Model Year 2021**

17 138. NHTSA Complaint regarding a 2021 ATLAS, dated 8/1/2022:
18 Brakes are making loud squeaking and grinding noises when brake is applied at
19 low speeds. It feels like the entire braking system is about to fall apart. ***Took the***
20 ***vehicle to the Volkswagen dealership and they said Volkswagen brakes are know***
21 ***to make noise.*** I told them at the dealership, online customer support chat, and
22 phone customer support that this should not be happening on a brand new vehicle.
23 They said there is nothing they can do about it. ***The sounds are very loud even***
24 ***with all the windows up, it's like an old car. I can hear the brakes squeak from a***
25 ***third floor building.*** (ID No. 11483920; emphasis supplied)

26 139. NHTSA Complaint regarding a 2021 ATLAS, dated 9/29/2022:
27 The brakes make loud squealing and grinding noises and don't feel like they are
28

1 properly functioning when attempting to stop. ***I rolled through a stop sign when***
2 ***they were grinding loudly last week because the brakes would not engage. I***
3 ***immediately scheduled to have it diganosed again. I have had it diagnosed by***
4 ***VW 3 times and also contacted VW corporate and they have all stated to me that***
5 ***it is a known issue with the brakes on VW atlas and have had 1000s of complaints***
6 ***and will do nothing to repair or resolve the situation. They said they know it is an***
7 ***issue and not correct and they will not be doing anything to correct the situation or***
8 ***make sure the vehicle is safe.”*** (ID No. 11487219; emphasis supplied)

9 140. NHTSA Complaint regarding a 2021 ATLAS, dated 2/15/2022:

10 The front brake rotors on this VW model are faulty and unsafe from the factory
11 and need to be recalled. They warp and squeal, and the issue seems to be starting at
12 about 4 months. The brake rotors warp between 4-6 months and the front brakes
13 start to vibrate when driving at 65 mph or more. The brake pads are fine, however
14 the rotors need to be replaced. The rotors need to be inspected as they appear to be
15 made out of inferior material/metal. The VW dealership refused to replace the
16 rotors under warranty and I had to pay for the replacement. I contacted VW USA,
17 but they were not helpful at all. [XXX] VW Bensenville, IL Based on my
18 research through different VW online forums, there's a lot of people that were
19 having the same issue. INFORMATION Redacted PURSUANT TO THE
20 FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6). (ID No.
21 11491172)

22 141. NHTSA Complaint regarding a 2021 ATLAS, dated 3/27/2023:

23 We just purchased a certified pre-owned vehicle from the dealership. Since we've
24 had the vehicle, it produces a loud squeaking sound when braking. We took it to a
25 brake shop and were advised the rear brakes get so hot and are glazed over and
26 need to replace the rotors. When I look online I see this is a common problem for
27 this vehicle and that the manufacturer has done nothing to get it fixed. (ID No.
28 11514028)

1 142. NHTSA Complaint regarding a 2021 ATLAS, dated 6/28/2023:

2 The brakes make a deep grinding sound every 4000-8000 miles. A typical sound of
3 failing brakes. When I took the vehicle into the dealership they let me know they
4 have a defective brake pad system. When they changed the compound in
5 2019/2020 this has been an issue. The pads are showing in good acceptable range.
6 However *when driving the vehicle you do not know if it is safe or not* unless you
7 take the vehicle in to make sure I. Again every 4000-8000 miles. I do not see how
8 they are able to sell you a car with a known issue and not disclose this. This should
9 be covered or recalled. *It absolutely is a safety issue when you cannot tell if your*
10 *brakes are working properly! They are telling me they see 4-5 people a week*
11 *with the same issue.* How is this not being recalled! (ID No. 11529687; emphasis
12 supplied)

13 143. NHTSA Complaint regarding a 2021 ATLAS, dated 7/8/2023:

14 Within a week of our purchase of a brand new atlas, we started hearing squeaking
15 and grinding noises with the front brakes. I've taken it into multiple dealerships for
16 them to inspect and ensure the safety, and I'll have given me the same spiel, that
17 the brakes are working just fine. *The grinding noise is clearly beyond normal and*
18 *I'm concerned for my family safety.* (ID No. 11531086; emphasis supplied)

19 144. NHTSA Complaint regarding a 2021 ATLAS, dated 10/22/2023:

20 I leased my VW ATLAS in Feb. 2021. Since then the vehicle has been in for
21 service many times because the brakes squeak, grind and gurgle. *They even had to*
22 *replace the whole front end braking system in spring of 2022. Even with the*
23 *replacement, the brakes are yet again squeaking, grinding and gurgling.* The
24 service department at VW has acknowledged that this is a problem with many
25 Atlases and does not seem to care and has told me that they just make that noise
26 and that the brakes are functional and pose no safety risk. This I am weary of. (ID
27 No. 11551226; emphasis supplied)

28

1 145. NHTSA Complaint regarding a 2021 ATLAS, dated 11/7/2023:
2 When the car is just started a horrible braking/grinding noise when trying to stop
3 The brakes eventually stop grinding and starts making a screeching noise when
4 coming to a stop ***It does feel safe at all Dealer states this is normal*** It is not
5 normal for any car This happens daily (ID No. 11553995; emphasis supplied)

6 146. NHTSA Complaint regarding a 2021 ATLAS, dated 11/29/2023:
7 A few weeks after we purchased the vehicle from the dealership, the brakes started
8 making loud metallic noises and grinding. The vehicle was taken to the dealership
9 where ***they replaced the brakes and then the issue occurred again just a few***
10 ***weeks after that repair.*** We continue to take the car back to the dealership and they
11 now just keep telling us that there are no issues. I called Volkswagen directly and
12 they sided with the dealer. At this point I have a vehicle that keeps having the same
13 persistent issue. I did my own research and found that there are several other Atlas
14 owners that are encountering the same issue in 2021+ models. This is a known
15 issue and Volkswagen refuses to do anything about it. ***I have 2 kids and have do***
16 ***not feel confident in my cars brakes when they are in there.*** (ID No. 11557510;
17 emphasis supplied)

18 147. NHTSA Complaint regarding a 2021 ATLAS, dated 10/21/2023:
19 The breaks are very loud- squeaky and grinding. Have had them checked several
20 times and break pads are in good condition. Additionally after the car is idle for
21 several hours, it'll be a loud gurgle when breaks are applied the first few "stops".
22 Additionally, when driving in cold weather the rear the stability assist light on the
23 dash will engage. It will flash on and off so to be uncertain if the traction control is
24 engaged on possible slippery roads (ID No. 11560572)

25 148. NHTSA Complaint regarding a 2021 ATLAS, dated 10/22/2021:
26 Since purchasing the car new, my brakes squeal and make a grinding noise. They
27 don't stop well and the noise doesn't stop until I drive the car for a while. This
28

1 happens every time I drive my vehicle. ***I have taken it to VW service and they say***
2 ***that it is normal for those kinds of brakes.*** (ID No. 11561753; emphasis supplied)

3 149. NHTSA Complaint regarding a 2021 ATLAS, dated 1/29/2024:
4 yes when start the car and drive from 0-20 mph from the start you will hear a loud
5 noise when applying the brake and now getting louder and louder everywhere you
6 drive the vehicle. ***took it in the dealer 2-3 time and they are telling me is***
7 ***manufactures design.*** don't have this problem from day one I purchase the vehicle
8 but now after 40k. miles start this problem specially brake, ***its scare me to drive***
9 ***the vehicle..*** please, advise. Thank you.. (ID No. 11576673; emphasis supplied)

10 ***Model Year 2022***

11 150. NHTSA Complaint regarding a 2022 ATLAS, dated 10/26/2022:
12 Brakes are very squeaky and sound like grinding metal when in use. ***This happens***
13 ***every day for the past year regardless of weather or moisture.*** Most recently they
14 have started skipping. I can feel the break pedal pulsing as if the brakes are
15 bouncing and the car “skids”. This morning I was coming out of my driveway,
16 around 3 mph, and a vehicle passed by so I pressed the brakes and the car still
17 moved out into the street. ***This is going to cause a crash at some point if the***
18 ***brakes are not stopping the vehicle as intended by the driver.*** (ID No. 11490949;
19 emphasis supplied)

20 151. NHTSA Complaint regarding a 2022 ATLAS, dated 10/3/2022:
21 I have a 2022 Volkswagen atlas with 15k miles on it. My brakes are making a hard
22 sweeping noise when braking. It has been happening for a few weeks now. When I
23 start to push on the breaks no matter the type of weather, it sounds like it is metal
24 on metal. I do not know if it is the calipers sticking or if it is something more. (ID
25 No. 11492483)

26 152. NHTSA Complaint regarding a 2022 ATLAS, dated 1/22/2023:
27 Brakes are always squeaky and making grinding noises for the first 10 minutes of
28

1 every drive. Brake pedal is also squeaky. ***Was brought to dealership two times***
2 ***and told that it's normal.*** (ID No. 11503013; emphasis supplied)

3 153. NHTSA Complaint regarding a 2022 ATLAS, dated 2/28/2022:
4 Brand new Atlas has the worst brake pads/rotors! Screech & squeal incessantly in
5 reverse and when braking. ***Dealer has said this is "normal" and is not under***
6 ***warranty.*** Drive to and from work every day and this happens each time within the
7 first 10 minutes of starting the car. (ID No. 11508332; emphasis supplied)

8 154. NHTSA Complaint regarding a 2022 ATLAS, dated 12/1/2022:
9 We purchased this vehicle new in 2022, since the purchase, we have taken the car
10 in for defective brakes and brake noise. ***2 different dealerships have resurfaced***
11 ***the rotors and brake pads for a total of 3 resurfaces and the noise (grinding like***
12 ***metal on metal) still exists.*** We have contacted VolkswagenUSA and they are not
13 able to tell us what is causing the noise and want us to pay 10% of the repair costs
14 event thought this issue has been going on during the warranty period. Thank you
15 (ID No. 11515533; emphasis supplied)

16 155. NHTSA Complaint regarding a 2022 ATLAS, dated 5/1/2023:
17 The brakes squeak and grid a lot. During the rain the brakes do not stop fast at the
18 first apply and they don't perform well, because a lot of debris from the brake pads
19 are stuck at brake system. ***VW Certified Technician stated that it is manufacturer***
20 ***defective brake system and it needs replacement but they refused to replace it***
21 ***under warranty.*** This issue was stated by me from the first week I bought this
22 vehicle. (ID No. 11520478; emphasis supplied)

23 156. NHTSA Complaint regarding a 2022 ATLAS, dated 8/1/2023:
24 The breaks make a horrible grinding and squeak sound. ***Feels unsafe to drive car.***
25 (ID No. 11536622; emphasis supplied)

26 157. NHTSA Complaint regarding a 2022 ATLAS, dated 1/6/2022:
27 The vehicle brakes sound like metal v metal, grinding and squeaking. ***The***
28

1 *dealership says that its a known problem but they have no fix. This concerns me*
2 *when driving.* (ID No. 11544415; emphasis supplied)

3 158. NHTSA Complaint regarding a 2022 ATLAS, dated 7/1/2022:

4 Brakes make a HORRIBLE METAL TO METAL, screeching, sharp noise when
5 breaking. Just knowing the money that was paid for this vehicle and as I drive and
6 brake at my children school it sounds like a cheap made vehicle. Something may
7 be done because the sound the brakes make us truly unacceptable. I can't believe
8 Volkswagen has not come up with a fix. A lot of people are having issues with it.
9 They need to resolve it for all of us Volkswagen Atlas owners. (ID No. 11547447)

10 159. NHTSA Complaint regarding a 2022 ATLAS, dated 10/26/2023:

11 Roughly 60 days after we purchased our Atlas the brakes started squealing,
12 grinding, and when its wet or raining, it is nearly impossible to stop the vehicle
13 without slamming the brakes so hard that the anti-lock braking system engages.
14 This is a safety hazard/concern. We contacted the dealership where we purchased
15 the vehicle (out of state) and they said this was standard and not to worry. This
16 was mentioned at our first service at our local VW dealership and we were again
17 told that this was normal and that the brake pads were wearing just fine. The
18 safety concern was not addressed, nor is this normal. At our second service
19 appointment, we asked that these be checked again and for them to address the
20 difficulty in stopping during wet conditions. Same response, this is normal and
21 brakes are not covered under warranty. We have since contacted the original
22 selling dealership who lined up another service appointment with our local VW
23 dealership, and again, we received the same answer as before. We do have
24 audio/video of the squealing and grinding noises, and again, we have been told this
25 is standard, and its a known problem with the VW Atlas. There are many other
26 complaints similar to this. This should reach the level of a recall before something
27 catastrophic happens and someone loses their life over it. I/we as owners of this
28

1 type vehicle should not have to spend thousands of dollars replacing brakes shortly
2 after purchasing this type of vehicle. (ID No. 11552287; emphasis supplied)

3 160. NHTSA Complaint regarding a 2022 ATLAS, dated 5/15/2023:

4 1. Dealer has accepted the problem and indicated they are unable to do anything,
5 that all Atlas do the brake screeching and sensors going off with no reason. 2.
6 Brakes- Everytime at starting the car in the morning or around 15 to 30 minutes
7 after use (parked), they screech and it feels as if the pads slide and not truly break.
8 This happens always along with a water-like gargling sound. The screeching also
9 makes the sensors go off. ***The concern is the safety as you can feel the breaks do***
10 ***not respond the same when this happens vs after using three or four stops. You***
11 ***can feel and hear how the pads slide and the car has difficulty breaking.*** 2. The
12 left side sensors of the mirror and side of car go off random and it is annoying to
13 say the least. The safety issue is that when you are driving, reaching a stop and
14 they go off, it can somewhat scare you and you then hit the breaks thinking
15 something is really there being sensed by the sensors. This could cause an accident.
16 I have videos of the sensors problem showing how even though there is nothing
17 around, they go off. I also have videos of the breaks making the noise. (ID No.
18 11558524; emphasis supplied)

19 161. NHTSA Complaint regarding a 2022 ATLAS, dated 12/2/2023:

20 My brakes have been making a weird sound when I break and at times grind as if
21 the brakes need to be changed. I have taken my car to be serviced for this issue and
22 ***they tell me that my brakes are great with no issues. That the Atlas have that***
23 ***issue but it's normal. There are times that it seems my brakes fail. This poses a***
24 ***safety risk for me and my family*** (ID No. 11559066; emphasis supplied)

25 162. NHTSA Complaint regarding a 2022 ATLAS, dated 12/27/2023:

26 brand new car of VW 2022 Atlas Premium, but, with the brake grinding noise
27 issue from starting driving this brand new car. The dealer acknowledged this noise
28 issue, but, stated no safety issue, and asked me to call VW directly. We called VW

1 directly, they said, no safety issue. We questioned we spent about \$60k for this
2 brand new car, why having such extremely brake noise from driving from day #1 ,
3 why the manufacture and dealer did not take care and fix this issue? and ***such***
4 ***grinding noise made my wife not dare to press the brake hardly. Such noise***
5 ***made the driver feel so scared, and this scare potentially cause the safety issue.***
6 (ID No. 11562139; emphasis supplied)

7 163. NHTSA Complaint regarding a 2022 ATLAS, dated 1/1/2024:

8 When I start driving the vehicle after it has been sitting for a little while (anywhere
9 between a couple hours to overnight), the first few times I use the brakes, it sounds
10 and feels like the brakes are grinding. There is a loud metallic grinding noise until I
11 come to a full stop. This will last for several miles, and eventually go away. At the
12 same time it does this, the driver side alert (cameras) start beeping like crazy. I
13 have taken it in once as it started very shortly after I got the car and ***they replaced***
14 ***the brakes*** to appease me even though they said everything looked perfectly fine.
15 They also said the sensors for the camera just needed cleaning off. ***All of this***
16 ***started happening again about 6 months later.*** In addition, I also have issues with
17 the car shutting off whenever it feels like it and requiring a manual restart, In the
18 middle of intersections, etc. (ID No. 11564030; emphasis supplied)

19 164. NHTSA Complaint regarding a 2022 ATLAS, dated 8/13/2013:

20 Very loud grinding noises and squeaking especially in the mornings when you use
21 the brakes. (ID No. 11565101)

22 165. NHTSA Complaint regarding a 2022 ATLAS, dated 1/14/2024:

23 Breaks grind as if they are used up but vehical is new and shouldnt have run
24 through the pad so quickly Breaking becoming harder to stop (ID No. 11565491)

25 166. NHTSA Complaint regarding a 2022 ATLAS, dated 2/8/2024:

26 The brakes make an awful grinding noise that sounds like metal on metal . When
27 braking the collision alert system will go off as if a crash is inevitable like no one
28 is braking. ***I have had pedestrians flag me down and tell men that the noise is a***

1 *brake rotor issue and that the pads must be completely gone cause they have*
2 *never heard them sound that bad. The dealer claims they are fine and it is a*
3 *know issue* and safe even if the collision alert system goes off unnecessarily. The
4 *most dangerous thing is the lack of interest they have in investigating the*
5 *problem.* (ID No. 11572822; emphasis supplied)

6 167. NHTSA Complaint regarding a 2022 ATLAS, dated 1/19/2024:

7 There needs to be a recall on all 2022 Volkswagen Atlas. There is a major issue
8 with the braking system that if goes unaddressed, will cause accidents. There are
9 many, many people complaining about it and I'm guessing until we start seeing
10 deaths related to it, nothing will get done. The braking system is grinding,
11 squealing and jumping when attempting to brake. This is going to continue to get
12 worse until something gets fixed. (ID No. 11574437)

13 168. NHTSA Complaint regarding a 2022 ATLAS, dated 1/2/2024:

14 vehicle has recurring noise when braking, sounds like a grinding. There is also a
15 gurgling noise when stopping coming from the engine compartment on the driver's
16 side. (ID No. 11575866)

17 169. NHTSA Complaint regarding a 2022 ATLAS, dated 2/20/2024:

18 Leased vehicle in Aug 2022, brand new. Approx. six months later the vehicle
19 exhibited a recurring noise when braking which sounds like a grinding. The noise
20 is also accompanied with a gurgling sound when stopping originating from the
21 engine compartment on the driver's side. ***Dealership said it might be break dust,***
22 ***they cleaned the area and test drove the vehicle. It worked fine for less than a***
23 ***day before the noise returned.*** Additionally, the car has surged when at a stop and
24 turned off unexpected with Auto Start/Stop off. Dealership diagnosed the issues as
25 related to the battery from the factory but stated it is not yet with in the failure
26 limits to constitute a warranty replacement. Just to be clear, the battery is failing
27 but not at the rate the manufacture would cover the replacement. Told by the dealer
28

1 to wait until the problem becomes worse so they can replace it under warranty. (ID
2 No. 11577211; emphasis supplied)

3 170. NHTSA Complaint regarding a 2022 ATLAS, dated 8/29/2023:
4 *My sensors continue to beep when there is no obstruction around the vehicle. At*
5 *times, this will also cause the brakes to grind.* When I take it in for inspection,
6 they are unable to find any malfunction because this happens inconsistently. *This*
7 *puts myself and others at risk because it is very distracting to the driver.* The
8 vehicle has been inspected by the service dealer, but they have not been able to
9 reproduce the problem. Other lights have also popped up randomly... the driver
10 seat belt sign, when I did have my seat belt on and the EPC sign while I drove
11 down my street. (ID No. 11541560; emphasis supplied)

12 171. NHTSA Complaint regarding a 2022 ATLAS, dated 2/19/2024:
13 The *collision alert system is activated when we brake and a terrible grinding*
14 *noise occurs.* It seems that the brake issues makes the collision system think the
15 car is not being stopped by the brakes. *The dealer refuses to do anything about*
16 *the issues because there is no nhtsa recall. They claim the issue is humidity.* (ID
17 No. 11572829; emphasis supplied)

18 **Model Year 2023**

19 172. NHTSA Complaint regarding a 2023 ATLAS, dated 5/1/2023:
20 When the vehicle is wet (after car wash or when it rains), the breaks start
21 screeching and the breaking jerks suddenly. *It's a terrible sound and terrible*
22 *feeling because it's unexpected and abnormal* (ID No. 11535286; emphasis
23 supplied)

24 173. NHTSA Complaint regarding a 2023 ATLAS, dated 12/15/2023:
25 The vehicle only has 15K miles and the breaks are already producing a grinding
26 sound. Brought it back to the dealership and they said that the pads and rotors are
27 measuring correct and that it was the humidity. No vehicle that we have ever
28 experiences has had grinding, so new and blamed weather. They are stating that

1 the pads and rotors are made up of higher iron and corrosion is happening quicker.
2 This is unacceptable and put extra wear on the vehicle breaking components
3 ultimately putting breaking at risk. (ID No. 11560294)

4 174. NHTSA Complaint regarding a 2023 ATLAS, dated 5/11/2024:

5 This is my second Volkswagen Atlas, that has the same issues of breaks making
6 loud squealing noise when I hit the brakes. Volkswagen changed the brakes on my
7 2022 Atlas, then allowed me to trade it in for a 2023 Atlas. I been having the same
8 problem with the brakes and all the dealers says is' (Volkswagen is aware of the
9 brake problem and working on a solution)., however it has been a ongoing issue
10 for over a year. Just today in Walmart parking lot located at [XXX] , I hit brakes
11 and the brakes squeal loud, ***this is not just an issue because of the noise, this is a***
12 ***safety issue***. Now the dealer is telling me the brakes are only under warranty for
13 24,000 miles and my car has 34,000 miles, leaving me having to try to find out
14 what to do on my own. My car note is \$914.10, I love Volkswagen, but I will
15 never buy another one. Imagine paying \$914.10 per month for a vehicle that has a
16 safety issue and the dealer has been working on a solution for over 2 years. The
17 break lights doesn't come on, so the dealer stated it is only a annoying sound not a
18 safety issue, I believed these vehicles need a examination or please examine mines,
19 because if your brakes squeals, something is wrong with the vehicle.

20 INFORMATION REDACTED PURSUANT TO THE FREEDOM OF
21 INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6) (ID No. 11588261; emphasis
22 added)

23 **ii. Volkswagen Atlas Cross Sport**

24 **Model Year 2021**

25 175. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
26 11/22/2021: The contact owns a 2021 Volkswagen Atlas Sport. The contact stated
27 that upon depression of the brake pedal, an abnormal grinding noise would emit
28 from the brakes. She stated that the failure was intermittent and that no warning

1 lights had appeared on the instrument panel. ***The contact had called and taken the***
2 ***vehicle to several dealers***; Fiesta Volkswagen (8201 Lomas Blvd NE,
3 Albuquerque, NM 87110); University Volkswagen Mazda (5150 Ellison St NE,
4 Albuquerque, NM 87109); Garcia Volkswagen of Santa Fe (2560 Camino Edward
5 Ortiz, Santa Fe, NM 87507) ***and each confirmed that they are aware of the***
6 ***failure; however, there was no remedy***. The brakes had been inspected by each
7 dealer and none were able to diagnose the failure. ***The manufacturer was then***
8 ***notified of the failure and was informed that the grinding noise was normal***. No
9 further assistance was provided. The vehicle had yet to be repaired. The failure
10 mileage was approximately 16,000. (ID No. 11448695; emphasis supplied)

11 176. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
12 1/14/2022: With 10k miles and barely over a year, my atlas cross sport needs new
13 brakes and rotors! Brought to dealership and opened a case with VW corporate but
14 they won't cover it because I've owned it more than a year. The dealership service
15 manager even said they have had seen this issue with other atlas cross sports. (ID
16 No. 11449185)

17 177. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
18 5/1/2021: 1) Brakes grinding and squealing 2) Known defects in the 2021 brakes
19 could reduce potential stopping distance for affected vehicles. 3) Dealer replaced
20 brakes at 10,000 miles with exact same part and now we are currently experience
21 the same problems at 23,000 but now dealer says there are unable to replace
22 because the issue will remain due to there not being a fixed replacement. Dealer
23 also recommend contacting the manufacture customer care. There response
24 acknowledge the issue but there was nothing they could do due to there not being a
25 replacment part. 4) Yes, both by dealer and third party mechanics who also
26 explained there are currently no after market brakes that could replace the defective
27 brakes and they would have to replace with the same part. 5) No warning just
28 constant grinding and noise (ID No. 11493206; emphasis supplied)

1 178. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
2 3/1/2021: Brakes are extremely loud and not as good as they should be for such a
3 behemoth of an SUV. Leads to a lot of uncertainty especially in wet weather. **Any**
4 **attempt to rectify this issue at the dealer leads to me being without a vehicle**
5 **for HOURS for them to simply state no issue produced. (Also sound of advice**
6 **of slamming on my breaks in drive and revers to get rid of the screech)** which
7 doesn't help unfortunately I gave in and tried it. The TPS system in the ACS is
8 DANGEROUS. Multiple flat tires with not one sign of lost air or change in
9 pressure. Once even on the freeway with my partner and toddler in the car.
10 Reverse camera and screen black outs, infotainment system is frustrating and not
11 dependable. (ID No. 11500627; emphasis supplied)

12 179. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
13 8/1/2022: After having the car for less than a year the brakes started grinding metal
14 on metal as well as an extremely loud screeching sound. I've taken it to a brake
15 center and the dealership and there is nothing anyone can do as the brakes still
16 show they are not ready to be replaced. Volkswagen is aware of the issue
17 specifically with new Atlas models and will not do anything about it. (ID No.
18 11509387)

19 180. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
20 1/20/2023: I own my car for a 18 months and my brakes make a grinding noise. I
21 have taken in for service and they tell me that's its normal. How can it be normal I
22 have own several new autos and never had I had this problem. (ID No. 11527350)

23 181. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
24 1/29/2024: Since I purchased the vehicle the brakes sound like they are bad, yet
25 they are not bad. ***I was told at Volkswagen that they are aware of the issue in***
26 ***these SUV's but the only fix will void out my warranty if I choose to do it.*** If this
27 is a known problem with Volkswagen cross sports then why is there not a solution to
28 the problem that will not jeopardize our warranty. I'm frustrated, the car sounds

1 ridiculous when the brakes are applied and ***how is one to know when they are***
2 ***actually bad if they always sound that way.*** (ID No. 11568606; emphasis
3 supplied)

4 182. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
5 10/4/2021: Car has a harsh loud metal grinding sound when brakes are applied.
6 Steering wheel vibration when brakes are applied at medium/high speeds, more
7 notable in declined (down hill) roads. This has been ***reported to dealership since***
8 ***we got the car brand new and they do nothing about it except to provide a***
9 ***scripted answer stating that the "car is safe" and/or that they cannot reproduce***
10 ***the issue.*** (ID No. 11572088; emphasis supplied)

11 183. NHTSA Complaint regarding a 2021 ATLAS CROSS SPORT, dated
12 6/2/2021: SUV was purchased in May of 2021 at the Chapman VW dealership in
13 Scottsdale, Arizona. Within several days of owning the Atlas, I noticed a grinding,
14 shrieking noise coming from the brakes every time they were applied. I
15 immediately ***notified the dealer and they said that this was a common occurrence***
16 ***on the Atlas. They were aware of the issue but VW had not come up with a fix at***
17 ***that point in time. I brought the car in and they offered to replace the pads***
18 ***which were done. The problem continued.*** Most recently, the noise and friction
19 from the brakes has gotten infinitely worse. I contacted ***VW executives in the US***
20 and they once again said that they were ***aware of the issue but that no***
21 ***reimbursement would be given*** if I paid for new brakes myself, which I had to do.
22 All participants, including the manager of Chapman VW, agree that this is a
23 problem issue. However, there is no recall as of yet (one person there said one was
24 forthcoming) and that they hear this problem from many Atlas owners. My
25 question is why are they continuing to sell the car with the copper/rotor issue and
26 why are they not fixing it nor reimbursing people like me? Thank you. (ID No.
27 11574497; emphasis supplied)

Model Year 2022

1
2 184. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
3 10/22/2022: I leased the vehicle on 2/2022, months later I started having braking
4 problems. The dealer stated the brakes squeals only in the morning, but ***the brakes***
5 ***squeals throughout the day while I am driving.*** A water leaked was fixed,
6 however, the carpet remains in the car and on back order, also the smell effects my
7 pregnant wife. ***If we were told brakes would be squealing we wouldn't have***
8 ***purchased the vehicle.*** (ID No. 11497301; emphasis supplied)

9 185. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
10 12/28/2022: Upon breaking its a grinding at time with squeaking. I've taken
11 concern 2-3 times now to dealership and they say there's nothing wrong with
12 breaks. They have given me no resolution in fixing. It happens on a daily.
13 Depending how breaking happens. I've never owned a vehicle that had this issue
14 and for a dealership not to fix. (ID No. 11499298; emphasis supplied)

15 186. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
16 1/19/2023: The brakes make a grinding and squeaking sound after every start up
17 and continues either for many miles or doesn't go away at all. ***It is a safety issue***
18 ***because the brakes sound horrible and this is not a normal occurrence for a new***
19 ***car, i will not know if there is a more serious issue with my brakes if its***
20 ***"normal" for them to make this sound. The dealership has inspected the vehicle***
21 ***and says everything is fine and that this is normal... They have had numerous of***
22 ***the same vehicle in the shop for the same issue.*** This is not normal for a brand
23 new vehicle. No warning lamps are on. (ID No. 11505132; emphasis supplied)

24 187. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
25 2/10/2023: I have taken my car to the dealer and had them look at the brakes.
26 ***Every time I press on the brakes it makes a grinding sound almost as if the car is***
27 ***to heavy for the brakes and skids a little. At Findlay Volkswagen they tell me***
28 ***they are aware of the problem, but Volkswagen has not approved any type of fix.***

1 I have also talked to other people with the same car everyone I have spoken with
2 that has this model car has the same issues with the brakes. ***To mne this is a safety***
3 ***issue if the car is to heavy for the brakes.*** (ID No. 11506664; emphasis supplied)

4 188. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
5 3/3/2022: The brakes on this new car constantly grind and are extremely noisy.
6 There have been a few occasions where they barely stopped the car before we hit
7 another car. ***We have brought the car in for service several times and the dealer is***
8 ***unable to repair the vehicle. The service reps tell us this is a known problem with***
9 ***this car. Then they tell us they did not find any issues. they have claimed to have***
10 ***replaced the brakes but the issues still persist.*** Lots of owners of this vehicle have
11 the same concerns or worse. This Atlas Cross Sport should not be allowed on
12 California streets and highways. This really needs to be looked into (ID No.
13 11510003; emphasis supplied)

14 189. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
15 10/1/2022: I purchased my car in July 2022 and started having issues with it within
16 3 months. ***I've have my car at the dealer 4 times for them to look at the brakes***
17 ***(grinding, scraping noise, squeaking that can be fetl in the pedal). I was told***
18 ***each time that the rotors and brake pads aren't compatible. VW knows about the***
19 ***problem but doesn't have a fix for it.*** They say they clean the pads and that the car
20 is safe to drive (really?). ... I only have 7,900 miles on my car and I just want it
21 permanently fixed. (ID No. 11518484; emphasis supplied and edited for relevance)

22 190. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
23 10/4/2022: “Car make noises while breaking at times, ***does not break at all if you***
24 ***dont push the pedal really hard.***” (ID No. 11535512; emphasis supplied)

25 191. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
26 10/1/2022: Purchased April 2022, and once the weather got cooler, brakes make a
27 horrendous grinding, squeaky noise, sounds like metal on metal. ***Have brought***
28 ***into dealership multiple times to no avail until a few months ago, confirmed that***

1 *it is a known issue, but nothing they can do about it.* Said there is a build up of
2 some kind on the brakes that has to warm up before it will go away, which is why
3 it is prominent when weather is cooler. My concern is that typically, grinding,
4 squeaking are usually signs that the brakes make have issues. *Dealer is saying*
5 *brakes or fine, so do I have to wait for brakes to go out, run into something or*
6 *someone before they can validate that brakes are not safe and are defective?* (ID
7 No. 11551307; emphasis supplied)

8 192. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
9 7/1/2023: The brakes began squealing and grinding about 6 months ago, I had the
10 car a little over a year and didn't understand how the pads could be worn. I noticed
11 that when the grinding occurs it is a little slower to stop when braking. *I*
12 *immediately took it to VW, they heard it, checked them and said they were*
13 *basically brand new. If I wanted to change them it wouldn't be under warranty.*
14 It continued so I took it to Mavis for a second opinion. They told me the pads are
15 like brand new as well but it looked like there was grease all over the pads and they
16 cleaned them up. It didn't make a noise for about 1 week and then back at it and
17 the grinding and slow braking is happening. *This is a concern and I don't like*
18 *driving the car because im nervous I won't be able to brake.* I've looked online to
19 see if there was anyone else experiencing this and there are tons of threads stating
20 the same thing. How has VW not been required to correct this? (ID No. 11553617;
21 emphasis supplied)

22 193. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
23 8/1/2023: Brakes are making an awful grinding noise. Dealer says there is nothing
24 they can do about it. That's just "the way they are" (ID No. 11560502; emphasis
25 supplied)

26 194. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
27 10/4/2023: JUST PURCHACED MY ATLAS AROUND SEPTEMBER, AFTER
28 DRIVING IT A MONTH WE NOTICED A LOAD SCREACH SOUND WEN

1 COMING TO A STOP, ***I HAVE TAKEN IT TO TOO VW DEALERS ONLY TO***
2 ***BE TOLD VOLKSWAGON IS AWARE OF THE ISSUE AND THERE IS***
3 ***NOTHING THEY CAN DO***, NOW THE BRAKES GRIND AND IM NOT SURE
4 HOW TO ADRESS THIS ISSUE. THANK YOU . (ID No. 11561013; emphasis
5 supplied)

6 195. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
7 1/5/2024: Breaks vibrate and squeal when making a slow stop. ***Dealership stated***
8 ***was just debris, but it continues to do this repeatedly***. Online this appears to be a
9 known issue throughout the Volkswagen brand and dealership give the same
10 reasoning, but the problem continues to persistent for all owners who have reported
11 it. ***The dealerships appear to have been instructed to use the same reasoning for***
12 ***the issues, but never repair/resolve the issue***. (ID No. 11564057; emphasis
13 supplied)

14 196. NHTSA Complaint regarding a 2022 ATLAS CROSS SPORT, dated
15 11/5/2022: I currently am leasing a 2022 Volkswagon Cross Atlas Sport that
16 currently has 26,000 miles on it. In October, I noticed when I press on the brakes
17 of my car, there is a loud grinding and squealing sound both inside and outside of
18 the car. ***It is so bad, that I tend to not push the brakes all the way down***. I brought
19 my car to be serviced to Jack Daniels Volkswagon in Fair Lawn, NJ. They said
20 they checked the brakes and they were in good condition and didn't need to be
21 replaced. I left there and the car continued to squeal and grind when the brakes are
22 pressed. I brought the car back last week to have them checked again and was told
23 that they definitely hear the noise, but the brakes are still fine and they will not
24 repair them. ***They are telling me there is nothing they can do and that I have to***
25 ***live with the noise and the feeling of the brakes being unsafe. I was upset and***
26 ***dissatisfied with their answer so I tried to call Volkswagon corporate and they***
27 ***told me the same answer, that I have to live with it. The girl at the repair shop***
28 ***told me that other Volkswagon cars are experiencing the same thing*** but there is

1 no recall yet. She explained that it might be possible to change the rotors and it
2 may correct the noise. All I would like is for someone from Volkswagen to approve
3 the change of my rotors paid for by them to see if that will eliminate the noise or to
4 rectify the situation. *I feel unsafe whereas I can't even fully press down on my*
5 *brakes without the noise and grinding being heard in and out of the car.* I can't
6 believe that I was told to live with it by the Volkswagen corporation and that
7 no one would try and fix the manufacturer's brake error. (ID No. 11565843;
8 emphasis supplied)

9 **Model Year 2023**

10 197. NHTSA Complaint regarding a 2023 ATLAS CROSS SPORT, dated
11 1/2/2024: Brakes on brand new vehicle are exhibiting behavior that is not normal
12 for a car of this size and relatively young age (miles). Measurably loud brake noise
13 based on manufacturer's choice of materials in components leave concern on overall
14 safety of brake system based on generally considered (except by dealer /
15 manufacturer of course) unexpected behavior of vehicle braking system. (ID No.
16 11563187)

17 198. NHTSA Complaint regarding a 2023 ATLAS CROSS SPORT, dated
18 5/22/2024: MY CAR SHUTS OFF WHILE DRIVING. ALSO I HAVE HAD
19 BRAKE ISSUES. GRINDING NOISE AND LOUD NOISE. **THEY RELACED**
20 **THE BRAKE PADS THAT I HAD TO PAY FOR BECAUSE MANUFACTUR**
21 **PADS WOULD HAVE CAUSE THE SAME ISSUE. NOW MY CAR IS**
22 **SHAKING WHILE I BRAKE. THEY SAID I NEED NEW ROTORS.** WITH
23 THE CAR SHUTTING OFF WHILE DRIVING IS MY MAIN CONCERN. IT
24 HAS SHUT OFF A TOTAL OF 8 TIME SINCE I HAVE OWNED IT. SHUT
25 OFF RANDOMLY ON STREET, PARKING LOTS AND FREEWAY GOING
26 65MPH. I HAVE MY GRAND CHILDREN IN MY CAR A LOT. SO
27 THEREFORE, THIS IS A HIGH RISK SAFETY CONCERN OF MINE.. (ID No.
28 11590253)

1 **II. COMMON CLASS ALLEGATIONS**

2 199. Throughout the relevant period, Defendant has designed,
3 manufactured, distributed, imported, warranted, marketed, advertised, serviced,
4 sold, and leased the Class Vehicles. Upon information and belief, Defendant has
5 sold, directly or indirectly through dealers and other retail outlets, thousands of
6 Class Vehicles in California, New York, Illinois, and nationwide.

7 200. Upon information and belief, Defendant knew or should have known
8 that the Vehicles are defective and are not fit for their intended purpose of
9 providing consumers with safe and reliable transportation. Nevertheless, Defendant
10 failed to disclose the Brake Defect to Plaintiffs and the Class Members at the time
11 of purchase or lease and thereafter.

12 201. Under the Transportation Recall Enhancement, Accountability and
13 Documentation Act (“TREAD Act”), 49 U.S.C. §§ 30101-30170, and its
14 accompanying regulations, when a manufacturer learns that a vehicle contains a
15 safety defect, the manufacturer must promptly disclose the defect. 49 U.S.C. §§
16 30118(c)(1) & (2). If it is determined that the vehicle is defective, the manufacturer
17 must notify vehicle owners, purchasers, and dealers of the defect and must remedy
18 the defect. 49 U.S.C. §§ 30118(b)(2)(A) & (B). Upon information and belief,
19 Defendant also violated the TREAD Act by failing to timely inform NHTSA of the
20 Brake Defect and allowed the Vehicles to remain on the road with these defects.
21 These same acts and omissions also violated various state consumer protection
22 laws as detailed below.

23 202. Defendant has long known that the Class Vehicles have a defective
24 braking system. Defendant has exclusive access to information about the defects
25 through its dealerships, pre-release testing data, warranty data, customer complaint
26 data, and replacement part sales data, among other sources of aggregate
27 information about the problem. In contrast, the Brake Defect was not known or
28

1 reasonably discoverable by Plaintiffs and Class Members prior to purchase and
2 without experiencing the Brake Defect firsthand.

3 203. Defendant owes a duty to disclose the Brake Defect to Plaintiffs and
4 Class Members because Defendant has exclusive knowledge or access to material
5 facts about the Vehicles that are not known or reasonably discoverable by
6 Plaintiffs and Class Members until the Defect has manifested; and because
7 Defendant has actively concealed the Brake Defect from its customers. Improperly
8 operating brakes on any vehicle are per se a safety defect.

9 204. Whether the Vehicles’ brakes fail to reliably apply consistent braking
10 force (because they are, e.g., too “squishy” or “grabby”), make surprising and
11 distracting squealing and grinding sounds, or erroneously activate the proximity
12 alert—and particularly when they intermittently present more than one of these
13 concerns—they introduce serious safety risks.

14 205. Not only the Vehicle’s driver is put at risk by the Brake Defect (as are
15 any passengers in the Vehicle), but so are other drivers, passengers, and even
16 pedestrians near enough to the Vehicles to be startled and distracted by the sounds
17 – not to mention the increased possibility of the Vehicle braking too quickly or
18 slowly, and causing an impact.

19 206. Moreover, the failure of the Vehicles to reliably apply braking force,
20 as well as their proclivity to emit squealing and grinding sounds, and to trigger
21 false-positive proximity alerts, is at direct odds with the ordinary expectations of
22 Plaintiffs, and all reasonable consumers, regarding how an automobile’s brakes
23 function.

24 207. In order to effectuate advertising, distribution, and sales of the
25 Vehicles by Volkswagen to consumers, Volkswagen maintains both written
26 contracts and general operating relationships with its certified dealerships.
27
28

1 208. These contracts and relationships render the Volkswagen certified
2 dealerships agents of Volkswagen for purposes of advertising and selling
3 Volkswagen-manufactured vehicles.

4 209. Volkswagen also maintains written contracts and operating
5 relationships with its certified dealerships by which the dealerships must perform
6 service and repairs on Volkswagen vehicles which are covered by the warranty
7 extended by Volkswagen. Such warranty-related service and repair has to be
8 conducted according to processes, protocols, instructions, and limitations dictated
9 by Volkswagen. These protocols require, *inter alia*, that employees performing
10 service or repairs be certified by Volkswagen, how much time an employee may
11 spend on a specific repair or service, and the order in which an employee might
12 attempt repairs.

13 210. These contracts and relationships render the Volkswagen certified
14 dealerships agents of Volkswagen for purposes of performing warranty service and
15 repairs on the Vehicles.

16 211. Volkswagen's contracts and operating relationships with its certified
17 dealerships also demonstrate that Plaintiffs, and other consumers, are the intended
18 recipients and beneficiaries of any advertising, terms of sale, and warranties
19 extended in connection with the Vehicles.

20 212. The Vehicles come with a New Vehicle Limited Warranty ("NVLW")
21 which states that Volkswagen will cover any repairs to correct a manufacturer's
22 defect in material or workmanship for 4 years or 50,000 miles, whichever occurs
23 first.

24 213. The NVLW "covers any repair to correct a defect in manufacturer's
25 material or workmanship (i.e., mechanical defects) ... Repairs under this limited
26 warranty are free of charge. Your Volkswagen dealer will repair the defective part
27 or replace it with a new or remanufactured Genuine Volkswagen Part."
28

1 214. Volkswagen’s NVLW claims to limit coverage for “Brake
2 pads/shoes” to “1 year or 12,000 miles.” But, even if such a limitation is otherwise
3 valid, it does not apply to Plaintiffs’ claims as the Brake Defect involves
4 components in the Vehicles’ brake systems beyond merely the “Brake pads and
5 shoes,” such as the brake rotors, brake calipers, brake carriers, brake pad retaining
6 plates, brake pad springs, guide pins, guide pin caps, and lithium grease, as well as
7 implicating issues with the brake master cylinder, brake booster, and brake lines.

8 215. Additionally, Volkswagen has attempted to repair or resolve the Brake
9 Defect under warranty, including outside of the 1-year limitation on “Brake pads
10 and shoes,” demonstrating that it acknowledges the Brake Defect to be covered by
11 the NVLW and other applicable warranties.

12 216. But, as demonstrated by Plaintiffs’ experiences and those of other
13 Vehicle owners, Volkswagen is unwilling and/or unable to repair or correct the
14 Brake Defect.

15 217. Where repairs have been attempted with respect to the Brake Defect
16 they have been unsuccessful at permanently resolving the concerns, at least those
17 which simply “repair the defective part or replace it with a new or remanufactured
18 Genuine Volkswagen Part.”

19 218. Volkswagen employees at various levels, at both the dealership and
20 corporate levels, have acknowledged awareness of the ongoing Brake Defect while
21 admitting that no repair is available or offered.

22 219. Volkswagen employees have even admitted that they have been
23 directed to respond to consumer complaints regarding the Brake Defect in such a
24 way as to avoid addressing, delay diagnosing, prevent recording, or otherwise
25 obstruct resolution of their concerns.

26 220. If a Class Member sought to correct the Brake Defect by upgrading
27 their braking system with non-“Genuine Volkswagen Parts” which would
28

1 permanently resolve their issues, they put their Vehicle’s NVLW in jeopardy and
2 would thereby lose its coverage.

3 221. Had Defendant informed Plaintiffs and the Class about the Brake
4 Defect, Plaintiffs and the Class would not have purchased the Vehicles from
5 Defendant, but rather would have purchased different vehicles. Defendant
6 knowingly sold a defective product to Plaintiffs and the Class, without disclosing
7 such defect, and now refuse to provide an adequate long-term remedy, repair, or
8 restitution for their actions.

9 222. Defendant’s conduct described herein constitutes an omission of
10 material fact and a deceptive business practice in violation of statutory and
11 common law, including those of California, New York, and Illinois.

12 **A. Tolling of the Statute of Limitations**

13 **i. Discovery Rule Tolling**

14 223. Plaintiffs and Class Members could not have discovered through the
15 exercise of reasonable diligence that their Class Vehicles were defective within the
16 time period of any applicable statutes of limitation.

17 224. Among other things, neither Plaintiffs nor the other Class Members
18 knew or could have known that the Class Vehicles are equipped with braking
19 systems which are subject to the Brake Defect.

20 225. Further, Plaintiffs and Class Members had no knowledge of the Brake
21 Defect, and it occurred in a part of the vehicle that was not visible to consumers.
22 Volkswagen attempted to squelch public recognition of the Brake Defect by
23 propagating the falsehood that the Squealing, Grinding, Proximity Alert, and
24 Erratic Function Defects (*see, supra*, ¶¶ 4-10) that drivers of Class Vehicles were
25 experiencing was “normal.” Accordingly, any applicable statute of limitation is
26 tolled.

1 **ii. Fraudulent Concealment Tolling**

2 226. Throughout the time period relevant to this action, Volkswagen
3 concealed from and failed to disclose to Plaintiffs and the other Class Members
4 vital information about the Brake Defect described herein.

5 227. Volkswagen kept Plaintiffs and the other Class Members ignorant of
6 vital information essential to the pursuit of their claims. As a result, neither
7 Plaintiffs nor the other Class Members could have discovered the Defect, even
8 upon reasonable exercise of diligence.

9 228. Throughout the Class Period, Volkswagen has been aware that the
10 braking system it designed, manufactured, and installed in the Class Vehicles
11 contained the Brake Defect, resulting in loud, distracting, and startling sounds, as
12 well as unreliable and deficient function, when the brakes were put to regular and
13 expected use, placing Plaintiffs and other drivers in unsafe situations.

14 229. Despite its knowledge of the Brake Defect, Volkswagen failed to
15 disclose and concealed, and continues to conceal, this critical information from
16 Plaintiffs and the other Class Members, even though, at any point in time, it could
17 have disclosed the Brake Defect through individual correspondence, media release,
18 a recall, or by other means.

19 230. Plaintiffs and the other Class Members justifiably relied on
20 Volkswagen to disclose the Brake Defect in the Class Vehicles that they purchased
21 or leased, because the Brake Defect was hidden and not discoverable through
22 reasonable efforts by Plaintiffs and the other Class Members.

23 231. Thus, the running of all applicable statutes of limitation have been
24 suspended with respect to any claims that Plaintiffs and the other Class Members
25 have sustained as a result of the Brake Defect, by virtue of the fraudulent
26 concealment doctrine.

1 **iii. Estoppel**

2 232. Volkswagen was under a continuous duty to disclose to Plaintiffs and
3 the other Class Members the true character, quality, and nature of the unsafe and
4 defective braking systems.

5 233. Volkswagen knowingly concealed the true nature, quality, and
6 character of the defective braking systems from consumers.

7 234. Based on the foregoing, Volkswagen is estopped from relying on any
8 statutes of limitations in defense of this action.

9 **B. CLASS ACTION ALLEGATIONS**

10 235. Plaintiffs bring this lawsuit individually and as a class action on
11 behalf of all others similarly situated pursuant to Federal Rules of Civil Procedure
12 23(a), (b)(2), (b)(3). This action satisfies the numerosity, commonality, typicality,
13 adequacy, predominance, and superiority requirements of Rule 23.

14 **i. Class Definitions**

15 236. The Class is defined as:

16
17 All persons in the United States and its territories who
18 formerly or currently own(ed) or lease(d) one or more
19 Class Vehicles.¹

20 237. The California Subclass is defined as:

21 All current and former owners of Class Vehicles who
22 reside, and/or purchased/leased a Class Vehicle, in
23 California.

24 238. The New York Subclass is defined as:

25
26
27
28 ¹ Plaintiffs reserve the right to amend or modify their Class and Subclass definitions
to include additional model years of Vehicles.

1 All current and former owners of Class Vehicles who
2 reside, and/or purchased/leased a Class Vehicle, in New
3 York.

4 239. The Illinois Subclass is defined as:

5 All current and former owners of Class Vehicles who
6 reside, and/or purchased/leased a Class Vehicle, in
7 Illinois.

8 240. Excluded from the Class and Subclasses are Defendant and its
9 subsidiaries and affiliates, Defendant's executives, board members, legal counsel,
10 the judges and all other court personnel to whom this case is assigned, their
11 immediate families, and those who purchased Class Vehicles for the purpose of
12 resale.

13 241. Plaintiffs reserve the right to amend or modify the Class and Subclass
14 definitions.

15 **ii. FRCP 23 Allegations**

16 242. Numerosity: Fed. R. Civ. P. 23(a)(1). The Class is so numerous that
17 the joinder of all members is impracticable. While the precise number of Class
18 Members has yet to be determined, thousands of Class Vehicles have been
19 purchased or leased nationwide and in each of California, New York, and Illinois.

20 243. Commonality: Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions
21 of law and fact common to the Class. These common questions of law and fact
22 include, without limitation:

- 23 a. Whether the Vehicles and their braking systems are defectively
24 designed;
- 25 b. Whether the Vehicles and their braking systems are defectively
26 manufactured;
- 27 c. Whether the Vehicles and their braking systems are suitable for
28 their intended use;

- 1 d. Whether the Vehicles’ propensity to emit loud and high-pitched
- 2 sounds (e.g. squeal, squeak, screech) would be considered
- 3 material to a reasonable consumer;
- 4 e. Whether the Vehicles’ propensity to emit loud sounds of metal-
- 5 on-metal grinding or scraping would be considered material to a
- 6 reasonable consumer;
- 7 f. Whether the Vehicles’ propensity to trigger the proximity alert
- 8 sensors, even to the point of engaging the automatic emergency
- 9 brake to avoid an imminent impact, despite no object being
- 10 nearby, would be considered material to a reasonable consumer;
- 11 g. Whether the Vehicles’ propensity to suffer from inconsistent,
- 12 decreased, or harsh braking function (e.g. slipping, “squishy,”
- 13 “spongy,” or “grabby” braking) would be considered material
- 14 to a reasonable consumer;
- 15 h. Whether, as a result of Volkswagen’s concealment or failure to
- 16 disclose material facts, Plaintiffs and Class Members acted to
- 17 their detriment by purchasing Class Vehicles manufactured by
- 18 Volkswagen;
- 19 i. Whether Volkswagen was aware of the Brake Defect;
- 20 j. When Volkswagen became aware of the Vehicles’ propensity to
- 21 emit loud and distracting sounds, suffer from diminished
- 22 braking function, or otherwise experience symptoms related to
- 23 the Brake Defect;
- 24 k. Whether the Brake Defect constitutes an unreasonable safety
- 25 risk;
- 26 l. Whether Volkswagen breached, express and/or implied
- 27 warranties with respect to the Class Vehicles;
- 28

- 1 m. Whether Volkswagen violated consumer protection laws in
- 2 connection with its design, manufacturing, advertising, sale, or
- 3 other activities related to the Vehicles and their braking system;
- 4 n. Whether Volkswagen engaged in unfair, unlawful, or deceptive
- 5 practices by advertising and selling Vehicles;
- 6 o. Whether Plaintiffs and Class Members are entitled to actual
- 7 damages as a result of Volkswagen's wrongful conduct;
- 8 p. Whether Plaintiffs and Class Members are entitled to restitution
- 9 as a result of Volkswagen's wrongful conduct;
- 10 q. Whether Volkswagen has a duty to disclose the Brake Defect to
- 11 Plaintiffs and Class Members;
- 12 r. When Volkswagen's duty to disclose the Brake Defect to
- 13 Plaintiffs and Class Members arose; and
- 14 s. Whether Plaintiffs and Class Members are entitled to equitable
- 15 relief, including but not limited to a preliminary and/or
- 16 permanent injunction.

17 244. Predominance: Fed. R. Civ. P. 23(b)(3). These common questions
18 predominate over any individual questions that might arise, including questions
19 regarding entitlement to and amount of damages. Even if individual questions are
20 required, answers to the above common questions will advance the litigation for all
21 parties.

22 245. Typicality: Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of
23 those of other Class Members because all purchased or leased Class Vehicles.

24 246. Policies Generally Applicable to the Class: This class action is also
25 appropriate for certification because Volkswagen has acted or refused to act on
26 grounds generally applicable to the Class, thereby requiring the Court's imposition
27 of uniform relief to ensure compatible standards of conduct toward the Class
28 Members and making final injunctive relief appropriate with respect to the Class as

1 a whole. Defendant’s policies challenged herein apply to and affect Class Members
2 uniformly and Plaintiffs’ challenge of these policies hinges on Defendant’s
3 conduct with respect to the Class as a whole, not on facts or law applicable only to
4 Plaintiffs.

5 247. Adequate Representation: Fed. R. Civ. P. 23(a)(4). Plaintiffs will
6 fairly and adequately protect the interests of Class Members. Plaintiffs have
7 retained attorneys experienced in the prosecution of class actions, including
8 consumer and product defect class actions, and Plaintiffs intend to prosecute this
9 action vigorously.

10 248. Superiority: Fed. R. Civ. P. 23(b)(3). Plaintiffs and Class Members
11 have all suffered and will continue to suffer harm and damages as a result of
12 Volkswagen’s unlawful and wrongful conduct. A class action is superior to other
13 available methods for the fair and efficient adjudication of the controversy. Absent
14 a class action, Class Members would likely find the cost of litigating their claims
15 prohibitively high and would therefore have no effective remedy at law. Because
16 of the relatively small size of Class Members’ individual claims, it is likely that
17 few Class Members could afford to seek legal redress for Volkswagen’s
18 misconduct. Absent a class action, Class Members will continue to incur damages,
19 and Volkswagen’s misconduct will continue without remedy. Class treatment of
20 common questions of law and fact would also be a superior method to multiple
21 individual actions or piecemeal litigation in that class treatment will conserve the
22 resources of the courts and the litigants and will promote consistency and
23 efficiency of adjudication.

24 249. Volkswagen has acted or refused to act on grounds generally
25 applicable to the Class and, accordingly, final injunctive or corresponding
26 declaratory relief with regard to the Class Members as a whole is appropriate under
27 Rule 23(b)(2) of the Federal Rules of Civil Procedure.
28

1 250. Likewise, particular issues under Rule 23(c)(4) are appropriate for
2 certification because such claims present only particular, common issues, the
3 resolution of which would advance the disposition of this matter and the parties’
4 interests therein. Such particular issues include, but are not limited to:

- 5 a. Whether the Vehicles and their braking systems are defectively
6 designed;
- 7 b. Whether the Vehicles and their braking systems are defectively
8 manufactured;
- 9 c. Whether the Vehicles and their braking systems are suitable for
10 their intended use;
- 11 d. Whether the Vehicles’ propensity to emit loud and high-pitched
12 sounds (e.g. squeal, squeak, screech) would be considered
13 material to a reasonable consumer;
- 14 e. Whether the Vehicles’ propensity to emit loud sounds of metal-
15 on-metal grinding or scraping would be considered material to a
16 reasonable consumer;
- 17 f. Whether the Vehicles’ propensity to suffer from inconsistent,
18 decreased, or harsh braking function (e.g. slipping, “squishy,”
19 “spongy,” or “grabby” braking) would be considered material
20 to a reasonable consumer;
- 21 g. Whether, as a result of Volkswagen’s concealment or failure to
22 disclose material facts, Plaintiffs and Class Members acted to
23 their detriment by purchasing Class Vehicles manufactured by
24 Volkswagen;
- 25 h. Whether Volkswagen was aware of the Brake Defect;
- 26 i. When Volkswagen became aware of the Vehicles’ propensity to
27 emit loud and distracting Squealing and/or Grinding noises,
28 triggering the Proximity Alert sensors, as well as Erratic

- 1 Function when the Vehicles’ brakes are applied, or otherwise
2 experience symptoms related to the Brake Defect (*see, supra,*
3 ¶¶ 4-10);
- 4 j. Whether the Brake Defect constitutes an unreasonable safety
5 risk;
- 6 k. Whether Volkswagen breached express and/or implied
7 warranties with respect to the Class Vehicles;
- 8 l. Whether Volkswagen violated consumer protection laws in
9 connection with its design, manufacturing, advertising, sale, or
10 other activities related to the Class Vehicles;
- 11 m. Whether Volkswagen engaged in unfair, unlawful, or deceptive
12 practices by advertising and selling Class Vehicles;
- 13 n. Whether Plaintiffs and Class Members are entitled to actual
14 damages as a result of Volkswagen’s wrongful conduct;
- 15 o. Whether Plaintiffs and Class Members are entitled to restitution
16 as a result of Volkswagen’s wrongful conduct;
- 17 p. Whether Volkswagen has a duty to disclose the Brake Defect to
18 Plaintiffs and Class Members;
- 19 q. When Volkswagen’s duty to disclose the Brake Defect to
20 Plaintiffs and Class Members arose; and
- 21 r. Whether Plaintiffs and Class Members are entitled to equitable
22 relief, including but not limited to a preliminary and/or
23 permanent injunction.

CAUSES OF ACTION

I. BREACH OF EXPRESS WARRANTY

U.C.C. § 2-313

(Cal. Com. Code § 2313; N.Y. UCC § 2-313; 810 Ill. Comp. Stat. 5/2-313)

(Plaintiffs, individually, and on behalf of the Class and their respective Subclasses)

251. Plaintiffs incorporate by reference and re-allege the preceding paragraphs as if fully set forth herein.

252. Plaintiffs bring this cause of action individually and on behalf of their respective Subclasses.

253. California, New York, and Illinois have each adopted the Uniform Commercial Code, including U.C.C. § 2-313, which covers express warranties. Cal. Com. Code § 2313; N.Y. UCC § 2-313; 810 Ill. Comp. Stat. 5/2-313. That section provides that “any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.” U.C.C. § 2-313(1)(a). Further, “[a]ny description of the goods which is made part of the basis of the bargain creates an express warranty that the good shall conform to the description.” *Id.* § 2-313(1)(b).

254. The class vehicles alleged herein are each a “consumer product” governed by the Federal Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. §§ 2301 *et seq.* The class vehicles are tangible personal property which is distributed in commerce and normally used for personal, family, or household purposes. 16 C.F.R. § 702.1(b).

255. Further, in a consumer transaction such as those alleged herein, a “*Written warranty*” includes: “(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or

1 promises that such material or workmanship is defect free or will meet a specified
2 level of performance over a specified period of time, or (2) Any undertaking in
3 writing in connection with the sale by a supplier of a consumer product to refund,
4 repair, replace or take other remedial action with respect to such product in the
5 event that such product fails to meet the specifications set forth in the undertaking,
6 which written affirmation, promise, or undertaking becomes part of the basis of the
7 bargain between a supplier and a buyer for purposes other than resale of such
8 product.” 16 C.F.R. § 702.1(c).

9 256. With all regards alleged in herein, Defendant was the “Warrantor” of
10 the class vehicles.” It gave and offered to give a written warranty as to each vehicle
11 to each class member. 16 C.F.R. §702.1(d).

12 257. In advertising and selling the class vehicles advertised and represented
13 that the class vehicles were sold with a warranty for four years or 50,000 miles,
14 whichever occurs first.

15 258. For example, and typical to all sales of class vehicles, Volkswagen
16 made available to prospective buyers such as class members the following
17 statement of its written warranty:



Coverage

New Vehicle Limited Warranty 4yrs. or 50,000 miles - Peace of mind when you need it

Ownership is easy with a 4-year or 50,000-mile (whichever occurs first) bumper-to-bumper limited warranty.³

1 [https://www.vw.com/en/owners-and-services/ownership-benefits/carefree-](https://www.vw.com/en/owners-and-services/ownership-benefits/carefree-coverage.html)
2 [coverage.html](https://www.vw.com/en/owners-and-services/ownership-benefits/carefree-coverage.html) (last visited May 16, 2025)

3 259. At no time during the Class Period did Volkswagen make available to
4 prospective purchasers or even just curious shopping consumers detailed
5 information about exclusions or limitations on its written express warranties
6 beyond these terms above.

7 260. In order to view a specific warranty guide—the document with all
8 restrictions and exclusions to be later asserted by Volkswagen—a consumer would
9 have to separately request a copy by specific VIN or other vehicle details, or
10 alternately order a copy of the guide.

11 261. Any limitations which Volkswagen asserts to limit or disclaim the 4-
12 year/50,000-mile warranty coverage offered with the Vehicles, were not disclosed,
13 advertised or presented to consumers, including Plaintiffs and class members, prior
14 to sale.

15 262. For all purposes in this case, Defendant was a “Seller” of the class
16 vehicles. 16 C.F.R. § 702.1(e). It offered the class vehicles for sale through its
17 restricted dealer network. Both the buying consumer and Defendant understood
18 that Volkswagen was selling the vehicle. The class vehicles were not being resold
19 and were being titled directly from Volkswagen to the buyer.

20 263. Defendant was also a “Supplier” as engaged in the business of making
21 the class vehicles directly or indirectly available to consumers. 16 C.F.R. §
22 702.1(f).

23 264. Defendant was a “Manufacturer” as well as it in fact made each class
24 vehicle. 16 C.F.R. § 702.1(g).

25 265. By federal law, Volkswagen’s attempts to impose restrictions or
26 exclusions of its express written warranty are legally ineffective where, as here, the
27 terms of restriction or exclusion within the written warranty were not made
28

1 available to the consumer (or prospective consumer) prior to sale of the vehicle at
2 the location of the sale to the consumer. *See e.g.* 15 U.S.C. § 2302.

3 266. Volkswagen did not itself or through its authorized dealers make the
4 text of its written warranty readily available for examination by the prospective
5 buyer, including Plaintiffs and each Class Member. It did not provide the warranty
6 guide or other warranty text to the Plaintiffs or other Class Members for request
7 and/or place signs reasonably calculated to elicit the prospective buyer's attention
8 in prominent locations in the dealerships, in its marketing materials or on its
9 website advising such prospective buyers of the availability of warranties upon
10 request. 16 C.F.R. § 700.3(a).

11 267. Further, Volkswagen did not provide its dealers with warranty
12 materials necessary for such dealers to comply with the requirements set forth in
13 the preceding paragraph. Volkswagen did not provide “a tag, sign, sticker, label,
14 decal or other attachment to the” class vehicles “which contains the full text of the
15 written warranty.” Volkswagen also did not provide its dealers “a notice, sign, or
16 poster disclosing the text of” its express written warranty. 16 C.F.R. § 700.3(b).

17 268. Volkswagen did not provide the express written warranty terms in an
18 accessible digital format on its Internet Web site, and as well did not provide
19 information to Plaintiffs, Class Members and other consumers informing them
20 before purchase.

21 269. As evidenced by Volkswagen's efforts to address and resolve the
22 Brake Defect, Volkswagen acknowledges that it is covered by an express written
23 warranty.

24 270. Volkswagen breached its express warranties to repair defects in
25 materials and workmanship of any part supplied by Volkswagen. Volkswagen has
26 not repaired, and has been unwilling to reasonably repair, the Brake Defect.

27 271. Furthermore, the express warranties to repair defective parts fail in
28 their essential purpose because the contractual remedy is insufficient to make

1 Plaintiffs and Class Members whole and because Volkswagen has failed and/or has
2 refused to adequately provide the promised remedies within a reasonable time.

3 272. Accordingly, recovery by Plaintiffs and the Class is not limited to the
4 express warranties of repair to parts defective in materials or workmanship, and
5 Plaintiffs seek all remedies as allowed by law.

6 273. Volkswagen was provided with notice of these issues by numerous
7 customer complaints regarding the Brake Defect before or within a reasonable
8 amount of time after the allegations of the Brake Defect became public.

9 274. In addition, the Plaintiffs named in this complaint have provided
10 Volkswagen with notice of claims they make on behalf of themselves and similarly
11 situated consumers. Although Volkswagen responded to the notice letter, it
12 suggested only a possibility of individual resolution rather than Class-wide relief.
13 Volkswagen's response makes clear that Plaintiffs' efforts for early resolution
14 were futile.

15 275. Plaintiffs were not required to notify Volkswagen of its breach and/or
16 were not required to do so because affording Volkswagen a reasonable opportunity
17 to cure any breach of written warranty would have been futile. Volkswagen was
18 also on notice of the Brake Defect from the complaints and service requests it
19 received from Class Members, from repairs and/or replacements of the Vehicles'
20 brakes or a component thereof, and through other internal sources.

21 276. Plaintiffs and other Class Members are entitled to statutory damages
22 and other legal and equitable relief including, at their election, the purchase price
23 of or a buyback of their Volkswagen vehicles, or the overpayment or diminution in
24 value of their Class Vehicles.

25 277. Plaintiffs and Class Members are also entitled to costs and reasonable
26 attorneys' fees.

1 **II. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

2 *U.C.C. § 2-314*

3 *(Cal. Com. Code § 2314; N.Y. UCC Sec. 2-314; 810 Ill. Comp. Stat. 5/2-314)*

4 *(Plaintiffs, individually, and on behalf of the Class and their respective*
5 *Subclasses)*

6 278. Plaintiffs incorporate by reference and realleges the preceding
7 paragraphs as if fully set forth herein.

8 279. Plaintiffs bring this cause of action individually and on behalf of their
9 respective Subclasses.

10 280. Volkswagen is and was at all relevant times a merchant with respect
11 to the Class Vehicles.

12 281. A warranty that the Class Vehicles were in merchantable condition
13 was implied by law in Class Vehicle transactions.

14 282. The Class Vehicles, when sold and at all times thereafter, were not
15 merchantable or fit for the ordinary purpose for which cars are used. Specifically,
16 they are inherently defective and dangerous due to the existence of the Brake
17 Defect.

18 283. Volkswagen was and/or is in actual or constructive privity with
19 Plaintiffs and all Class Members.

20 284. Plaintiffs had and continue to have sufficient direct dealings with
21 Volkswagen and/or its authorized dealers, franchisees, representatives, and agents
22 to establish any required privity of contract. Volkswagen's authorized dealers,
23 franchisees, representatives, and agents were not intended to be the ultimate
24 consumers of the Class Vehicles and have no rights under the warranty agreements
25 provided with the Class Vehicles. The warranty agreements were designed for and
26 intended to benefit only the ultimate purchasers and lessees of the Class Vehicles,
27 *i.e.*, Plaintiffs and Class Members.

1 285. Privity is not required to assert this claim because Plaintiffs and the
2 Class Members are intended third-party beneficiaries of contracts between
3 Volkswagen and its dealers, franchisees, representatives, and agents.

4 286. By extending express written warranties to end-user purchasers and
5 lessees, brought itself into privity with Plaintiffs and all Class Members.

6 287. Pursuant to each respective statute, the Class Vehicles owned or
7 leased by Plaintiffs Class Members were defectively designed and manufactured
8 and posed a serious and immediate safety risk to consumers and the public. The
9 Class Vehicles were subject to an implied warranty of merchantability, did not
10 comply with the warranty in that they were defective at the time of sale, and as a
11 proximate result of the Brake Defect the Plaintiffs and Class Members sustained
12 damages.

13 288. The Class Vehicles left Volkswagen's facilities and control with a
14 Defect caused by defective design incorporated into the manufacture of the Class
15 Vehicles. The Defect puts the consumers at a safety risk upon driving the Class
16 Vehicles. At all times relevant hereto, there was a duty imposed by law which
17 requires that a manufacturer or seller's product be reasonably fit for the ordinary
18 purposes for which such products are used, and that the product be acceptable in
19 trade for the product description. This implied warranty of merchantability is part
20 of the basis of the bargain between Volkswagen, on the one hand, and Plaintiffs
21 and Class Members, on the other.

22 289. Notwithstanding its duty, at the time of delivery Volkswagen
23 breached the implied warranty of merchantability in that the Class Vehicles
24 braking systems were defective and posed a serious safety risk at the time of sale,
25 would not pass without objection, are not fit for the ordinary purposes for which
26 such goods are used, and failed to conform to the standard performance of like
27 products used in the trade.

28

1 290. Volkswagen has not validly disclaimed, excluded, or modified the
2 implied warranties or duties described above, and any attempted disclaimer or
3 exclusion of the implied warranties was and is ineffectual.

4 291. Volkswagen knew, or should have known, that the Class Vehicles
5 posed a safety risk and contained the Brake Defect, and knew, or should have
6 known, of these breaches of implied warranties prior to sale or lease of the Class
7 Vehicles to Plaintiffs and Class Members.

8 292. As a direct and proximate result of Volkswagen's breaches of its
9 implied warranties, Plaintiffs and Class Members bought the Class Vehicles
10 without knowledge of the Brake Defect or their serious safety risks and purchased
11 unsafe products which could not be used for their intended use.

12 293. Plaintiffs and Class Members used the Class Vehicles in a manner
13 consistent with their intended use and performed each and every duty required
14 under the terms of the warranties, except as may have been excused or prevented
15 by the conduct of Volkswagen or by operation of law in light of Volkswagen's
16 unconscionable conduct.

17 294. Volkswagen had actual knowledge of, and received timely notice
18 regarding, the Brake Defect at issue in this litigation and, notwithstanding such
19 notice, failed and refused to offer an effective remedy.

20 295. In addition, Volkswagen received, on information and belief,
21 numerous consumer complaints and other notices from customers advising of the
22 Brake Defect associated with the braking systems equipped in the Class Vehicles.

23 296. By virtue of the conduct described herein and through this Complaint,
24 Volkswagen breached the implied warranty of merchantability.

25 297. As a direct and proximate result of Volkswagen's breaches of its
26 implied warranties, Plaintiffs and Subclass Members bought the Class Vehicles
27 without knowledge of the Brake Defect or their serious safety risks and purchased
28 unsafe products which could not be used for their intended use.

1 298. As a direct and proximate result of Volkswagen’s breach of its
2 implied warranties, Plaintiffs and Subclass Members have suffered economic
3 damages, including loss attributable to the diminished value of their Class
4 Vehicles, loss of use of their Class Vehicles and other tangible property, as well as
5 the monies spent and to be spent to repair and/or replace their brake pads, brake
6 rotors, or other components of their Vehicles’ braking system. Volkswagen was
7 unjustly enriched by keeping the profits for its unsafe products while never having
8 to incur the cost of repair, replacement or a recall.

9 **III. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY**
10 **ACT FOR BREACH OF EXPRESS WARRANTIES**

11 *(Cal. Civ. Code §§ 1791.2 & 1793.2)*

12 *(Plaintiffs Wright and Plaintiff Segarini, individually, and on behalf of the*
13 *California Subclass)*

14 299. Plaintiffs incorporate by reference and re-allege the preceding
15 paragraphs as if fully set forth herein.

16 300. Plaintiffs Wright and Plaintiff Segarini bring this cause of action
17 individually and on behalf of the California Subclass.

18 301. Plaintiffs and Class Members are “buyers” within the meaning of the
19 Song-Beverly Consumer Warranty Act (“SBCWA”). Cal. Civ. Code § 1791(b).

20 302. The Class Vehicles are “consumer goods” within the meaning of Cal.
21 Civ. Code § 1791(a).

22 303. Volkswagen is a “manufacturer” within the meaning of Cal. Civ.
23 Code § 1791(j).

24 304. Plaintiffs and Class Members bought or leased Volkswagen Class
25 Vehicles equipped with Volkswagen’s defective braking system.

26 305. Volkswagen made express warranties to Plaintiffs and Class Members
27 within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2 as set forth herein.
28

1 306. Specifically, in the course of selling and leasing the Class Vehicles,
2 Volkswagen expressly warranted in writing that the vehicles were covered by
3 certain warranties in Volkswagen’s “New Vehicle Limited Warranty” as described
4 herein. This express warranty states that it “covers any repair to correct a defect in
5 manufacturer’s material or workmanship (i.e., mechanical defects) ... Repairs
6 under this limited warranty are free of charge. Your Volkswagen dealer will repair
7 the defective part or replace it with a new or remanufactured Genuine Volkswagen
8 Part.”

9 307. As set forth herein in detail, the Class Vehicles are inherently
10 defective because they are equipped with Volkswagen’s defective braking system
11 which emits loud and distracting Squealing and/or Grinding sounds, triggers the
12 Proximity Alert sensors, as well as Erratic Function , when the Vehicles’ brakes
13 are applied (*see, supra*, ¶¶ 4-10).

14 308. The Brake Defect jeopardizes the safety of drivers and passengers of
15 Class Vehicles, and other drivers on the road, and substantially impairs the use,
16 value, and safety of the Class Vehicles to reasonable consumers like Plaintiffs and
17 Class Members.

18 309. Plaintiffs delivered the Class Vehicle to Volkswagen or its authorized
19 repair facility to repair the Brake Defect but Volkswagen failed and continues to
20 fail to make repairs to Plaintiffs' Class Vehicles under its Warranty.

21 310. The braking system equipped in the Class Vehicles is covered by
22 Volkswagen’s New Vehicle Limited Warranty.

23 311. The New Vehicle Limited Warranty as described was made part of the
24 basis of the bargain when Plaintiffs and Class Members bought or leased the Class
25 Vehicles.

26 312. Volkswagen breached its express warranties to repair defects in
27 materials and workmanship of any part supplied by Volkswagen. Volkswagen has
28 not repaired, and has been unwilling to reasonably repair, the Brake Defect.

1 313. Furthermore, the express warranties to repair defective parts fail in
2 their essential purpose because the contractual remedy is insufficient to make
3 Plaintiffs and Class Members whole and because Volkswagen has failed and/or has
4 refused to adequately provide the promised remedies within a reasonable time.

5 314. Accordingly, recovery by Plaintiffs and the Class is not limited to the
6 express warranties of repair to parts defective in materials or workmanship, and
7 Plaintiffs seek all remedies as allowed by law.

8 315. As a direct and proximate result of Volkswagen's breach of its express
9 warranties, Plaintiffs and Class Members received goods containing a dangerous
10 condition that substantially impairs the value of the goods sold to Plaintiffs and
11 Class Members, and have been damaged in an amount to be determined at trial.

12 316. Pursuant to Cal. Civ. Code. §§ 1793.2 & 1794, Plaintiffs and other
13 Class Members are entitled to damages and other legal and equitable relief
14 including, at their election, the purchase price of or a buyback of their Volkswagen
15 vehicles, or the overpayment or diminution in value of their Class Vehicles.

16 317. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and Class Members are
17 also entitled to costs and reasonable attorneys' fees.

18 **IV. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY**
19 **ACT FOR BREACH OF IMPLIED WARRANTIES**

20 *(Cal. Civ. Code §§ 1791.1 & 1792)*

21 *(Plaintiffs Wright and Plaintiff Segarini individually, and on behalf of the*
22 *California Subclass)*

23 318. Plaintiffs incorporate by reference and re-allege the preceding
24 paragraphs as if fully set forth herein.

25 319. Plaintiffs Wright and Plaintiff Segarini bring this cause of action
26 individually and on behalf of the California Subclass.

27 320. Plaintiffs and California Subclass members are “buyers” within the
28 meaning of the SBCWA. *See* Cal. Civ. Code § 1791(b).

1 321. The Class Vehicles are “consumer goods” within the meaning of Cal.
2 Civ. Code § 1791(a).

3 322. Volkswagen is a “manufacturer” within the meaning of Cal. Civ.
4 Code § 1791(j).

5 323. Volkswagen impliedly warranted to Plaintiffs and the other Class
6 Members that its Class Vehicles were “merchantable” within the meaning of Cal.
7 Civ. Code §§ 1791.1(a) & 1792.

8 324. In reality, the Class Vehicles do not possess those qualities that a
9 buyer would reasonably expect.

10 325. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of
11 merchantability” or “implied warranty that goods are merchantable” means that the
12 consumer goods meet each of the following: (1) Pass without objection in the trade
13 under the contract description. (2) Are fit for the ordinary purposes for which such
14 goods are used. (3) Are adequately contained, packaged, and labeled. (4) Conform
15 to the promises or affirmations of fact made on the container or label.

16 326. The Class Vehicles are not suitable for the market, and would not pass
17 without objection in the automotive industry and market because they are equipped
18 with Volkswagen’s defective braking system which emits loud and distracting
19 Squealing and/or Grinding sounds, triggering the Proximity Alert sensors, as well
20 as Erratic Function, when the Vehicles’ brakes are applied (*see, supra*, ¶¶ 4-10).

21 327. Volkswagen’s defective braking system makes the Class Vehicles
22 unsuitable for safe driving. The Class Vehicles are not in merchantable condition,
23 and are therefore, not fit for their ordinary purposes.

24 328. Furthermore, Class Vehicles are not adequately labeled because the
25 labeling fails to disclose the Brake Defect.

26 329. Volkswagen breached the implied warranty of merchantability by
27 manufacturing and selling Class Vehicles equipped with Volkswagen’s defective
28 braking system. Furthermore, the Brake Defect has caused Plaintiffs and other

1 Class Members to not receive the benefit of their bargain and have caused Class
2 Vehicles to depreciate in value.

3 330. The braking systems installed in the Class Vehicles were defective at
4 the time they left the possession of Volkswagen, as set forth above. The Class
5 Vehicles, when sold or leased and at all times thereafter, were not in merchantable
6 condition and not fit for their ordinary purpose of providing safe and reliable
7 transportation. The Class Vehicles contain an inherent defect in their braking
8 system and present an undisclosed safety risk to drivers, occupants, and others.
9 Thus, Volkswagen breached its implied duty of merchantability.

10 331. Defendant cannot disclaim its implied warranties as it knowingly sold
11 or leased a defective product.

12 332. Volkswagen knew, or should have known, that the Class Vehicles
13 posed a safety risk and were defective and knew, or should have known, of these
14 breaches of implied warranties prior to sale or lease of the Class Vehicles to
15 Plaintiffs and Class Members.

16 333. Plaintiffs and the other Class Members have had sufficient direct
17 dealings with Volkswagen and/or its authorized dealers, franchisees,
18 representatives, and agents to establish privity of contract between Volkswagen
19 and Plaintiffs and each of the other Class Members. Volkswagen's authorized
20 dealers, franchisees, representatives, and agents were not intended to be the
21 ultimate consumers of the Class Vehicles and have no rights under the warranty
22 agreements provided with the Class Vehicles. The warranty agreements were
23 designed for and intended to benefit only the ultimate purchasers and lessees of the
24 Class Vehicles, i.e., Plaintiffs and Class Members.

25 334. Nonetheless, privity is not required here because Plaintiffs and each of
26 the other Class Members are intended third-party beneficiaries of contracts
27 between Volkswagen and its dealers, and specifically, of Volkswagen's implied
28 warranties. The dealers were not intended to be the ultimate consumers of the

1 Class Vehicles and have no rights under the warranty agreements provided with
2 the Class Vehicles; the warranty agreements were designed for and intended to
3 benefit the consumers only.

4 335. In addition, by extending express written warranties to end-user
5 purchasers and lessees, Volkswagen brought itself into privity with Plaintiffs and
6 all Class Members.

7 336. Volkswagen has not validly disclaimed, excluded, or modified the
8 implied warranties or duties described above, and any attempted disclaimer or
9 exclusion of the implied warranties was and is ineffectual.

10 337. Plaintiffs and Class Members used the Class Vehicles, its braking
11 systems, in a manner consistent with their intended use and performed each and
12 every duty required under the terms of the warranties, except as may have been
13 excused or prevented by the conduct of Volkswagen or by operation of law in light
14 of Volkswagen's unconscionable conduct.

15 338. Volkswagen had actual knowledge of and received timely notice of
16 the Brake Defect at issue in this litigation and, notwithstanding such notice, failed
17 and refused to offer an effective remedy.

18 339. In addition, Volkswagen received, on information and belief,
19 numerous consumer complaints and other notices from customers advising of the
20 Brake Defect associated with the braking systems installed in the Class Vehicles.

21 340. As a direct and proximate result of Volkswagen's breach of the
22 implied warranty of merchantability, Plaintiffs and the other Class Members
23 received goods whose defective condition substantially renders them unsafe for
24 their intended purpose and impairs their value to Plaintiffs and the other Class
25 Members; Plaintiffs and Class Members have suffered damages and Volkswagen
26 was unjustly enriched by keeping the profits for its unsafe products while never
27 having to incur the cost of repair, replacement or a recall.

28

1 341. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and
2 Class Members are entitled to damages and other legal and equitable relief,
3 including, at their election, the purchase price of or a buyback of their Class
4 Vehicles, or the overpayment or diminution in value of their Class Vehicles.

5 342. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and Class Members are
6 also entitled to costs and reasonable attorneys' fees.

7 **V. VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**

8 *(Cal. Civ. Code § 1750, et seq.)*

9 *(California Plaintiffs individually, and on behalf of the California Subclass)*

10 343. Plaintiffs incorporate by reference and re-allege the preceding
11 paragraphs as if fully set forth herein.

12 344. California Plaintiffs bring this cause of action individually and on
13 behalf of the California Subclass.

14 345. Volkswagen's actions, representations and conduct violated the
15 CLRA because they extend to transactions that were intended to result and which
16 have resulted, in the sale or lease of goods to Plaintiffs and Class Members. Cal.
17 Civ. Code § 1770.

18 346. Defendant is a "person" as defined by Cal. Civ. Code § 1761(c).

19 347. Plaintiffs and California Subclass Members are "consumers" as
20 defined by Cal. Civ. Code §1761(d).

21 348. The Class Vehicles are "goods" within the meaning of Cal. Civ. Code
22 § 1761(a).

23 349. Volkswagen made numerous representations concerning the Class
24 Vehicles' specifications that were misleading, including marketing and advertising
25 the workmanship of Class Vehicles and the nature and extent of Volkswagen's
26 Warranty.
27
28

1 350. Volkswagen also omitted material facts about the Class Vehicles,
2 namely the Brake Defect.

3 351. In purchasing or leasing Class Vehicles, Plaintiffs and Class Members
4 were deceived by Volkswagen's failure to disclose that the Class Vehicles contain
5 the Brake Defect, resulting in expensive damage for which Volkswagen will not
6 provide coverage under its express or implied warranties.

7 352. Volkswagen violated the CLRA in at least the following respects:

- 8 a. in violation of § 1770(a)(5), Volkswagen represented that the
9 Class Vehicles have approval, characteristics, and uses or
10 benefits which they do not have;
- 11 b. in violation of § 1770(a)(7), Volkswagen represented that the
12 Class Vehicles are of a particular standard, quality or grade,
13 when they are of another;
- 14 c. in violation of Section 1770(a)(9), Volkswagen has advertised
15 the Class Vehicles as safe with the intent not to sell them as
16 advertised; and
- 17 d. in violation of § 1770(a)(16), Volkswagen represented that the
18 goods have been supplied in accordance with previous
19 representations, when they were not.

20 353. Volkswagen violated the CLRA by representing the Class Vehicles
21 were safe and free of defects when they were not and Defendant knew, or should
22 have known, that the representations and advertisements were false and
23 misleading.

24 354. Volkswagen had a duty to disclose the Brake Defect because
25 Volkswagen had exclusive knowledge of the Brake Defect prior to making sales
26 and leases of Class Vehicles and because Volkswagen made partial representations
27 about the quality of Class Vehicles but failed to fully disclose that the Brake
28 Defect plagues Class Vehicles.

1 355. Specifically, Volkswagen was under a duty to Plaintiffs and Class
2 Members to disclose the defective nature of the Class Vehicles because:

- 3 a. Volkswagen was in a superior position to know the true state of
4 facts about the Brake Defect—a defect that can pose a safety
5 risk—and associated repair costs in the Class Vehicles;
- 6 b. Plaintiffs and Class Members could not reasonably have been
7 expected to learn or discover that the Class Vehicles have a
8 defect that affects operability of Class Vehicles and creates
9 safety concerns until manifestation of the Brake Defect;
- 10 c. Volkswagen knew that Plaintiffs and the Class Members could
11 not reasonably have been expected to learn or discover the
12 Brake Defect until manifestation of the Brake Defect; and
- 13 d. Volkswagen made incomplete representations about the safety
14 and reliability of Class Vehicles generally, while withholding
15 material facts from Plaintiffs and Class Members that
16 contradicted these representations.

17 356. The facts concealed or not disclosed by Volkswagen to Plaintiffs and
18 Class Members are material in that a reasonable consumer would have considered
19 them to be important in deciding whether to purchase or lease Class Vehicles or
20 pay a lesser price.

21 357. Had Plaintiffs and Class Members known about the defective nature
22 of the Class Vehicles, they would not have purchased or leased the Class Vehicles,
23 or they would have paid less.

24 358. A vehicle made by a reputable manufacturer of safe vehicles is worth
25 more than a comparable vehicle made by a disreputable manufacturer of unsafe
26 vehicles that conceals defects rather than promptly remedies them.

27 359. Volkswagen has known of the defective braking system since at least
28 when it began selling Class Vehicles which generated numerous consumer

1 complaints made to the NHTSA. However, Volkswagen continued to allow
2 unsuspecting new and used consumers to buy or lease the Class Vehicles and
3 allowed them to continue driving dangerous vehicles.

4 360. Defendant intended that Plaintiffs and Class Members would, in the
5 course of their decision to expend monies in purchasing, leasing and/or repairing
6 Class Vehicles, reasonably rely upon the misrepresentations, misleading
7 characterizations, warranties and material omissions concerning the quality of the
8 Class Vehicles and its braking system with respect to materials, workmanship,
9 design and/or manufacture.

10 361. Plaintiffs and Class Members reasonably relied on Volkswagen's
11 misrepresentations and omissions in purchasing or leasing Class Vehicles.

12 362. Plaintiffs and Class Members have been damaged as a proximate
13 result of Defendant's violations of the CLRA and have suffered actual damages as
14 a direct and proximate result of purchasing or leasing defective Class Vehicles.

15 363. Prior to filing this Complaint, Plaintiffs served notice letters on
16 Volkswagen, notifying Volkswagen of Plaintiffs' damages and the Brake Defect in
17 their Class Vehicles, in compliance with Cal. Civ. Code §1782(a). Plaintiffs have
18 made pre-suit attempts to remedy the Brake Defect in their Class Vehicles, to no
19 avail.

20 364. Under Cal. Civ. Code § 1780(a), Plaintiffs and Class Members seek
21 actual damages, an order enjoining Volkswagen from further engaging in the
22 unfair and deceptive acts and practices alleged herein, restitution, attorney's fees
23 and costs.

24 365. Under Cal. Civ. Code § 1780(b), Plaintiffs and Class Members seek
25 an additional award against Volkswagen of up to \$5,000 for each Class Member
26 who qualifies as a "senior citizen" or "disabled person" under the CLRA.
27 Volkswagen knew or should have known that its conduct was directed to one or
28 more Class Members who are senior citizens or disabled persons. Volkswagen's

1 conduct caused one or more of these senior citizens or disabled persons to suffer a
2 substantial loss of property set aside for retirement or for personal or family care
3 and maintenance, or assets essential to the health or welfare of the senior citizen or
4 disabled person. One or more Class Members who are senior citizens or disabled
5 persons are substantially more vulnerable to Volkswagen's conduct because of age,
6 poor health or infirmity, impaired understanding, restricted mobility, or disability,
7 and each of them suffered substantial physical, emotional, or economic damage
8 resulting from Volkswagen's conduct.

9 366. Pursuant to Cal. Civ. Code § 3345, Plaintiffs and Class Members seek
10 an award of trebled damages on behalf of all senior citizens and disabled persons
11 comprising the Class as a result of Volkswagen's conduct alleged herein.

12 367. Pursuant to CLRA Section 1780(a)(4), Plaintiffs and Class Members
13 also seek punitive damages against Volkswagen because it carried out
14 reprehensible conduct with willful and conscious disregard of the rights and safety
15 of others, subjecting Plaintiffs and Class Members to potential cruel and unjust
16 hardship as a result. *See* Cal. Civ. Code § 1780(a)(4). Volkswagen intentionally
17 and willfully deceived Plaintiffs on life-or-death matters, and concealed material
18 facts that only Volkswagen knew. Volkswagen's unlawful conduct likewise
19 constitutes malice, oppression, and fraud warranting exemplary damages under
20 Cal. Civ. Code § 3294.

21 368. Plaintiffs further seek any other just and proper relief available under
22 the CLRA.

23 **VI. VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**

24 *(Cal. Bus. Prof. Code §§ 17200, et seq.)*

25 *(California Plaintiffs individually, and on behalf of the California Subclass)*

26 369. Plaintiffs repeat and re-allege the allegations above as if fully set forth
27 herein.
28

1 370. California Plaintiffs bring this claim on behalf of themselves and
2 California Subclass.

3 371. The UCL broadly prohibits acts of “unfair competition,” including
4 any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive,
5 untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

6 372. A business act or practice is “unfair” under the UCL if the reasons,
7 justifications and motives of the alleged wrongdoer are outweighed by the gravity
8 of the harm to the alleged victims.

9 373. Volkswagen has engaged in “unfair” business practices and/or acts by
10 falsely representing the qualities of its express and implied warranties for Class
11 Vehicles; by misrepresenting the workmanship of its Class Vehicles; by failing to
12 disclose the Brake Defect to consumers; and by refusing to provide warranty
13 coverage for the Brake Defect.

14 374. The acts and practices alleged herein are unfair because they caused
15 Plaintiffs and Class Members, and reasonable consumers like them, to believe that
16 Volkswagen was offering something of value that did not, in fact, exist.
17 Volkswagen intended for Plaintiffs and Class Members to rely on its
18 representations. As a result, purchasers and lessees, including Plaintiffs, reasonably
19 perceived that they were receiving Class Vehicles with certain benefits. This
20 perception induced reasonable purchasers to purchase or lease Class Vehicles,
21 which they would not otherwise have done had they known the truth.

22 375. The gravity of the harm to Plaintiffs and Class Members resulting
23 from these unfair acts and practices outweighs any conceivable reasons,
24 justifications and/or motives of Volkswagen for engaging in such deceptive acts
25 and practices. By committing the acts and practices alleged above, Volkswagen
26 engaged in unfair business practices within the meaning of the UCL.

27 376. A business act or practice is also “fraudulent” under the UCL if it is
28 likely to deceive members of the consuming public. Volkswagen engaged in a

1 uniform course of conduct which was intended to, and did in fact, deceive
2 Plaintiffs and Class Members and induced them into buying Class Vehicles.
3 Volkswagen’s course of conduct and marketing practices were fraudulent within
4 the meaning of the UCL because they deceived Plaintiffs, and were likely to
5 deceive members of the Class, into believing that they were entitled to a benefit
6 that did not, in fact, exist. Volkswagen’s misrepresentations are likely to deceive
7 and have deceived the public.

8 377. A business act or practice is also “unlawful” under the UCL if it
9 violates any other law or regulation. Volkswagen has violated the CLRA, and other
10 laws as set forth herein.

11 378. Volkswagen has engaged in unfair competition and unfair, unlawful
12 and fraudulent business practices by the conduct, statements, and omissions
13 described above, and by knowingly and intentionally concealing from Plaintiffs
14 and Class Members that the Class Vehicles suffer from the Brake Defect (and the
15 costs, risks, and diminished value of the Vehicles as a result of this problem).

16 379. Volkswagen should have disclosed the Brake Defect and this
17 information because Volkswagen was in a superior position to know the true facts
18 related to the Brake Defect, and Plaintiffs and Class Members could not reasonably
19 be expected to learn or discover the true facts related to the Brake Defect. Plaintiffs
20 and Class Members relied upon Volkswagen’s express representations and
21 promises, as well as omissions, regarding the workmanship of and the warranties
22 for the Class Vehicles, believed them to be true, and would not have agreed to
23 purchase or lease Class Vehicles had they known the truth about the Brake Defect.

24 380. Therefore, the omissions and acts of concealment, fraud, and deceit by
25 Volkswagen pertained to information that was material to Plaintiffs and the Class
26 Members, as it would have been to all reasonable consumers.

27 381. Volkswagen had a duty to disclose the Brake Defect because
28 Volkswagen had exclusive knowledge of the Brake Defect prior to making sales

1 and leases of Class Vehicles and because Volkswagen made partial representations
2 about the quality of Class Vehicles, but failed to fully disclose that the Brake
3 Defect plagues Class Vehicles.

4 382. In failing to disclose that Class Vehicles contain the Brake Defect, the
5 true nature of the quality and workmanship of Class Vehicles, and suppressing
6 other material facts from Plaintiffs and Class Members, Volkswagen breached its
7 duties to disclose these facts, violated the UCL, and caused injuries to Plaintiffs
8 and Class Members.

9 383. Plaintiffs and Class Members acted reasonably when they relied on
10 Volkswagen's misrepresentations and omissions in purchasing or leasing Class
11 Vehicles—reasonably believing these were true and lawful.

12 384. The injuries suffered by Plaintiffs and the Class Members greatly
13 outweigh any potential countervailing benefit to consumers or to competition, nor
14 are they injuries that Plaintiffs and the Class Members should have reasonably
15 avoided.

16 385. Through its fraudulent, unfair, and unlawful acts and practices,
17 Volkswagen has improperly obtained money from Plaintiffs and the Class.

18 386. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts
19 or practices by Volkswagen relating to the Brake Defect in Class Vehicles and
20 from violating the UCL in the future by selling Class Vehicles with the Brake
21 Defect.

22 387. Plaintiffs and Class Members also seek to obtain restitutionary
23 disgorgement of all monies and revenues generated as a result of such practices,
24 require notice of this dangerous condition be given to the Class, and all other relief
25 allowed under Cal. Bus. & Prof. Code § 17200.

1 **VII. VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**

2 *(N.Y. Gen. Bus. Law § 349)*

3 *(New York Plaintiffs, individually, and on behalf of the New York Subclass)*

4
5 388. Plaintiffs incorporate by reference and re-alleges the preceding
6 paragraphs as if fully set forth herein.

7 389. New York Plaintiffs bring this cause of action individually and on
8 behalf of the New York Subclass.

9 390. New York’s General Business Law § 349 makes unlawful
10 “[d]eceptive acts or practices in the conduct of any business, trade or commerce.”

11 391. By failing to disclose and actively concealing the dangers and risks
12 posed by the Class Vehicles and/or the defective braking system installed in them,
13 Defendants engaged in deceptive acts or practices prohibited by the New York
14 General Business Law § 349, including: (i) representing that its vehicles and their
15 braking system had characteristics, uses, or benefits which they do not have; (ii)
16 advertising its goods with intent not to sell them as advertised; (iii) representing
17 that its vehicles and braking system are of a particular standard, quality, or grade
18 when they are not; (iv) representing that a transaction conferred or involved rights,
19 remedies, or obligations which they do not; and (v) representing that its goods have
20 been supplied in accordance with a previous representation when they have not.

21 392. Defendant’s actions as set forth above occurred in the conduct of trade
22 or commerce.

23 393. In the course of their business, Defendant failed to disclose and
24 actively concealed the dangers and risks posed by the Class Vehicles and/or the
25 defective braking system installed in them as described herein and otherwise
26 engaged in activities with a tendency or capacity to deceive.

27 394. Defendant also engaged in unlawful trade practices by employing
28 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,

1 suppression or omission of any material fact with intent that others rely upon such
2 concealment, suppression or omission, in connection with the sale of the Class
3 Vehicles and/or the defective braking system installed in them.

4 395. Complaints to the NHTSA, which Volkswagen monitors with respect
5 to its vehicles, show that drivers were reporting the problem with the Vehicles'
6 braking systems as early as 2021. Further Volkswagen uses a variety of other
7 means to track data about how its vehicles are performing after they are sold,
8 including through tracking complaints, warranty claims, replacement parts data,
9 and other aggregated data sources.

10 396. Defendant's unfair or deceptive acts or practices, including these
11 concealments, and omissions of material facts, had a tendency or capacity to
12 mislead, tended to create a false impression in consumers, were likely to and did in
13 fact deceive reasonable consumers, including Plaintiff, about the true safety and
14 reliability of Class Vehicles and/or the defective braking system installed in them,
15 and the true value of the Class Vehicles.

16 397. Defendant intentionally and knowingly misrepresented material facts
17 regarding the Class Vehicles and/or the defective braking system installed in them
18 with an intent to mislead Plaintiffs and Class Members.

19 398. To protect their profits and to avoid remediation costs and a public
20 relations nightmare, Defendant concealed the dangers and risks posed by the
21 defective braking system installed in the Class Vehicles, and allowed unsuspecting
22 new and used car purchasers to continue to buy/lease the Class Vehicles, and
23 allowed them to continue driving dangerous vehicles.

24 399. Defendant owed Plaintiffs and the Class Members a duty to disclose
25 the true safety and reliability of the Class Vehicles and/or the defective braking
26 system installed in them because Defendant: (a) possessed exclusive knowledge of
27 the dangers and risks posed by the foregoing; (b) intentionally concealed the
28 foregoing from Plaintiffs; and/or (c) made incomplete representations about the

1 safety and reliability of the foregoing generally, while withholding material facts
2 from Plaintiffs and Class Members that contradicted these representations.

3 400. Defendant’s failure to disclose and active concealment of the dangers
4 and risks posed by the defective braking system in Class Vehicles were material to
5 Plaintiffs and Class Members. A vehicle made by a reputable manufacturer of safe
6 vehicles is worth more than an otherwise comparable vehicle made by a
7 disreputable manufacturer of unsafe vehicles that conceals defects rather than
8 promptly remedies them.

9 401. Plaintiffs and the Class Members suffered ascertainable loss caused
10 by Defendant’s misrepresentations and its failure to disclose material information.
11 Had they been aware of the defective braking system installed in the Class
12 Vehicles, Plaintiffs and the Class Members either would have paid less for their
13 vehicles or would not have purchased or leased them at all. Plaintiffs and the Class
14 Members did not receive the benefit of their bargain as a result of Defendant’s
15 misconduct.

16 402. Defendant’s violations present a continuing risk to Plaintiffs, the Class
17 Members, as well as to the general public. Defendant’s unlawful acts and practices
18 complained of herein affect the public interest.

19 403. Plaintiffs and the other Class Members were injured as a result of
20 Defendant’s conduct in that Plaintiffs and the other Class Members overpaid for
21 their Class Vehicles and did not receive the benefit of their bargain, and their Class
22 Vehicles have suffered a diminution in value. These injuries are the direct and
23 natural consequence of Volkswagen’s misrepresentations and omissions.

1 **VIII. VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**

2 *(N.Y. Gen. Bus. Law § 350)*

3 *(New York Plaintiffs, individually, and on behalf of the New York Subclass)*

4
5 404. Plaintiffs reference and reallege the paragraphs above as if fully set
6 forth herein.

7 405. New York Plaintiffs bring this cause of action individually and on
8 behalf of the New York Subclass.

9 406. New York’s General Business Law § 350 makes unlawful “[f]alse
10 advertising in the conduct of any business, trade or commerce[.]” False advertising
11 includes “advertising, including labeling, of a commodity ... if such advertising is
12 misleading in a material respect,” taking into account “the extent to which the
13 advertising fails to reveal facts material in the light of ...representations [made]
14 with respect to the commodity....” N.Y. Gen. Bus. Law § 350-a.

15 407. Volkswagen caused to be made or disseminated through New York,
16 through advertising, marketing, and other publications, statements that were untrue
17 or misleading, and which were known, or which by the exercise of reasonable care
18 should have been known to Volkswagen, to be untrue and misleading to
19 consumers, including Plaintiffs and the other Class Members.

20 408. Volkswagen has violated N.Y. Gen. Bus. Law § 350 because the
21 misrepresentations and omissions regarding the Class Vehicles and/or the defective
22 braking system installed in them, as described above, which was material and
23 likely to deceive a reasonable consumer.

24 409. Plaintiffs and the other Class Members have suffered injury, including
25 the loss of money or property, as a result of Volkswagen’s false advertising. In
26 purchasing or leasing their Class Vehicles, Plaintiffs and the other Class Members
27 relied on the misrepresentations and/or omissions of Volkswagen with respect to
28 the safety, quality, functionality, and reliability of the Class Vehicles and/or the

1 defective braking system installed in them. Volkswagen’s representations turned
2 out to be untrue because the defects described within renders the Class Vehicles
3 and/or the panoramic braking system installed in them to spontaneously shatter, as
4 described hereinabove. Had Plaintiffs and the other Class Members known this,
5 they would not have purchased or leased their Class Vehicles and/or paid as much
6 for them.

7 410. Accordingly, Plaintiffs and the other Class Members overpaid for
8 their Class Vehicles and did not receive the benefit of the bargain for their Class
9 Vehicles, which have also suffered diminution in value.

10 411. Plaintiffs, individually and on behalf of the other Class Members,
11 request that this Court enter such orders or judgments as may be necessary to
12 enjoin Volkswagen from continuing their unfair, unlawful and/or deceptive
13 practices. Plaintiffs and the other Class Members are also entitled to recover their
14 actual damages or \$500, whichever is greater. Because Volkswagen acted willfully
15 or knowingly, Plaintiffs and the other Class Members are entitled to recover three
16 times actual damages, up to \$10,000.

17 **IX. VIOLATIONS OF ILLINOIS CONSUMER FRAUD & DECEPTIVE**
18 **PRACTICES ACT**

19 *(815 Ill. Comp. Stat. 505/1, et seq.)*

20 *(Illinois Plaintiff, individually, and on behalf of the Illinois Subclass)*

21 412. Plaintiffs incorporate by reference and realleges the preceding
22 paragraphs as if fully set forth herein.

23 413. Illinois Plaintiffs bring this cause of action individually and on behalf
24 of the Illinois Subclass.

25 414. Plaintiffs assert a claim under Illinois’s Consumer Fraud and
26 Deceptive Business Practices Act (“CFDBPA”), which makes it unlawful to
27 engage in “[u]nfair methods of competition and unfair or deceptive acts or
28 practices, including but not limited to the use or employment of any deception

1 fraud, false pretense, false promise, misrepresentation or the concealment,
2 suppression or omission of any material fact, with intent that others rely upon the
3 concealment, suppression or omission of such material fact, or the use or
4 employment of any practice described in Section 2 of the ‘Uniform Deceptive
5 Trade Practices Act’ ... in the conduct of any trade or commerce ... whether any
6 person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.²

7 415. Volkswagen developed, manufactured, marketed and sold the
8 defective Class Vehicles containing the Brake Defective braking systems as
9 alleged herein. Volkswagen developed, manufactured, marketed and sold the Class
10 Vehicles despite knowledge of the Brake Defect and that the Class Vehicles posed
11 a serious safety risk to consumers like Plaintiffs and Subclass members.

12 416. Volkswagen’s actions and omissions in selling and leasing its Class
13 Vehicles as safe for the road despite knowing that the Class Vehicles posed a
14 serious safety risk to consumers, failing to disclose the Brake Defect and safety
15 risks known to Volkswagen but hidden from the consumer, and Volkswagen’s
16 knowing concealment of the defective Class Vehicles’ unreasonable safety risks,
17 constitute “deception fraud, false pretense, false promise, [and] misrepresentation”
18 as well as “concealment, suppression [and] omission of a[] material fact, with

19 _____
20 ² Illinois’s CFDBPA states, in relevant part, that “[a] person engages in a deceptive
21 trade practice when, in the course of his or her business, vocation, or occupation,
the person: ...

- 22 (2) causes likelihood of confusion or of misunderstanding as to the ...
certification of goods ...;
23 (5) represents that goods ... have ... characteristics ... uses, [or] benefits ...
that they do not have...;
24 (7) represents that goods ... are of a particular standard, quality, or grade ...
25 if they are of another; ...
26 (9) advertises goods or services with intent not to sell them as advertised; ...
[or]
27 (12) engages in any other conduct which similarly creates a likelihood of
28 confusion or misunderstanding.”

815 ILCS 510/2(a).

1 intent that [Plaintiffs and Class Members] rely upon the concealment, suppression
2 or omission of such material fact” in violation of the CFDBPA. 815 ILCS 505/2.
3 Volkswagen’s unfair and deceptive practices alleged herein also constitute several
4 practices prohibited by the Uniform Deceptive Trade Practices Act, including
5 subparts (2), (5), (7), (9), and (12). 815 ILCS 510/2. Volkswagen’s practices are
6 illegal, unfair or deceptive acts or practices in the conduct of trade or commerce
7 and are inherently deceptive. Volkswagen’s practices alleged herein offend public
8 policy and are immoral, unethical, oppressive, and unscrupulous.

9 417. Volkswagen violated the CFDBPA not only when it sold the Class
10 Vehicles as safe for use by consumers, but also when it failed to disclose to
11 Plaintiffs and Subclass members that the Class Vehicles had a Defect that posed a
12 serious safety risk to consumers and the public, despite Volkswagen’s knowledge
13 that the Class Vehicles posed such a risk to Plaintiffs and Subclass members.

14 418. Volkswagen engaged in deceptive trade practices, in violation of the
15 CFDBPA, including by creating a likelihood of confusion or misunderstanding as
16 to the characteristics, quality, uses, benefits, approval, or certification of the Class
17 Vehicles, using deceptive representations in connection with the Class Vehicles,
18 representing that the Class Vehicles have approval, characteristics, uses, benefits,
19 or qualities that they do not have, representing that Class Vehicles meet a
20 particular standard, quality, or grade when they are not, advertising Class Vehicles
21 as having certain qualities, uses, and benefits even though Volkswagen intended to
22 sell them other than as advertise, knowingly making false or misleading statements
23 of fact concerning the need for parts, replacement, or repair service regarding the
24 Brake Defect and defective braking systems, and by selling new Class Vehicles
25 without disclosing the Brake Defect which constitutes material damage to a motor
26 vehicle.

27 419. Volkswagen’s deceptive trade practices were designed to induce
28 Plaintiffs and Subclass members to purchase the Class Vehicles containing the

1 Brake Defect and to avoid the cost of replacing, repairing or recalling the Class
2 Vehicles already in use across the United States. Volkswagen's violations of the
3 CFDBPA were designed to conceal, and Volkswagen failed to disclose, material
4 facts about the Brake Defect and unreasonable safety risks in the Class Vehicles in
5 order to induce Plaintiffs and Subclass members to purchase the Class Vehicles
6 and in order to avoid the business cost of replacing, repairing and/or recalling the
7 Class Vehicles.

8 420. By engaging in the unfair and deceptive conduct described herein,
9 Volkswagen actively concealed and failed to disclose material facts about the
10 defective Class Vehicles.

11 421. The omissions set forth above regarding the Class Vehicles are
12 omissions of material facts that a reasonable person would have considered
13 important in deciding whether or not to purchase a Class Vehicle. Indeed, no
14 reasonable consumer would have knowingly bought or leased a Class Vehicle for
15 use on the road, or otherwise, if that consumer had known that the product had a
16 serious Defect that posed a safety risk and that the Brake Defect caused the Class
17 Vehicles to lose power in the normal course of use.

18 422. Volkswagen's acts were intended to be deceptive and/or fraudulent,
19 namely to market, distribute and sell the Class Vehicles and to avoid the expense
20 of replacing, repairing and/or recalling Class Vehicles across the United States.

21 423. Plaintiffs and Subclass members suffered injury in-fact as a direct
22 result of Volkswagen's violations of the CFDBPA in that they have paid a
23 premium for Class Vehicles that are equipped with Volkswagen's defective
24 braking system and that pose an immediate safety risk to consumers and the public.
25 Plaintiffs and Illinois Subclass members did not receive the benefit of the bargain
26 they made when purchasing or leasing their Class Vehicles.

27 424. Plaintiffs and Illinois Subclass members have also been denied the use
28 of their Class Vehicles, expended money on replacement and repairs, and suffered

1 unreasonable diminution in value of their Class Vehicles as a result of
2 Volkswagen's conduct alleged herein.

3 425. Had Volkswagen disclosed the true quality, nature and defects of the
4 Class Vehicles, Plaintiffs and Subclass members would not have purchased the
5 Class Vehicles or would have paid less.

6 426. To this day, Volkswagen continues to violate the CFDBPA by
7 concealing the defective nature of the Class Vehicles in failing to notify customers,
8 in failing to issue a recall, and in collecting the profits from costly repairs and
9 replacements.

10 427. Volkswagen owed Plaintiffs and Subclass Members a duty to disclose
11 the true safety and reliability of the Class Vehicles and/or the defective braking
12 system installed in them because Volkswagen: (a) possessed exclusive knowledge
13 of the dangers and risks posed by the foregoing; (b) intentionally concealed the
14 foregoing from Plaintiffs and Subclass Members; and/or (c) made incomplete
15 representations about the safety and reliability of the foregoing generally, while
16 withholding material facts from Plaintiff and Subclass Members that contradicted
17 these representations.

18 428. Plaintiffs and Subclass Members reasonably relied on Volkswagen's
19 misrepresentations and omissions, and expected that the Class Vehicles would not
20 be equipped with a defective braking system, such that it would render the Class
21 Vehicles unsafe and not fit for their ordinary use. Further, Plaintiff and Subclass
22 Members reasonably expected Volkswagen would honor its warranty obligations,
23 as represented to them at the time they purchased or leased their Class Vehicles.

24 429. Prior to filing this Complaint, on June 4, 2024, Plaintiffs served
25 demand letters on Volkswagen, notifying Volkswagen of Plaintiffs' damages and
26 the Brake Defect in their Class Vehicles and demanding relief, in compliance with
27 815 ILCS 505/10a.

28

1 430. Plaintiffs and Subclass Members have been damaged by these
2 violations of the CFDBPA. The damages should be trebled, and Plaintiffs and
3 Subclass members should be allowed to recover attorneys' fees pursuant to 815
4 ILCS 505/10a.

5 **X. FRAUD/FRAUDULENT CONCEALMENT**

6 *(Plaintiffs, individually, and on behalf of the Class)*

7 431. Plaintiffs incorporate by reference and realleges the preceding
8 paragraphs as if fully set forth herein.

9 432. This claim is brought by Plaintiffs individually and on behalf of Class
10 Members.

11 433. Volkswagen concealed and suppressed material facts concerning the
12 performance and quality of the Class Vehicles—namely, the Brake Defect—and
13 the quality of the Volkswagen brand. Specifically, Volkswagen knew (or should
14 have known) of the Brake Defect but failed to disclose it prior to or at the time it
15 sold or leased Class Vehicles to consumers. Volkswagen did so to boost sales and
16 leases of Class Vehicles.

17 434. Plaintiffs and Class Members had no way of knowing that
18 Volkswagen's representations were false and gravely misleading, or that
19 Volkswagen had omitted imperative details. Plaintiffs and Class Members did not,
20 and could not, unravel Volkswagen's deception on their own.

21 435. Volkswagen had a duty to disclose the true performance of Class
22 Vehicles and the Brake Defect because knowledge thereof and the details related
23 thereto were known and/or accessible only to Volkswagen; Volkswagen had
24 superior knowledge and access to the facts; and knew the facts were not known to,
25 or reasonably discoverable, by Plaintiffs and the Class. Volkswagen also had a
26 duty to disclose because they made many general affirmative representations about
27 the qualities of the Class Vehicles.
28

1 436. On information and belief, Volkswagen still has not made full and
2 adequate disclosures, and continues to defraud consumers by concealing material
3 information regarding the Brake Defect and the performance and quality of Class
4 Vehicles.

5 437. Plaintiffs and the Class were unaware of these omitted material facts
6 and would not have acted as they did if they had known of the concealed and/or
7 suppressed facts, in that they would not have purchased or leased the Class
8 Vehicles. The actions of Plaintiffs and Class Members were justified. Volkswagen
9 was in exclusive control of the material facts and such facts were not known to the
10 public, Plaintiff, or Class Members.

11 438. Plaintiffs and Class Members relied upon Volkswagen's
12 representations and omissions regarding the quality of Class Vehicles and the
13 Brake Defect in deciding to purchase or lease Class Vehicles.

14 439. Because of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage because they did not receive the value of the price
16 paid for their Class Vehicles. Plaintiffs and Class Members would have paid less
17 for Class Vehicles had they known about the Brake Defect, or they would not have
18 purchased or leased Class Vehicles at all.

19 440. Accordingly, Volkswagen is liable to Plaintiffs and Class Members
20 for damages in an amount to be proven at trial.

21 441. Volkswagen's actions and omissions were done maliciously,
22 oppressively, deliberately, with intent to defraud, and in reckless disregard of
23 Plaintiffs' and the Class's rights and well-being, to enrich Volkswagen.
24 Defendant's conduct warrants an assessment of punitive damages in an amount
25 sufficient to deter such conduct in the future, which amount is to be determined
26 according to proof.

27 442. Furthermore, as the intended and expected result of its fraud and
28 conscious wrongdoing, Volkswagen has profited and benefited from Plaintiffs' and

1 Class Members' purchase of Class Vehicles containing the Brake Defect.
2 Volkswagen has voluntarily accepted and retained these profits and benefits with
3 full knowledge and awareness that, as a result of Volkswagen's misconduct alleged
4 herein, Plaintiffs and Class Members were not receiving Vehicles of the quality,
5 nature, fitness, or value that had been represented by Volkswagen, and that a
6 reasonable consumer would expect.

7 443. Volkswagen has been unjustly enriched by its fraudulent, deceptive,
8 and otherwise unlawful conduct in connection with the sale and lease of Class
9 Vehicles and by withholding benefits from Plaintiffs and Class Members at the
10 expense of these parties. Equity and good conscience militate against permitting
11 Volkswagen to retain these profits and benefits, and Volkswagen should be
12 required to make restitution of its ill-gotten gains resulting from the conduct
13 alleged herein.

14 **REQUESTS FOR RELIEF**

15 444. WHEREFORE, Plaintiffs, individually and on behalf of the other
16 members of the Class and Subclasses proposed in this Complaint, respectfully
17 request that the Court enter judgment in their favor and against Volkswagen, as
18 follows:

- 19 a. Declaring that this action is a proper class action, certifying the
20 Class as requested herein, designating Plaintiffs as Class and
21 Subclass Representatives and appointing the undersigned
22 counsel as Class Counsel;
- 23 b. Ordering Volkswagen to pay actual damages (and no less than
24 the statutory minimum damages) and equitable monetary relief
25 to Plaintiffs and the other members of the Class and Subclasses;
- 26 c. Ordering Volkswagen to pay punitive damages, as allowable by
27 law, to Plaintiffs and the other members of the Class and
28 Subclasses;

- 1 d. Ordering Volkswagen to pay statutory damages, as allowable
- 2 by the statutes asserted herein, to Plaintiffs and the other
- 3 members of the Class and Subclass;
- 4 e. Awarding injunctive relief as permitted by law or equity,
- 5 including enjoining Volkswagen from continuing the unlawful
- 6 practices as set forth herein, and ordering Defendant to engage
- 7 in a corrective recall campaign;
- 8 f. Ordering Volkswagen to pay attorneys' fees and litigation costs
- 9 incurred by Plaintiffs for the benefit of the Class and
- 10 Subclasses;
- 11 g. Ordering Volkswagen to pay both pre- and post-judgment
- 12 interest on any amounts awarded; and
- 13 h. Ordering such other and further relief as may be just and
- 14 proper.

15 **DEMAND FOR JURY TRIAL**

16 445. Plaintiffs, individually and all others similarly situated, hereby
17 demand a trial by jury as to all matters so triable.

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1 Dated: May 16, 2025

Respectfully submitted,

2 **MILBERG COLEMAN BRYSON**
3 **PHILLIPS GROSSMAN PLLC**

4 */s/Leland H. Belew*

5 Leland H. Belew (SBN 293096)

6 lbelew@milberg.com

7 227 West Monroe Street, Suite 2100

8 Chicago, Illinois 60606

9 Telephone: 312-224-8685

10 Facsimile: 865-522-0049

11 Alex R. Straus (SBN 321366)

12 astraus@milberg.com

13 280 S. Beverly Drive, PH Suite

14 Beverly Hills, California 90212

15 Telephone: 866-252-0878

16 Facsimile: 865-522-0049

17 Mitchell Breit*

18 mbreit@milberg.com

19 405 E. 50th Street

20 New York, New York 10022

21 Telephone: 630-796-0903

22 Facsimile: 865-522-0049

23 *Attorneys for Plaintiff and the*
24 *Proposed Class*

25 **Pro hac vice forthcoming*