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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JESSICA COLE and **KAREN WERNER**,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

**VOLKSWAGEN GROUP OF AMERICA,
INC.** a New Jersey corporation, and
VOLKSWAGEN AG, a foreign corporation,

Defendants.

Case No.: 3:20-cv-2085

CLASS ACTION COMPLAINT

1. Breach of Express Warranties UCC
2. Breach of Implied Warranties UCC
3. Breach of Express Warranties Song-Beverly Consumer Warranty Act
4. Breach of Implied Warranties Song-Beverly Consumer Warranty Act
5. Violation of MMWA
6. Violation of UCL
7. Violation of CLRA
8. Fraud by Omission/Fraudulent Concealment
9. Unjust Enrichment

CLASS ACTION COMPLAINT

Plaintiffs Jessica Cole and Karen Werner, individually and on behalf of all others similarly situated, by and through their undersigned counsel, bring this Class Action Complaint against Defendants Volkswagen Group of America, Inc. (“VWoA”) and Volkswagen AG (“VWAG”) (collectively “VW”). Plaintiffs allege the following based upon personal knowledge as to their own acts, and based upon investigation of counsel as to all other allegations.

I. SUMMARY OF THE CASE

1. VW is one of the world’s largest automobile manufacturers and it has been quite profitable in the U.S. over the years.

2. But VW took a hit to its reputation, credibility, and U.S. profit share as a result of “Dieselgate” – the scandal the company admitted to in 2015 where VW had utilized a “defeat device” enabling the company to fake the emissions levels in approximately “580,000 vehicles it sold between 2006 and 2015” allowing the cars to “pass regulatory lab tests” for emissions levels even though the cars’ “real-world driving[] emissions were several times the permissible limits.”¹

3. The scandal continues to haunt the company. In fact, just last year, the U.S. Securities and Exchange Commission (SEC) charged VWAG and two of its subsidiaries “for defrauding U.S. investors, raising billions of dollars through the corporate bond and fixed income markets while making a series of deceptive claims about the environmental impact of the company’s ‘clean diesel’ fleet.”²

4. In an attempt to win back some U.S. consumers after Dieselgate, VW broadened its written warranty offering the People First bumper-to-bumper New Vehicle Limited Warranty – a 6 year/72,000 mile warranty.³ The warranty is longer than any other offered in the industry.

5. All of VW’s warranties promise consumers that VW will make “any repair to correct a defect in the manufacturer’s material or workmanship.”⁴

¹ <https://knowledge.wharton.upenn.edu/article/volkswagen-diesel-scandal/> (last accessed 3.10.2020).

² *Id.*

³ *Id.*

⁴ *Id.*

6. VW has not honored this warranty statement when it comes to the following VW vehicle models: 2016-present Audi A1 Mk2, Audi A3 Mk3, Audi TT Mk3, Audi Q2, Audi Q3, Volkswagen Arteon, Volkswagen Atlas/Teramont, Volkswagen Golf, Volkswagen Jetta, Volkswagen Passat, Volkswagen Polo, Volkswagen Tiguan, and Volkswagen Touran that are sold with a sunroof (collectively, the “Class Vehicles”).⁵

7. VW also has not lived up to the promises made to consumers in its advertising and marketing materials related to the Class Vehicles.

8. Consumers purchase the Class Vehicles reasonably expecting that their vehicles can be used in the normal and ordinary manner in which cars are used, including driving in the rain.

9. Consumers reasonably expect that the Class Vehicles, all equipped with sunroofs, will not suffer water damage in the interior of the car when the sunroof is closed during inclement weather.

10. Despite these reasonable consumer expectations, VW knowingly, through the use of deceptive practices, sold (and continues to sell) tens of thousands of Class Vehicles equipped with sunroofs that have inherent flaws due to design, manufacturing, and/or workmanship that cause leaks resulting in damage to the vehicles’ interior, including electrical systems, audio systems, upholstery, carpet, roof headliners, seats, and more (the “Defect”). Damage to the electrical systems causes certain features of the cars to malfunction. Consumers have experienced the forward/front and rear sensors malfunctioning which causes their vehicles to slam on the brakes and stop on their own – even when the vehicles are moving at high speeds in the middle of a road.

11. Internal documents distributed from VW to its dealers in North America reveal that VW has long been aware of the Defect and has actively concealed it from consumers.

12. VW has refused to disclose and failed to warn consumers of the Defect and the propensity for the Class Vehicles’ sunroofs to leak despite VW’s knowledge of the Defect and the problems associated with it and despite the fact that a diligent consumer could not reasonably learn of the Defect, safety risks, and potential damages on his or her own.

⁵ Plaintiff anticipates amending the Class Vehicles’ definition upon VW identifying in discovery all of its vehicles manufactured and sold with the relevant defective sunroofs.

13. VW also refuses and/or is unable to repair, correct, or otherwise remedy the sunroof Defect on the Class Vehicles, despite its promise to do so in express warranties to consumers.

14. VW may have intended its new warranty to win over consumers after Dieselgate, but given that VW failed to inform consumers of the Defect, failed to acknowledge or repair the known sunroof Defect, and failed to honor the spirit of the warranty by concealing the Defect from consumers while the express warranties expired, the warranty has not restored Class Vehicle consumers' faith in VW.

15. VW has created another scandal through its deceptive and fraudulent business practices wherein VW's profits soar while its consumers suffer.

16. Plaintiffs, individually and on behalf of a class of all consumers who purchased or leased the Class Vehicles with the same or substantially similar component sunroof parts, seek recovery for damages suffered as a result of VW's defective sunroofs. Thus, Plaintiffs, on behalf of themselves and all Class Members, bring this class action against VW for breach of express and implied warranties; violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; violation of the Song-Beverly Consumer Warranty Act, Consumers Legal Remedies Act ("CLRA");; fraud by omission/fraudulent concealment; and unjust enrichment.

II. JURISDICTION AND VENUE

17. This Court has personal jurisdiction over the Defendants because VW has regular and systematic contacts in the state of California, in which it does business and placed the Plaintiffs' vehicles into the stream of commerce.

18. This Court has subject matter jurisdiction over this action because it is based, in part, on a federal claim under 15 U.S.C. § 2301, *et. seq.*, the Magnuson-Moss Warranty Act, and supplemental jurisdiction over any state law claims under 28 U.S.C. § 1367.

19. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and 28 U.S.C. § 1332, the Class Action Fairness Act, because the aggregated claims of Class Members exceed \$5 million, Plaintiffs and Defendants are residents of different states, and there are at least one hundred members of the proposed class.

20. Pursuant to 28 U.S.C. § 1391, venue is proper in this District because VW is subject to personal jurisdiction and the sale of Plaintiffs' vehicles occurred in this District, giving rise to Plaintiffs' claims.

III. PARTIES

21. Plaintiff Jessica Cole is a resident of Santa Rosa, California located in Sonoma County.

22. Plaintiff Karen Werner is a resident of Woodside, California located in San Mateo County.

23. Defendant VWoA is a New Jersey corporation with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

24. VWoA through its various entities markets, distributes, and sells Volkswagen automobiles, including the Class Vehicles, in multiple locations across the United States, including California.

25. VWoA also developed and disseminated the owner's manual and warranty booklets, advertisements, and other promotional materials relating to the Class Vehicles.

26. Defendant VWAG is a German corporation headquartered in Wolfsburg, Germany.

27. VWAG is engaged in the business of designing, engineering, manufacturing, testing, marketing, supplying, selling, and distributing motor vehicles, including the Class Vehicles, in the United States.

28. VWAG and/or its agents designed, manufactured, and installed the defective sunroofs in the Class Vehicles.

29. VWAG is and was at all relevant times to this Complaint doing business in a continuous manner through a chain of distribution and dealers throughout the United States, including within this District by selling, advertising, promoting, and distributing Volkswagen motor vehicles.

30. Through its wholly-owned subsidiaries and/or agents, VWAG markets its products in a continuous manner in the United States, including in this District.

31. VWAG is the parent of, controls, and communicates with VWoA concerning virtually all aspects of the Volkswagen vehicles distributed in the United States.

32. VWoA acts as the sole distributor for Volkswagen vehicles in the United States, purchasing those vehicles from VWAG for sale in this country.

33. VWAG also developed, reviewed, and/or approved the marketing and advertising campaigns designed to sell the Class Vehicles.

34. The relationship between VWAG and VWoA is governed by a General Distributor Agreement that gives VWAG the right to control nearly every aspect of VWoA's operations—including sales, marketing, management policies, information governance policies, pricing, and warranty terms.

35. VWoA is a wholly owned subsidiary of VWAG.

36. VW has thousands of authorized dealerships across the United States and controls the distribution of automobiles, parts, services, and warranty repairs throughout the United States, all of which are under VW's control. VW authorizes these distributors and dealerships to sell VW vehicles, parts, and accessories and to service and repair VW vehicles using VW parts. Its operating income through those distributors and dealerships for its North American region totaled €30 billion for the fiscal year ending December 31, 2019.⁶ VW sells its vehicles to its authorized distributors and dealerships, which in turn sell those vehicles to consumers. After these dealerships sell cars to consumers, including Plaintiff and Class members, they purchase additional inventory from VW to replace the vehicles sold, increasing VW's revenues. Thus, Plaintiffs and Class Members' purchase of Class Vehicles accrues to the benefit of VW by increasing its revenues.

IV. FACTUAL BACKGROUND

A. *The VW Sunroof Defect*

37. Defendants manufacture, market, and distribute mass produced automobiles in the United States under the VW brand name.

⁶ See <https://annualreport2019.volkswagenag.com/group-management-report/results-of-operations-financial-position-and-net-assets/results-of-operations.html> (The Passenger Cars Business Area recorded sales revenue of €182.0 billion in the period from January to December 2019; 17% of Sale Revenue was attributable to North America).

38. The VW automobile models that make up the Class Vehicles in this case are the 2016-present Audi A1 Mk2, Audi A3 Mk3, Audi TT Mk3, Audi Q2, Audi Q3, Volkswagen Arteon, Volkswagen Atlas/Teramont, Volkswagen Golf, Volkswagen Jetta, Volkswagen Passat, Volkswagen Polo, Volkswagen Tiguan, Volkswagen Touran, and the Volkswagen Touareg that are sold with a sunroof. Plaintiffs anticipate amending the Class Vehicles' definition upon VW identifying in discovery all of its vehicles manufactured and sold with the relevant defective sunroofs.

39. The defective sunroofs in all of the Class Vehicles are substantially similar in design and manufacture.

40. The VW sunroofs suffer from defects in design, manufacturing, and/or workmanship such that they are prone to leak water into the interior of the vehicle.

41. The VW sunroofs are defective and prone to leak due to problems with their drainage systems,⁷ seals,⁸ and/or "[a] difference in the expansion rate between the plastic water channel and steel reinforcement plates [that] may cause stress cracks to occur at the edges of the reinforcement plates."⁹

42. The VW sunroofs present safety hazards to drivers, passengers, and others, as described herein.

43. Due to the defective nature of the VW sunroofs, owners and lessees as well as others in the public are damaged and/or injured.

44. All the while, VW profits.

⁷ *E.g.*, "The rear sunroof drains may be pinched shut by foam blocks on the headliner, not allowing the sunroof frame to drain properly" due to "[i]ncorrect assembly in production [which] allows too much length in the sunroof drain between the second and third securing clips. This causes excess slack in the drain hose allowing the foam block to contact the hose." October 24, 2016 TSB.

⁸ *E.g.*, "Incorrect rework in production" – "Spot welds around the perimeter of the sunroof opening may be too large. This prevents the outer sunroof seal from properly adhering to the body of the vehicle, allowing water to leak through the seal.

Insufficient cleaning process prior to applying outer sunroof seal. The sunroof frame opening may have been improperly cleaned prior to application of the acrylic tape on the outer sunroof seal. This prevents the outer sunroof seal from properly adhering to the body of the vehicle, allowing water to leak through the seal." November 22, 2016 TSB.

⁹ *E.g.*, September 28, 2016 TSB; February 6, 2017 TSB; August 8, 2017 TSB.

1 45. The actual material cost of the sunroof is relatively low, yet VW is able to charge
2 more for the same vehicle if it has a sunroof – making the sunroof option one of the most profitable
3 features in the automotive industry.

4 ***B. VW's Knowledge and Active Concealment of the Defect***

5 46. VW wrongly profits on its defective sunroofs because it has known or should have
6 known of the sunroofs' defective nature for years and VW never informed consumers of the Defect;
7 never warned about the consequences of the Defect; actively concealed the Defect from consumers;
8 and failed to live up to the express and implied warranties it made through its warranty materials,
9 advertisements, and other contractual agreements and promises made to consumers.

10 47. VW has been aware of the sunroof Defect since at least 2016.

11 48. At all relevant times, VW has had superior and exclusive knowledge of the sunroof
12 Defect and knew or should have known that the Defect was not known or reasonably discoverable
13 by Plaintiffs and Class Members before their purchase or lease of the Class Vehicles.

14 49. Before Plaintiff and Class Members purchased or leased their respective Class
15 Vehicles, and since pre-production and post-production road testing of the Class Vehicles, if not
16 earlier, VW knew about the sunroof Defect through sources not available to consumers, including
17 pre-release testing data, such as design mode failure analysis, early consumer complaints to VW
18 and its dealers, testing conducted in response to those complaints, high failure rates and replacement
19 part sales data, and other aggregate data from VW dealers about the problem. Publicly available
20 facts set forth *infra* further confirm VW's knowledge.

21 50. VW is experienced in the design and manufacture of consumer vehicles. As an
22 experienced manufacturer, VW conducts tests, including pre-sale and post-sale durability testing,
23 on vehicle components such as the sunroofs in Class Vehicles, to verify the parts are free from
24 defects and align with VW's specifications. Further, pre-production and post-production testing on
25 vehicles and their components is designed to be harsher than expected "real-world" driving
26 experiences of consumers. Such testing necessarily includes examining the sunroofs. Thus, VW
27 knew or should have known that the sunroofs in the Class Vehicles were defective and prone to
28 leaking.

1 51. Additionally, VW should have learned of this widespread Defect from the sheer
2 number of reports received from dealerships and from customer complaints directly to VW. VW's
3 customer relations department collects and analyzes field data including, but not limited to, repair
4 requests made at dealerships, technical reports prepared by engineers who have reviewed vehicles
5 for which warranty coverage is being requested, parts sales reports, and warranty claims data.

6 52. VW's warranty department analyzes and collects data submitted by its dealerships
7 in order to identify trends in its vehicles. It is VW's policy that when a repair is made under
8 warranty, the dealership must provide VW with detailed documentation of the problem and the
9 repair employed to correct it in order to be reimbursed. Dealerships have an incentive to provide
10 detailed information to VW, because they will not be reimbursed for any repairs unless the
11 justification is sufficiently detailed.

12 53. Further, VW issued to its dealers and not to consumers a number of technical
13 bulletins or technical service bulletins ("TSBs") related to the defective sunroofs.

14 54. In general, TSBs contain a manufacturer's diagnosis of a particular problem as well
15 as the manufacturer's recommended procedures for addressing and/or repairing the known
16 problem.

17 55. TSBs are tied to warranty claims made by consumers.

18 56. By the time VW issues a TSB, the company has already known of the problem,
19 received various complaints, reports, and/or warranty claims about it, investigated the problem,
20 strategized how to "fix" the problem, and how that "fix" should be communicated to dealers and/or
21 consumers.

22 57. The issue date of a TSB does not equate to VW's date of first knowledge about the
23 problem – the company knew about the problem prior to issuing a TSB and its prior knowledge
24 prompted issuance of the TSB.

25 58. VW issued no less than twelve (12) TSBs relating to the sunroof feature in the Class
26 Vehicles.

59. VW also issued various Tech Tips which are treated essentially the same as TSBs. VW distinguishes between a Tech Tip and a TSB because a Tech Tip is, according to the company, not associated with warranty claiming, while TSBs are.

60. Though Tech Tips are not based on warranty claims, they are only issued after VW has discovered a problem, investigated it, strategized how to “fix” the problem, and determined how the problem and “fix” should be communicated to dealers and/or consumers.

61. Like TSBs, the date a Tech Tip issues does not equate to the company’s date of first knowledge about the issue.

62. VW issued no less than three (3) Tech Tips relating to the sunroof feature in the Class Vehicles.

63. VW also has seven dealers in the country that are Product Field Information (“PROFI”) designated dealers, which means those dealers are the face of quality control and they work with VWoA engineers to help VW address technical issues.¹⁰

64. VW issued no less than three (3) communications to its PROFI designated dealer(s) relating to the sunroof feature in the Class Vehicles and no less than an additional two (2) communications were made to VW dealers in general.

65. VW also issues Service Actions, which could be referred to as service campaigns and are typically discussed in conjunction with recalls.

66. Service Actions address technical issues and VW advises that these actions should be completed on all affected vehicles promptly in order to prevent the known problem from occurring.¹¹

67. VW issued no less than three (3) Service Action notices relating to the sunroof feature in the Class Vehicles.

68. VW also issued one (1) Special Notice and one (1) Important Notice relating to the sunroof feature in the Class Vehicles.

¹⁰ <https://sites.hireology.com/volkswagenofsouthcharlotte/about.html> (last accessed 3.21.2020).

¹¹ <https://www.vw.com/owners-recalls/> (last accessed 3.21.2020).

69. In total, there have been *at least* twenty-five (25) TSBs, Tech Tips, Communications with PROFI Dealers, Communications with Dealers, Service Actions, and/or Special or Important Notices related to the defective nature of the Class Vehicles' sunroofs and their propensity to leak.

1. VW TSBs, Tech Tips, Communications with PROFI Dealers, Communications with Dealers, Service Actions, and Special/Important Notices Related to the Defect

70. On January 7, 2016, VW issued an outbound communication with its PROFI dealers concerning "water leak from sunroof/water stains on headliner" instructing the dealers to inspect vehicles presenting with these problems for loose or pinched sunroof drain tubes. An excerpt of the communication appears below:

MY(s) Affected:	2015-2016
Vehicle Model(s):	Golf SportWagen
VIN Range (if applicable):	All
Engine Code(s):	All
Gearbox (Manual / Automatic):	All
Issue Description / Symptom:	
Water leak from sunroof / water stains on headliner.	
Workshop Problem Validation Procedure:	
Inspect vehicle for loose or pinched sunroof drain tubes.	
Required Actions:	
If a loose or pinched sunroof drain tube is found to be the cause of the complaint, please obtain pictures showing the condition of the sunroof drain tube and the location of the pinched/disconnected drain on the vehicle. Please send pictures and vehicle information in to the Profi inbox with the title "2015-047 Golf SportWagen Sunroof Drain Tube."	
Please repair the vehicle as needed.	

<https://static.nhtsa.gov/odi/tsbs/2016/MC-10121057-9999.pdf> (last accessed 3.21.2020).

71. This request for an investigation and additional information on a sunroof water leak shows that VW was in possession of information evidencing the existence of the Defect.

72. In April 2016, after 22 weeks of collecting information from its PROFI dealers regarding leaking sunroofs and pinched or loose drain tubes, VW closed its data collection on the issue from its PROFI dealers. An excerpt of the report on the issue appears below:

Topic ID	Outbound requests closed within the last month	Closed	Weeks Open
2015-047	Golf SportWagen Sunroof Drain Tube (VIN-4-A-PIN) Model Year: 2015-2016 Carline(s): Golf SportWagen See outbound request form attached for details. This topic is now closed as an outbound request and we are no longer requesting any further actions. We have collected all of the information we need for this concern. We greatly appreciate your support with this topic.	4/12/2016	22

73. The National Highway Traffic Safety Administration (“NHTSA”) recorded VW’s closure of its investigation of complaints concerning water leaks from sunroof drain tubes on April 28, 2016, as shown below:

April 28, 2016 MANUFACTURER COMMUNICATION NUMBER: 2015-047

Components: VISIBILITY

NHTSA ID Number: 10107762

Manufacturer Communication Number: 2015-047

Summary

THIS COMMUNICATION IS THE CLOSURE OF A PREVIOUS REQUEST FROM VW TO PRODUCT SUPPORT TO VW PROFI DEALERS TO INVESTIGATE ANY COMPLAINTS OF WATER LEAKS FROM SUNROOF DRAIN TUBES.

6 Affected Products

Vehicles

MAKE	MODEL	YEAR
VOLKSWAGEN	GOLF	2015-2016
VOLKSWAGEN	GOLF SPORTWAGEN	2015-2016
VOLKSWAGEN	GTI	2015-2016

2016 VOLKSWAGEN GOLF SPORTWAGEN SW FWD

1 RECALLS | **INVESTIGATIONS 0** | **COMPLAINTS 19**

OVERALL SAFETY RATING

<https://www.nhtsa.gov/vehicle/2016/VOLKSWAGEN/GOLF%252520SPORTWAGEN#manufacturerCommunications> (last accessed 3.21.2020).¹²

¹² Note that the closure identifies the Golf, Golf SportWagen, and the GTI as affected vehicles.

74. On September 28, 2016, VW issued a TSB providing dealers with a “PANORAMIC SUNROOF INSPECTION AND REPAIR PROCEDURE” in the event of a water leak. This TSB states that it applies to the Golf and the Golf GTI, model years 2015-2017. The required parts and tools include a repair kit and sealant.

Required Parts and Tools

Part No:	Part Description	Quantity
5GM 898 041	Repair Kit	2
D 172 090 A2	Sealant	1

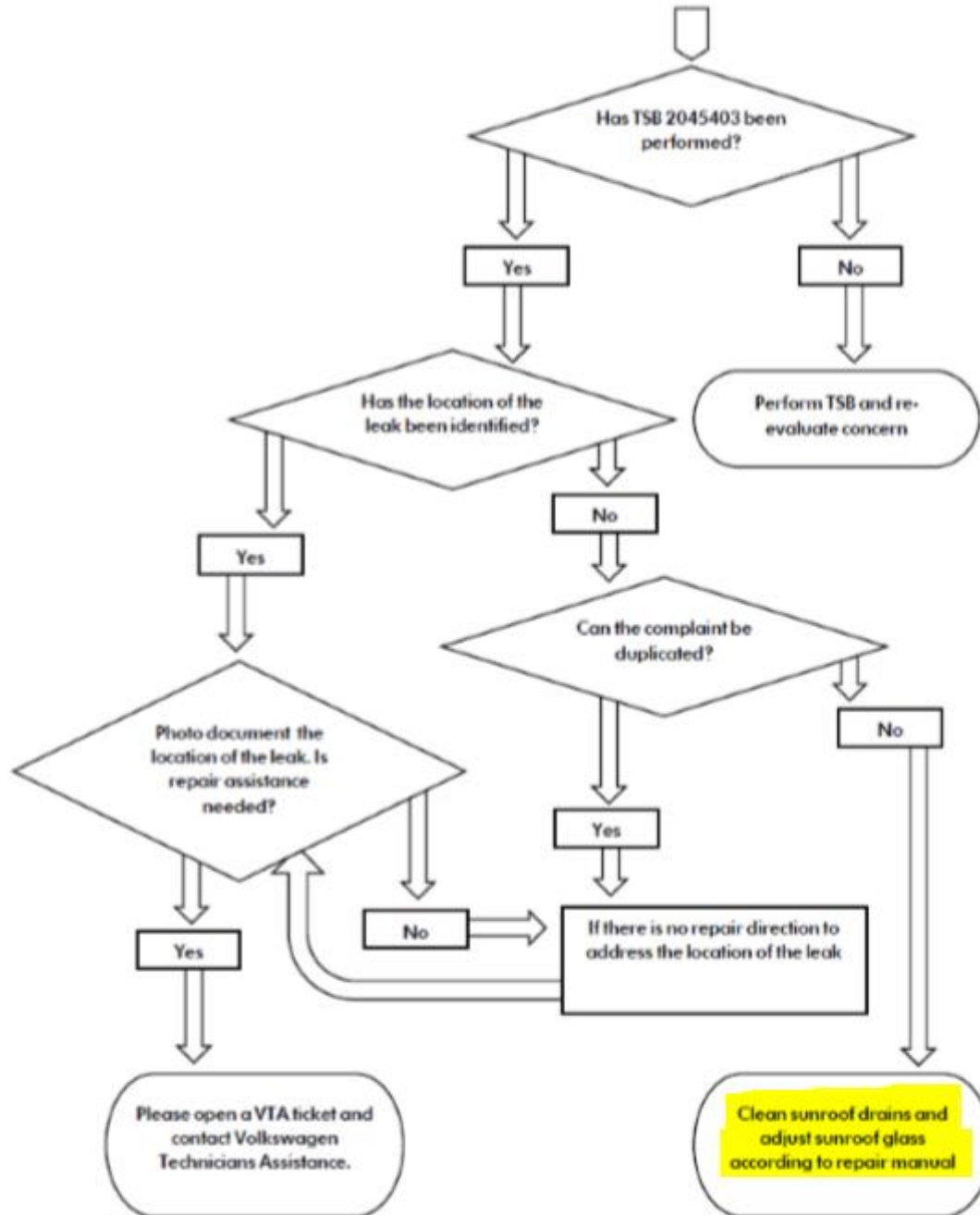
75. On October 24, 2016, VW issued a TSB instructing dealers of how to inspect and replace the rear sunroof drain hoses and ensure the correct routing of those hoses in the event “Water Leaks from the Rear of the Panoramic Sunroof.” This TSB states that it applies to the Golf Sportwagen model years 2015-2017. The required parts include a water drain hose (Part No. 5G0877228).

Required Parts and Tools

Part No:	Part Description	Quantity
5G0 877 228	Water Drain Hose	2

For Special Tools see Repair Manual.

76. VW then issued a Tech Tip providing a “Sunroof Concern Diagnostic Tree to address Water Leaks, Wind Noise, Mechanical Concerns” on November 18, 2016. In the diagnostic tree, VW specifically acknowledges that the dealer may not be able to replicate the issue and provides steps to take, if this is the case. In the case of a water leak that cannot be replicated, the Tech Tip instructs that the dealer should clean the sunroof drains and adjust the sunroof glass.



77. Just four days later, on November 22, 2016, VW issued a TSB concerning “Water Leak from Panoramic Sunroof.” This TSB also asks dealers to “refer to TSB 2045672 Water Leaks from the Rear of the Panoramic Sunroof” (*i.e.*, the October 24, 2016 TSB). This TSB states that it applies to the Golf Sportwagen and Golf Alltrack, model years 2015-2017. The required parts include a sunroof seal and cleaning solution.

Required Parts and Tools

Part No:	Part Description	Quantity
5G9 877 459 A	Sunroof Seal	1
D 00940104	Cleaning Solution	0.5

For Special Tools see Repair Manual.

78. VW again issued a TSB on December 6, 2016. The required parts include the repair kit and sealant, just like the September 28, 2016 TSB.

79. On January 4, 2017, VW issued Special Notice SM 14-2016 to “inform dealers to return all sunroof repair kits” labeled 5GM898041, and to order repair kit 5GM898041A going forward. The sunroof repair kit to be returned is the same one that was ordered to be used in the September 28, 2016 TSB in the event of a sunroof water leak.

80. The “fix” provided by VW in the form of a sunroof repair kit did not work and the kit itself had to be replaced.

81. On February 6, 2017, VW issued a TSB to supersede the one it issued on December 6, 2016 to include a different title and clarify the models, VIN range, and application of additional foil patches. This new TSB addressed “Water leak from the Sunroof (Panoramic Roof) on Golf and

GTI models.” This TSB states that it applies to the Golf and Golf GTI, model years 2015-2017. The required parts include the repair kit and sealant.

Required Parts and Tools

Part No:	Part Description	Quantity
5GM 898 041*	Repair Kit	2
D 172 090 A2	Sealant	1

82. On August 7, 2017, VW issued an Important Notice to Dealers – For Immediate Distribution to inform dealers about an upcoming update that would provide specific repair instructions on sunroofs “to prevent water leaks into the interior of the vehicle that could be caused by cracks in the sunroof frame.”¹³

83. The August 7, 2017 notice to dealers essentially issued a stop sale order, informing dealers that “each vehicle should be completed when it comes into the dealer for maintenance or any other service visit[,]” and “[d]ealer stock vehicles **cannot, however, be delivered** to consumers until the Update is completed.” *Id.* (emphasis in original).

84. The August 7, 2017 notice to dealers also actively advised dealers to conceal the defects, stating, “Volkswagen is not notifying consumers.” *Id.*

85. On August 8, 2017, VW issued the updated TSB to dealers that it had communicated about the day earlier. The TSB reiterated that dealers must “[p]erform this UPDATE on all applicable vehicles within New Vehicle Limited Warranty” and “[i]t is MANDATORY to perform UPDATES on all applicable vehicles in dealer inventory PRIOR TO RETAIL SALE.” This TSB states that it applies to the Golf and Golf GTI, model years 2015-2017. The required parts include the repair kit and sealant.

¹³ <https://static.nhtsa.gov/odi/tsbs/2017/MC-10125683-9999.pdf> (last accessed 3.21.2020).

Required Parts

Part Description	Part No:	Quantity
Repair Kit	5GM898041A	1
-And if required (cracks are found)-		
Sealant	D 172090A2	1

86. On September 6, 2017, VW then issued a TSB that superseded the one previously issued on November 22, 2016. VW issued this new TSB to include an additional model vehicle and an additional model year – the Golf Alltrack and 2018 model year vehicles, in addition to the Golf Sportwagen and Golf Alltrack and model years 2015-2017. This TSB addressed “Water Leak from Panoramic Sunroof” just as the previous November 22, 2017 TSB did. The required parts include a sunroof seal and cleaning solution.

Required Parts and Tools

Part No:	Part Description	Quantity
5G9 877 459 A	Sunroof Seal	1
D 00940104	Cleaning Solution	0.5

For Special Tools see Repair Manual.

87. VW issued a TSB on February 21, 2018 relating to “Water Leaks from the Rear of the Panoramic Sunroof.”

88. VW issued a Tech Tip on July 27, 2018 relating to the malfunctions that occur after the original sunroof seal has been replaced and the new seal does not properly compress.

89. On information and belief, this July 27, 2018 Tech Tip relates to sunroof seal (Part No. 5G9877459A).

90. VW issued a TSB on October 2, 2018 that superseded the one it issued on February 21, 2018 addressing “Water Leaks from the Rear of the Panoramic Sunroof.” This TSB states that

it applies to the Golf Sportwagen and Golf Alltrack, model years 2015-2018. The required parts include a water drain hose.

Required Parts and Tools

Part No:	Part Description	Quantity
5G0 877 228	Water Drain Hose	2

For Special Tools see Repair Manual.

91. VW issued a TSB on March 27, 2019 relating to “Sunroof Water Leak, Reduced Adhesion Causing Loose Seal.” This TSB states that it applies to the Tiguan LWB, model years 2018-2019. The required parts include cleaner, primer, and gasket (adhesive).

Required Parts and Tools

Part Number	Designation	Qty.
D 009 401 04	Cleaner	0.5
D 366 PR1 A1	Primer	1
3G9 877 459 A	Gasket (adhesive)	1
Part numbers are accurate at time of publication. Always refer to ETKA for the latest part information.		

No special tools required.

92. On April 1, 2019, VW issued a TSB superseding the one it issued on March 27, 2019. These TSBs addressed the front headliner area showing leakage around the vanity light(s), sunroof, and overhead console area due to water entering via the sunroof.

93. VW issued another TSB on July 18, 2019 that updated two previous TSBs (October 24, 2016 TSB and October 2, 2018 TSB) it had issued regarding “Water Leak From Rear Of Panoramic Sunroof.” This TSB states that it applies to the Golf Sportwagen and Golf Alltrack, model years 2015-2018. The required parts include a water drain hose (Part No. 5G0877228).

94. On July 26, 2019, VW issued a Tech Tip related to the anti-lock braking system “ABS, Airbag, Traction and TPMS Lights ON with Numerous Rear Wheel Speed Sensor Faults” explaining that “[c]logged sunroof drains may cause water leaks in the A-pillar areas” which “may

result in water ingress into TIUL coupling connector which may result in various system faults. Faults that may be present are C101C4A, C101C29, C101D29, C101D4A, C101D29, C101C14, C101D14, C114602, B10B300.” This Tech Tip states that it applies to the Golf, Golf Sportwagen and GTI, model years 2015-2018.

95. VW issued a dealer communication on December 2, 2019 informing dealers of an available repair for “Service Action 60E2 / Front Sunroof Drain Cleaning & Modification.” The service action affected over 50,000 vehicles and was limited to only 2018 or newer Atlases. An excerpt of the communication appears below:

Issue:	In some sunroof-equipped vehicles, the front sunroof drains can become blocked with moist debris. If this happens, water could leak into the passenger compartment.																		
Repair:	- REPAIR AVAILABLE – December 03, 2019 - Dealers will inspect, clean and modify the front sunroof drains. - See ELSA/ServiceNet for complete repair & claiming instructions - Check both the daily Campaign Open Inventory report <u>and</u> OMD for affected vehicles in inventory. Verify OPEN status in ELSA <u>on the day of repair</u>. - Repair every affected inventory vehicle <u>before delivery to consumers</u>.																		
Parts Department:	No parts needed.																		
Affected Vehicles	<table border="1"> <thead> <tr> <th>Country</th><th>Beginning Model Year</th><th>Ending Model Year</th><th>Vehicle</th><th>Vehicle Count</th></tr> </thead> <tbody> <tr> <td>USA</td><td>2018</td><td>2019</td><td>ATLAS</td><td>49,714</td></tr> <tr> <td>CAN</td><td>2018</td><td>2019</td><td>ATLAS</td><td>12,271</td></tr> </tbody> </table> <i>*Counts reflect overall recall population; some vehicles may have already been repaired. Check Campaigns/Actions screen in Elsa <u>on the day of repair</u> to verify that a VIN qualifies for repair under this action. Elsa is the <u>only</u> valid campaign inquiry & verification source.</i>				Country	Beginning Model Year	Ending Model Year	Vehicle	Vehicle Count	USA	2018	2019	ATLAS	49,714	CAN	2018	2019	ATLAS	12,271
Country	Beginning Model Year	Ending Model Year	Vehicle	Vehicle Count															
USA	2018	2019	ATLAS	49,714															
CAN	2018	2019	ATLAS	12,271															
Notes:	- Schedule owner repairs immediately - Owner mailing – December 2019 - Service action expiration date: December 21, <u>2021</u> U.S.A.: Loaner/rental coverage cannot be claimed under this action. However, loaner/rental may be covered under the mobility program. Please refer to the Volkswagen Warranty Policy and Procedures Manual for loaner claims information and reimbursement details. Canada: Loaner/rental coverage cannot be claimed under this action. Please refer to the Volkswagen Service Loaner Program to determine loaner eligibility.																		

96. On the same day, VW issued another dealer communication informing dealers that the same repair was available under “Service Action 60E5 / Front Sunroof Drain Cleaning & Modification” for 2018 or newer Tiguan – affecting over 100,000 vehicles. An excerpt of the communication appears below:

Issue: In some sunroof-equipped vehicles, the front sunroof drains can become blocked with moist debris. If this happens, water could leak into the passenger compartment.

Repair:

- REPAIR AVAILABLE – December 03, 2019 - Dealers will inspect, clean and modify the front sunroof drains.
- See ELSA/ServiceNet for complete repair & claiming instructions
- Check both the daily Campaign Open Inventory report and OMD for affected vehicles in inventory. Verify OPEN status in ELSA on the day of repair.
- Repair every affected inventory vehicle before delivery to consumers.

Parts Department: No parts needed.

Affected Vehicles

Country	Beginning Model Year	Ending Model Year	Vehicle	Vehicle Count
USA	2018	2019	TIGUAN	83,710
CAN	2018	2019	TIGUAN	23,769

**Counts reflect overall recall population; some vehicles may have already been repaired. Check Campaigns/Actions screen in Elsa on the day of repair to verify that a VIN qualifies for repair under this action. Elsa is the only valid campaign inquiry & verification source.*

Notes:

- Schedule owner repairs immediately
- Owner mailing – December 2019
- Service action expiration date: December 21, 2021

U.S.A.: Loaner/rental coverage cannot be claimed under this action. However, loaner/rental may be covered under the mobility program. Please refer to the Volkswagen Warranty Policy and Procedures Manual for loaner claims information and reimbursement details.

Canada: Loaner/rental coverage cannot be claimed under this action. Please refer to the Volkswagen Service Loaner Program to determine loaner eligibility.

97. The next day, on December 3, 2019, VW issued two Service Actions and provided example letters to be sent out to consumers. One Service Action addressed the Atlas repair and one addressed the Tiguan repair. However, this was VW offering the same repair on different cars. The sample letters are nearly identical. An excerpt appears below:

Dear Volkswagen Owner,

As part of Volkswagen's ongoing commitment to customer satisfaction, we are informing you of our decision to conduct a service action on certain 2018-2019 model year Volkswagen Atlas vehicles. Our records show that you are the owner of a vehicle affected by this action.

What is the issue?	In some sunroof-equipped vehicles, the front sunroof drains can become blocked with moist debris. If this happens, water could leak into the passenger compartment.
What will we do?	Your authorized Volkswagen dealer will inspect, clean and modify the front sunroof drains. This work will take less than one hour to complete and will be performed for you free of charge. Please keep in mind that your dealer may need additional time for the preparation of the repair, as well as to accommodate their daily workshop schedule.
What should you do?	Please contact your authorized Volkswagen dealer as soon as possible to schedule this service. To set up an appointment online, please visit www.vw.com/find-a-dealer . Please also ensure that you routinely inspect and maintain the sunroof. Refer to your vehicle owner's manual or your authorized Volkswagen dealer for additional information.
Service Action Expiration Date	This service action will be available for you <u>free of charge only until December 31, 2021</u> . If you wish to have this service performed after that date, your dealer's normal labor cost associated with this repair will apply.
Lease vehicles and address changes	If you are the lessor and registered owner of the vehicle identified in this action, please forward this letter immediately via first-class mail to the lessee within ten (10) days of receipt. If you have changed your address or sold the vehicle, please fill out the enclosed prepaid Owner Reply card and mail it to us so we can update our records.
Can we assist you further?	If your authorized Volkswagen dealer fails or is unable to complete this work free of charge within a reasonable time, or if you should have any questions about this communication, please reach out to us using your preferred method of communication at www.vw.com/contact or by calling us at 800-893-5298.
Checking your vehicle for open Recalls and Service Campaigns	To check your vehicle's eligibility for repair under this or any other recall/service campaign, please visit www.vw.com/owners/recalls and enter your Vehicle Identification Number (VIN) into the Recall/Service Campaign Lookup tool.

We apologize for any inconvenience this matter may cause; however we are taking this action to help ensure your vehicle continues to meet and exceed your expectations.

Sincerely,

Volkswagen Customer Protection

98. The following day, VW revised the Service Action to update the criteria I.D. in claiming instructions.

99. Each TSB, Tech Tip, communication, Service Action, and notice typically lists the affected models and model years, but each usually only states that it is applicable to one series of vehicles, either the Golf *or* the Atlas *or* the Tiguan, for example. Even if the same repair kit, part, problem, code, procedure, “fix” is at issue for multiple cars (*e.g.*, the Golf, Atlas, *and* the Tiguan), VW provides separate documents for each series. This compartmentalization is by design. VW knows that certain information provided about, for example, the Golf Alltrack could, and often times would, impact, for example, the Tiguan in the same manner. This is evident upon closer examination of the documents. The same repair kits, same parts, same problems, same language, same procedure, and same “fixes” appear in reports relating to the Golf Alltrack as appear in reports relating to the Tiguan or even the Atlas.

100. One example, is the sunroof drain hose drain valve which is discussed in both December 3, 2019 Service Actions – the one for the Atlas and the one for the Tiguan. Both letters, in describing the repair process, include the following two images depicting and describing the sunroof drain hose drain valve.



- Remove flaps from left front and right front sunroof drains.



Removing sunroof drain flap:

! NOTE

When working during extreme temperatures, it is recommended that the vehicle be allowed to acclimate inside the shop to avoid temperature-related component damage/breakage. Damage to plenum chamber covers will not be covered under this action.

- Carefully lift the plenum chamber cover approximately 15 cm.
- Reach in along the outer edge of the plenum chamber (between the wiper transmission and the plenum chamber on the left side).
- Carefully remove the red sunroof drain flap <arrow> downward off the sunroof drain.
- Repeat on the opposite side.

101. As the image below depicts, this same part is used in the Golf Alltrack, Atlas, Beetle, e-Golf, Golf, Golf R, Golf SportWagen, GTI, SportWagen, and the Tiguan.

Sunroof Drain Hose Drain Valve

This Fits Your Volkswagen



Part Number: **5G6877236**

Supersession(s): **5G6-877-236**

Drain hose grommet. Sunroof Drain Hose Drain Valve.
2015-17. 2018-19. COUPE. FROM 03/01/2015. Front. Rear. TO
02/28/2015. W/PANORAMIC.

Fits Alltrack, Atlas, Beetle, e-Golf, Golf, Golf R, Golf SportWagen, GTI, SportWagen, Tiguan

7 people have looked at this part recently



102. When it comes to VW sunroofs the same parts are used across different models and used in different model years.

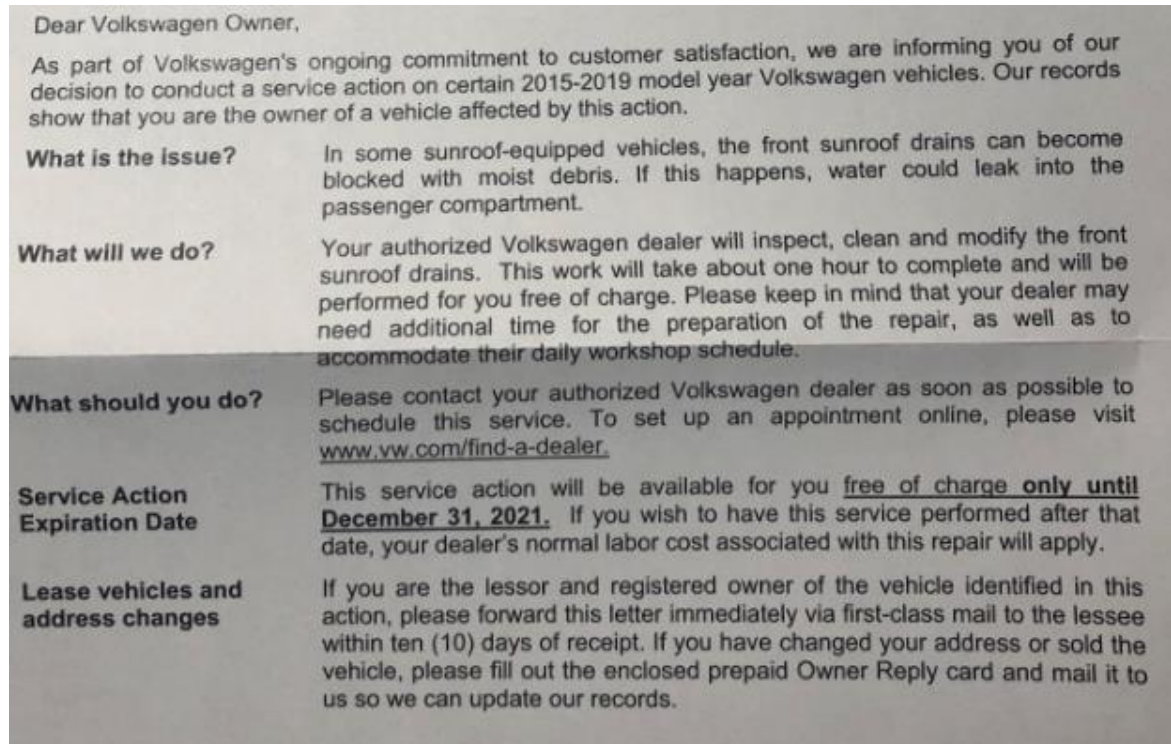
103. Thus, VW's knowledge as to the sunroof Defect in one model vehicle or in a particular model year is evidence that VW knew or should have known about the Defect in other model vehicles or other model years with the same or substantially same sunroofs and parts.

104. Based on these TSBs, Tech Tips, Communications with PROFI dealers, Communications with Dealers, Service Actions, and/or Special or Important Notices related to the defective nature of the Class Vehicles' sunroofs and their propensity to leak in addition to pre-production testing and design failure mode analysis, early complaints to dealers and warranty claims, replacement part orders, and complaints made to VWoA and NHTSA discussed in more detail below, VW was aware of the sunroof defect in the Class Vehicles but continued to misrepresent the safety, reliability, and ability to drive the Class Vehicles in any weather, and further concealed the sunroof Defect and its effects from Plaintiffs and Class members.

105. Plaintiffs anticipate discovery will reveal additional internal documents, exclusively within the possession and control of VW, that demonstrate VW's knowledge and the extent of the cover up and concealment of the Defect from consumers.

2. VW's Recent Attempts to Notify Consumers and Offer Repair is Too Little, Too Late

106. Some Plaintiffs and Class Members have received letters similar to the sample letters provided in the December 3, 2019 Service Actions. However, after initiation of a lawsuit against VW in late December 2019 in the Eastern District of New York with the same or similar allegations to those alleged herein, the letter received by Plaintiffs in March 2020 expands the service action from being available on certain 2018-2019 model vehicles to certain 2015-2019 model vehicles. An excerpt of the letter Plaintiffs received appears below:



107. This, and similar letters, being sent out does not right the wrongs VW has committed.

108. A limited number of customers will actually receive, read, and take advantage of the offer in the letter by the December 31, 2021 deadline.

109. The offered inspection along with the cleaning and modification of the front sunroof drains is not a permanent fix to the Defect and VW has not informed Plaintiffs and members of the Class of this.

110. Further, VW only offers to clean and modify the front sunroof drains. Yet, the TSBs, Tech Tips, Communications with PROFI dealers, Communications with Dealers, Service Actions, and Special and Important Notices discussed above indicate that the Class Vehicles' sunroofs have a propensity to leak from several areas, not just from the front drains.

111. Even if the front drains were the only area where leaking occurred, there would be no guarantee that the inspection and suggested modification would fix the Defect permanently.

112. There have been numerous TSBs, Tech Tips, Communications with PROFI dealers, Communications with Dealers, Service Actions, and Special and Important Notices related to the defective nature of the Class Vehicles' sunroofs and their propensity to leak and the problem continues to persist.

113. The letter also would not remedy the damage suffered by vehicle owners whose car has interior damage to the headliner, carpet, electronics, electrical functions, etc. as VW does not offer to repair or replace any such damage caused by the defective sunroofs.

114. The letter also cannot remedy the damage suffered by vehicle owners whose cars previously leaked and required a sunroof repair/replacement and leak damage repair that the owner paid for out-of-pocket and/or through an insurance claim with a deductible.

3. Consumer Complaints Demonstrate the Extent and Magnitude of the Defect as well as VW's Knowledge

115. Consumer complaints also demonstrate that VW knew or should have known of the Defect since at least 2016.

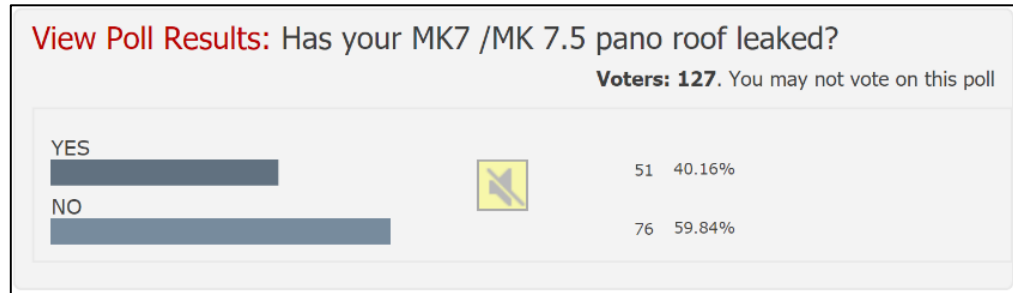
116. Consumers complained publicly and directly to VW about the sunroof Defect and symptoms thereof via blogs, VW group websites, NHTSA, social media, and other forums.

a. Examples of VW Forum Consumer Complaints

117. One VW group website demonstrates the sheer volume of consumers experiencing VW sunroof leaks, the frustration and lack of help from VW dealers, and the lack of any permanent

1 solution to the problem. Indeed, a search for “Sunroof Leak” at forums.vwvortex.com, a website
 2 dedicated to VW owners and enthusiasts, returns a maximum 3,000 results.

3 118. In an informal poll of MK 7 / MK 7.5 owners, 40.16 percent of respondents indicated
 4 that they had suffered leaks from their VW Sunroof.



9 14

10 119. Users’ posts on this site demonstrate that VW knew about the specific problems
 11 addressed in its TSBs, Tech Tips, and other documents for year(s) before issuing those documents
 12 to dealers.

13 120. The following communications demonstrate that VW knew of and attempted to
 14 correct the sunroof Defect prior to September 2016. On September 13, 2017, user girottic stated,
 15 “picking up my Alltrack tonight after 1 ½ weeks at the dealer. This is the 3rd attempt at fixing the
 16 leak. Water stains and dampness appeared on headliner, down both ‘A’ pillars and around panel
 17 above rear view mirror after each fix.” The user continued the post with a summary of the work
 18 done and the parts used. An excerpt of the post with that summary appears below:

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 28 ¹⁴ <https://forums.vwvortex.com/showthread.php?9301399-POLL-Has-your-MK7-MK7-5-pano-roof-leaked&highlight=sunroof+leak> (last accessed 3.10.2020).

1st attempt: Unkink front drain lines
 2nd attempt: Replace both forward drain lines and headliner
 3rd attempt: "... sunroof outer seal was lose ... replaced. . . (see part #s below)

SUNROOF/CONVERTIBLE IS LEAKING PLEASE INSPECT AND REPORT			
A	60VVZ	W	SUNROOF/CONVERTIBLE 0.00
Tech(s): 19552			
	5GM-867-501-J-ZA4	1	ROOFLINING
	5GM-867-233-F-MUY	1	PILLARTRIM
	5GM-867-234-F-MUY	1	PILLARTRIM
	5G9-877-459-A	1	GASKET
	D-009-401-04	1	*CLEANER
Pts:	1,114.78	Lbr:	0.00 Other: 0.00 Total Line A:
Story: 18282 NOTICE WATER STAIN ON BOTH SIDE A PILLAR AND HEADLINER. REMOVE ALL GRAB HANDLES, SUN VISOR AND HEADLINER. PERFORM WATER LEAK TEST FOR HALF HOUR. NOTICE WATER LEAK FROM OUTER SUNROOF SEAL. INSPECT OUTER SUNROOF SEAL. CONTACT TECH LINE. VTA 2212065. FOUND SUNROOF OUTER SEAL WAS LOOSE AND NOT ATTACHED TO THE BODY. REMOVE SUNROOF GLASS PANELS AND SUNROOF FRAME. REMOVE OUTER SUNROOF SEAL. CLEAN ALL ADHESIVE ON THE BODY. CLEAN BODY WITH CLEANER. REPLACED OUTER SUNROOF SEAL. REINSTALL SUNROOF FRAME. REINSTALL GLASS PANELS. ADJUSTED SUNROOF FRAME AND GLASS PANELS. PERFORM WATER LEAK TESTED. REPLACED HEADLINER AND TRANSFER WIRING HARNESS AND PARTS TO NEW HEADLINER. REPLACED BOTH SIDE A-PILLAR TRIM. REINSTALL ALL REMOVED PARTS. VC WBR.			

¹⁵ Two users responded to girottic's post on September 18, 2017. User iluvbugs1970 wrote,

I have a '16 SEL (not an Alltrack). I had a leak and a horribly annoying rattle that was fixed in August. They had to remove the entire sunroof assembly from the car. VW says that there are metal pieces in the sunroof cutout that are sticking up high than they should be, and the sunroof frame cannot seal properly. So the metal was ground down, the areas refinished and the entire sunroof was put back together....

Veedubgti then responded that

[t]he posted repair is exactly what they did to mine. It has been over a year now [sometime prior to September 2016] and I haven't observed anymore leaking (knock on wood). I must say though, every time it rains, when I get into my car, the first thing I do is look up. I have zero faith in the 'fix' but so far, so good. Again, knock on wood. My car was built in 12/15.¹⁶

121. A little over a month after the original post, user girottic posted a post-repair update to inform the group that the repair had not worked and the sunroof was leaking again. On October 18, 2017, girottic wrote "And . . . it's back. We haven't had much rain until this past week. Then this. [photo of damage] I spotted [water damage] above the passenger side window a couple of days ago. It's back to the dealer for the **4th time** next week. Awesome car, but this issue is infuriating."¹⁷ (ellipse and emphasis in original).

¹⁵ [https://forums.vwvortex.com/showthread.php?8833009-Another-Pano-Roof-leak-\(fixed-\)](https://forums.vwvortex.com/showthread.php?8833009-Another-Pano-Roof-leak-(fixed-)) (last accessed 3.23.2020).

¹⁶ *Id.*

¹⁷ *Id.*

122. On June 22, 2019, user blbo posted expressing frustration with the sunroof leak Defect because this was the third time taking his/her vehicle into the dealer to attempt to address the issue. blbo's frustration was so great that he/she was considering implementing a DIY fix wherein he/she would seal the sunroof shut. Blbo suggests the car would be much better without the sunroof feature. blbo's full post was as follows:

blbo  n00b Join Date: Oct 5th, 2015 Posts: 5	 "Permanently" sealing a leaky sunroof 06-22-2019 09:29 AM Reply #1 Hi, My car is at the dealer for the third time with a sunroof leak, with the third one appearing less than 2 month after the 3y warranty expired... I am hoping that VWoA will cover the repair, but I am also ready for the worse. At this point, I am about done with the sunroof, which I never open anyway, so I am thinking of tapping it shut by covering the whole roof with some form of plastic file. Maybe the type of material that is used to make hood "bras". Has anybody done this?. What kind of film can I use? It should leave no residue when removed, possibly a couple of years from now, and resist Louisiana sunlight. Are the fuses for the curtain and the roof the same? I'd rather be able to open the curtain. Blaise
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123. On December 16, 2018, user Houdinize posted sharing his/her personal story and seeking solutions as he/she "searched" but could not find that anyone had gotten their sunroof leak "fixed for good." Houdinize's full post was as follows:

Houdinize  Junior Member Join Date: Nov 15th, 2018 Posts: 20	 Has anyone had a water leak actually fixed? 12-16-2018 08:44 PM Reply #1 My 3rd VW in a row is leaking! I've searched the forums and read multiple threads about water leaks but can't seem to find anyone stating that they had one fixed for good. Here's my story: I had a 2017 Golf Sportwagen SE that started leaking from the sunroof in May at 20k miles, after over a month in the shop VW agreed to replace it with an 18 SEL in August, that one started leaking a week in and while in the shop had the drain tube flaps removed and yet still leaked so it was then replaced just last week with a 2019 Tiguan SEL (figured I'd change models for better luck and had to wait a bit for the 2019 in the color I wanted). I would've gone down to an SE without a sunroof but I'd already been upgraded to the SEL and am enjoying all the features like ACC and the digital cockpit. Welp, I picked up the car last Tuesday and on Friday there was water coming in from around the dome lights, grip handle, and A column. I heard about Golf sunroof welds being too high and interfering with the seals and also the drain tube flaps, but the thing is they told me when I picked up the Tiguan that the drain flaps had been removed, in hopes of preventing this issue. So, has anyone had a leak and had it completely resolved? I'm desperate and beyond frustrated and just want to enjoy my car. I'm happy to take a new one every 4 months but this is getting ridiculous.
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¹⁸ <https://forums.vwvortex.com/showthread.php?9323775-quot-Permanently-quot-sealing-a-leaky-sunroof&highlight=sunroof+leak> (last accessed 3.10.2020).

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b. Examples of NHTSA Consumer Complaints

124. VW monitors customers' complaints made to NHTSA. Federal law requires automakers like VW to be in close contact with NHTSA regarding potential automobile defects, including imposing a legal requirement (backed by criminal penalties) compelling the confidential disclosure of defects and related data by automakers to NHTSA, including field reports, customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414, 114 Stat.1800 (2000).

125. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints regarding their automobiles as part of their ongoing obligation to identify potential defects in their vehicles, including safety-related defects. *Id.* Thus, VW knew or should have known of the many complaints about the sunroof Defect logged by NHTSA Office of Defect Investigation (ODI), and the content, consistency, and large number of those complaints alerted, or should have alerted, VW to the Defect. Upon information and belief, VWoA monitors NHTSA complaints and responds to NHTSA inquiries and investigation as VWAG's designated agent in the United States. As such, VWoA has the right to request manufacturing and design information within the possession of VWAG.

126. The following are examples of the many complaints from owners and lessees of the Class Vehicles concerning the sunroof Defect available through NHTSA's website. Spelling and grammar mistakes appear as in original. The date provided is the date reported by NHTSA and may or may not correspond with the actual date of incident.

a. December 8, 2016 in a 2015 Golf Sportwagen

MARCH 10, 2019 - BEGINNING ON 12/08/2016, MY VW HAS BEEN TO SERVICE FOR A LEAKING SUNROOF 4 TIMES (THE CAR WAS LESS THAN 3.5 YEARS OLD!). THE WATER HAS FILLED THE SPARE TIRE/SUBWOOFER WELL FULL, DRIPPED THROUGH THE LIGHTING AND ELECTRICAL SWITCHES OF THE ROOF, DRAINED INTO THE DASH AND SHIFTER AS WELL AS MY LAP WHILE DRIVING. AND IT PRESENTS SO MUCH MOISTURE IN THE CAR THE WINDOWS WILL NOT DEFOG WITH THE A/C ON. VW MAINTENANCE DEPARTMENTS ALWAYS BLAME ME FOR DEBRIS CLOGGING THE ROOF DRAINS. I'VE SINCE

¹⁹ <https://forums.vwvortex.com/showthread.php?9275549-Has-anyone-had-a-water-leak-actually-fixed-My-3rd-VW-in-a-row-is-leaking!&highlight=sunroof+leak> (last accessed 3.10.2020).

BEEN INFORMED OF TWO TSBS ON THIS ROOF ADDRESSING THE FLAWED ENGINEERING. ALL THE DEALERSHIPS HAVE DONE IS CLEARED MY DRAIN HOSES AND ON THE 4TH RETURN, PRESENTED A \$1,600 BILL FOR REMOVING AND REPLACING MY DRAINS. I REFUSED THE REPAIR AND HAVE DUCT TAPED MY ROOF TO PREVENT FURTHER WATER DAMAGE UNTIL THIS MATTER IS FORMALLY RESOLVED. VW CUSTOMER CARE HAS REFUSED TO PAY FOR THIS SERVICE CLAIMING IT IS A MAINTENANCE ISSUE. GIVEN WHERE I LIVE, THE CALIFORNIA CENTRAL VALLEY, DURING THE FIRST THREE YEARS OF OWNING THIS VEHICLE, WE RARELY HAD RAIN. APPROXIMATELY EVERY 8 MONTHS THE CAR HAS BEEN TAKEN TO A VW DEALERSHIP TO ADDRESS THE LEAKING ROOF.

b. July 1, 2018 on a 2017 VW Alltrack

PANORAMIC SUNROOF LEAKS. HEADLINER I AND CARPET IS BADLY STAINED WITH VISIBLE MOLD GROWTH. PILLAR STAINING AS WELL. WATER LEAKS FROM DOME LIGHT AND SUNROOF CONTROL BUTTONS. WATER ALSO LEAKS INTO FOOT WELL. TAKEN TO TWO DIFFERENT DEALERSHIP WHO HAVE SAID THAT IT IS LIKELY THE SUNROOF DRAINS ARE BLOCKED BY DEBRIS AND REPAIR WOULD NOT BE COVERED BY WARRANTY. THERE IS NO WAY FOR THE CONSUMER TO ACCESS THE SUNROOF DRAINS TO KEEP THEM CLEAR, PARTICULARLY THE REAR DRAINS, WHICH ENTAILS DISMANTLING PART OF THE CAR. THIS IS A KNOWN ISSUE WITH MANY REPORTED COMPLAINTS BY OWNERS WITH A TECHNICAL SERVICE BULLETIN BEING ISSUED. PLEASE ENCOURAGE AN INVESTIGATION AND REPARATIONS FROM VW.

c. November 4, 2018 on a 2017 VW Alltrack

PANORAMIC SUNROOF LEAKS WHEN DRIVING IN THE RAIN. WINDOWS FOG UP, STAINS HEADLINER AND MOISTURE WILL OVER TIME CAUSE MOLD IN VEHICLE. IN COLD TEMPERATURE FROZEN CONDENSATION OBSERVED INSIDE OF VEHICLE WINDSHIELD AND BACK WINDOW MAKING IT DIFFICULT TO SEE OUT.

d. November 21, 2018 on a 2017 VW Alltrack

PANORAMIC SUNROOF LEAKS WATER INTO INTERIOR, CAUSING CONDENSATION ON ALL INTERIOR GLASS AND MAKING IT DIFFICULT/IMPOSSIBLE TO SEE OUT. THERE IS SO MUCH CONDENSATION THAT AC/DEFROST SETTINGS CANNOT REMOVE IT IN A TIMELY MANNER. IT TAKES SO LONG THAT ONE TRIES TO DRIVE EVEN BEFORE FULL OUTWARD VISION HAS BEEN RESTORED, INCREASING RISK GREATLY.

e. November 14, 2018 in a 2018 VW Tiguan

PANORAMIC MOONROOF LEAKAGE. WATER DRIPPING INSIDE VEHICLE ABOVE HEAD ON REAR RIGHT SIDE AND GOING DOWN INTO SEATBELTS COMPARTMENT. VEHICLE WAS STATIONARY. WATER DRIPPING INSIDE SEAT BELT COMPARTMENT IN MY OPINION MAY CAUSE SHORT SINCE SOME ELECTRICAL GOING THRU SAME COMPARTMENT.

f. September 23, 2018 in a 2015 VW Golf Sportwagen

LEAKING PANORAMIC SUNROOF CAUSES MOISTURE AND MOLD ON THE INTERIOR OF THE VEHICLE. HAPPENED IN THE RAIN WHEN PARKED AND DRIVING.

g. December 12, 2018 in a 2015 VW Sportwagen

PROBLEM NOTICED DECEMBER 12TH WHEN ONE BY ONE ALL THE WARNING LIGHTS CAME ON INCLUDING THE AIR BAG, THE STABILIZATION SYSTEM, THE HEADLIGHT SYSTEM AND OTHERS. THEN WHEN I STOPPED AT A RED LIGHT, THE CAR WOULD NOT SHIFT OUT OF 1ST GEAR. I ENDED UP HAVING TO HAVE MY VEHICLE TOWED BACK HOME. THE NEXT DAY A MECHANIC SCANNED IT AND SAID THERE WAS A PROBLEM IN THE EMISSIONS SYSTEM WHICH DISABLED THE CAR BY MAKING IT NOT ABLE TO DRIVE. I THEN HAD IT TOWED TO THE NEAREST VW DEALER WHO TOLD ME THAT THE WHOLE PROBLEM, INCLUDING THE FAILURE OF THE SAFETY SYSTEMS, WAS CAUSED BY A LEAK IN THE SUNROOF. WATER RAN DOWN THE A-PILLER AND SHORTED SOME WIRING. THEY GAVE ME A PRINT OUT WHERE VW ADMITS THAT THIS IS THE RESULT OF A PRODUCTION DEFECT BUT THEY SAID THAT IF THE DEFECT WAS NOT FOUND BEFORE THE WARRANTY RAN OUT THAT VW WOULD NOT ALLOW IT TO BE FIXED UNLESS I PAID THEM OVER \$1,0000. AS IT IS, I HAD TO PAY THEM \$240 TO TAKE THE TRIM OFF OF THE A-PILLER AND DRY THE WIRING OUT. THIS MADE THE CAR RUN NORMALLY FOR THE TIME BEING BUT NOW I AM AFRAID THAT IT WILL HAPPEN AGAIN.

h. September 27, 2018 2017 VW Alltrack

TL* THE CONTACT OWNS A 2017 VOLKSWAGEN GOLF ALLTRACK. THE CONTACT STATED THAT THE SUN ROOF WAS BLOCKED AND LEAKED WATER INTO THE VEHICLE WHEN IT RAINED. THE VEHICLE WAS TAKEN TO VOLKSWAGEN OF THE WOODLANDS (855-436-0113, LOCATED AT 16785 INTERSTATE 45 SOUTH, THE WOODLANDS, TX 77385) WHERE IT WAS STATED THAT THE FAILURE WAS DUE TO NEGLIGENCE BY THE CONTACT. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND STOOD BY THE DEALER'S RULING. THE VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS APPROXIMATELY 23,000. *DT UPDATED 11/2/18*JB THE CONSUMER STATED THE MANUFACTURER ADVISED ANY TIME THE VEHICLE WAS DRIVEN THROUGH MUD IT WAS POSSIBLE FOR THE DRAINS TO BECOME BLOCKED, WHICH THE CONSUMER WOULD BE RESPONSIBLE FOR REPAIRING.

i. May 14, 2018 on 2017 VW Golf Alltrack

2017 VW GOLF ALLTRACK: HAVE HAD THIS CAR FOR FOUR MONTHS NOW AND JUST HAD THREE DAYS WORTH OF RAIN HERE IN MICHIGAN. THE FRONT OF THE HEADLINER IS COMPLETELY SOAKED ON BOTH A-PILLARS AND AROUND THE OVERHEAD CONSOLE OF THE VEHICLE. DEALERSHIP SAID IT WAS MORE THAN LIKELY WELDS THAT DIDN'T GET SMOOTHED DOWN AND THEREFORE PINCH THE TUBES THAT DRAIN THE TROUGH IN THE SUNROOF AREA NOT ALLOWING IT TO FLOW BACK INTO THE OPENING IN THE CAR. IN OTHER WORDS, VW SOLD ME A CAR WITH A KNOWN DEFECT! NOW I HAVE TO TURN MY CAR IN FOR SOME UNKNOWN AMOUNT OF TIME, HAVE THEM TEAR THE INSIDE APART, TAKE THE CAR TO A BODY SHOP AND HAVE THE BODY SHOP GRIND THE WELDS DOWN SMOOTH, THEN INSTALL A NEW HEADLINER IN THE CAR. THAT'S ALL GREAT (NOT REALLY), BUT

WATER IS INCREDIBLY DESTRUCTIVE, SO WHAT ABOUT THE WATER THAT'S RUN DOWN THE A-PILLARS AND GOTTEN IN TO THE INSULATION IN THE DOORS? OR THE WATER THAT RAN LIKE A FAUCET OUT OF MY OVERHEAD CONSOLE THIS MORNING WHEN I STARTED DRIVING THAT DUMPED ALL OVER MY ELECTRONICS AND TRANSMISSION COLUMN? WHAT ABOUT THE POSSIBILITY OF WATER THAT WON'T BE LOOKED FOR IN THIS APPARENT FIX OF A KNOWN PROBLEM THAT THEN TURNS INTO BLACK MOLD THAT I AND MY FAMILY BREATHE EVERY DAY FOR THE LIFE OF THE CAR?! THIS HAS TO BE CORRECTED AS THERE IS NO WAY THIS CAR SHOULD HAVE BEEN SOLD TO ME AND MY FAMILY WITH A KNOWN DEFECT.

j. December 25, 2018 2017 VW Golf Sportwagen

PANORAMIC SUNROOF IS LEAKING WATER IN MULTIPLE PLACES. WHILE VEHICLE IS STATIONARY AND EXPOSED TO RAIN OR SNOW THE INSIDE OF PASSENGER CABIN GETS FILLED WITH WATER, SPECIFICALLY ON REAR RIGHT PASSENGER SIDE AND TRUNK AREA. THE SPARE TIRE COMPARTMENT GET FILLED UP WITH WATER EVERY TIME IT RAINS.

k. July 28, 2018 on a 2016 VW Golf Sportwagen

THE DRAIN ON RETRACTABLE ROOF BECAME BLOCKED. RAINWATER DRAINED INTO CAR SATURATING CARPETS. WATER FLOWED INTO CONTROL SYSTEM CAUSING AN EMERGENCY DASHBOARD ALERT TO STOP DRIVING IMMEDIATELY WHILE DRIVING ON HIGHWAY. THIS EVENT OCCURRED TWICE: FIRSTLY IN NEW YORK THEN TWO WEEKS LATER IN PA. VW SERVICE IN PA REPLACED CONNECTORS. VW SERVICE IN BROOKLYN NY AND WESTCHESTER PA EXPLAINED THAT THERE IS A DESIGN FAULT IN THE DRAINAGE SYSTEM IN THE RETRACTABLE ROOF.

l. October 8, 2019 2017 VW Alltrack

THE CONTACT OWNED A 2017 VOLKSWAGEN GOLF ALLTRACK. THE CONTACT STATED THAT THE SUN ROOF LEAKED AND CAUSED MOLD TO FORM INSIDE THE VEHICLE. THE VEHICLE WAS TAKEN TO VOLKSWAGEN CLEAR LAKE (281-848-5500, LOCATED AT 15100 GULF FWY, HOUSTON, TX 77034) WHERE IT WAS DETERMINED THAT THE FAILURE RESULTED FROM THE OWNER'S NEGLIGENCE OF PROPER VEHICLE MAINTENANCE. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND SUPPORTED THE DEALER'S CLAIM. THE CONTACT WAS INFORMED TO TAKE THE VEHICLE TO THE INSURANCE COMPANY. THE INSURANCE COMPANY TOTALED THE VEHICLE, STATING THAT IT WAS UNSAFE TO DRIVE. THE FAILURE MILEAGE WAS 11,000. THE VIN WAS NOT PROVIDED.

m. September 20, 2019 on a 2017 VW Alltrack

I AM SEEING WATER STAINS ON MY HEADLINER AROUND THE ENTIRE PANORAMIC SUNROOF. THERE IS WATER SOAKING THE CARPETS ON THE FRONT AND REAR PASSENGER CARPETS. THERE IS ALSO A MUSTY SMELL DUE TO THE STANDING WATER THAT HAS BEEN LEAKING FROM THE SUNROOF.

n. April 30, 2019 on a 2017 VW Alltrack

THIS PAST SPRING I NOTICED THE CAR'S HEADLINER WAS WET AND STAINED. IT THEN BEGAN TO DRIP COPIOUS AMOUNTS OF WATER

1 INTO THE VEHICLE DURING HEAVY RAINSTORMS. THE CAR IS ONLY A
 2 YEAR AND A HALF OLD AND HAS 20,000 MILES. BUT THERE ARE
 3 WATER STAINS EVERYWHERE AND IT WILL BE A MOLD ISSUE SOON,
 4 I'M AFRAID. TOOK IT TO THE DEALER, THE CAR IS UNDER WARRANTY.
 5 THEY SAID IT'S A MAINTENANCE ISSUE, NOT A WARRANTY ISSUE
 6 BECAUSE THE DRAINS THAT RELEASE THE WATER FROM SUNROOF
 7 ARE ALL BLOCKED WITH DEBRIS. DEALER FIRST ASKED ME IF I HAD
 8 JUST SIMPLY LEFT THE SUN ROOF OPEN AND WAS VERY
 9 PATRONIZING, BY ASKING ME IF THERE WAS JUST A LEAF STUCK UP
 10 THERE, CALLING ME HUNNY OVER THE PHONE. I TOLD HIM NO,
 11 SOMETHING WAS WRONG AND WE DROPPED IT OFF. \$600 TO CLEAR
 12 DRAINS. WE REFUSED BECAUSE WE FOUND MANY OTHER PEOPLE
 13 EXPERIENCING THE SAME PROBLEM WITH THE SAME CAR AND THERE
 14 IS A TECHNICAL SERVICE BULLETIN FOR THE PROBLEM. WE READ THE
 15 VW HELPED COVER THE COSTS FOR MANY PEOPLE SO WE CALLED VW
 16 CUSTOMER CARE. I ASKED FOR A BUYBACK OR FOR THEM TO FIX THE
 17 CAR. THEY CALLED ME BACK SAYING THERE WAS NOTHING THEY
 18 COULD DO AND REFUSED TO ADMIT THIS IS A DEFECT IN THE DESIGN
 19 OF THE CAR. EVEN IF I JUST GOT THE DRAINS CLEARED, THERE WAS
 20 STILL DAMAGE DONE BY THE "MAINTENANCE" NOT BEING TAKEN
 21 CARE OF. "MAINTENANCE" THAT WE KNEW NOTHING ABOUT AND
 22 THERE IS NOTHING IN THE OWNER'S MANUAL ABOUT CLEARING THE
 23 DRAINS UNTIL AROUND 40,000 MILES. I WAS ASKED IF I PARKED
 24 UNDER TREES. WELL, YEAH, WE CAMP A LOT. THIS CAR IS
 25 ADVERTISED AS AN ADVENTURE CAR. I ALSO DON'T HAVE THE
 26 LUXURY OF PARKING IN A GARAGE. I'M A TEACHER. I WORK HARD TO
 27 MAKE CAR PAYMENTS, BUT I BOUGHT BRAND NEW CAR NOT
 28 KNOWING I WOULD NEED TO BE SPENDING HUNDRED UPON
 HUNDREDS OF DOLLARS TO "MAINTAIN" SUNROOF DRAINS. THE CAR
 IS CURRENTLY AT ANOTHER DEALER AND THEY WANT NUMBERS IN
 THE THOUSANDS TO FIX THE WATER DAMAGE.

17 o. May 4, 2019 on a 2017 VW Alltrack

18 ROOF/SUNROOF LEAKING CAUSING STAINED HEADLINER AND WET
 19 CARPETING. VEHICLE SMELLS OF MOLD AND MILDEW AND CAUSES
 20 EXCESSIVE CONDENSATION ON WINDSHIELD. VW DEALERSHIP IN
 21 FAIR LAWN NJ ATTEMPTED REPAIR BY REPLACING SUNROOF DRAIN
 22 TUBES BUT DID NOT RESOLVE THE ISSUE. NEW LEAKS HAVE
 DEVELOPED AND DEALER SERVICE IS UNCLEAR WHERE OR WHAT IS
 CAUSING THEM. AS OF 6/12/2019 DEALER IS ATTEMPTING SECOND
 REPAIR STATING THE SUNROOF FRAME NEEDS TO BE REPLACED.
 UNSURE IF THIS WILL RESOLVE THE ISSUE.

23 p. October 10, 2019 in a 2018 VW Tiguan

24 WATER LEAKS FROM SUNROOF AND DOORS. WATER FROM THE ROOF
 LANDS OF START ENGINE BUTTON. FLOORS FLOODED WITH WATER
 MAKES FOOT SLIPPERY.

25 q. September 21, 2019 in a 2018 VW Tiguan

26 PANORAMIC SUNROOF DEFECTIVE AND CAUSED MAJOR LEAKAGE OF
 27 WATER INTO VEHICLE. IN ADDITION, IT SEEMS LIKE CHEMICALS
 28 POSSIBILITY FROM WINDSHIELD FLUID LEAKING INSIDE VEHICLE.
 THIS RESULTED ON BLACK MOLD TO DEVELOP THROUGHOUT THE
 VEHICLE. ALL CARPETS REPLACED ON MY VEHICLE; HOWEVER,
 EXTREME FOUL CHEMICAL ODOR CONTINUES IN THE INTERIOR AND

MAKES IT DIFFICULT TO BREATHE. THE DEALER HAS MY VEHICLE FOR MORE THAN 9 DAYS AND STILL NO RESOLUTION. ISSUE STARTED WITH LESS THAN 1 YEAR OF OWNERSHIP OF THIS BRAND NEW CAR. EVEN WHEN VEHICLE IS PARKED ON MY DRIVEWAY WITH WINDOWS CLOSED YOU CAN SMELL THE CHEMICAL ODOR AROUND THE VEHICLE. FIRST OCCURRENCE REPORTED ON 7/3/19 AND NO RESOLUTION. SECOND OCCURRENCE: 9/21/19 AND STILL ONGOING.

c. Examples of Facebook Consumer Complaints

127. Customers complained on Facebook directly to VW via VW's Facebook Page. Examples of those consumer complaints include the following:

- a. On May 19, 2016, Annette Leigh explained her 2016 Tiguan woes to VW, among them, a "shower" she had in her car that the VW dealer confirmed was a "leak in [her] sunroof." Ms. Leigh's full post was as follows:



Annette Leigh ▸ Volkswagen ✓

May 19, 2016 · 🌐



Spent time at the Volkswagon dealership again yesterday to address ongoing problems with my 2016 Tiguan. Service Manager and staff were great, but called this morning confirm the shower I had was a leak in my sunroof....just as I thought. The Service Manager is replacing the fuel system to try and address the whining sound that's been there from day one, but really isn't sure what's causing this. New transmission, new fuel system, leaky sunroof which I'm sure will affect electrical going forward.

Volkswagon...REPLACE THIS VEHICLE! Take care of your loyal customers that have supported you through your TDI scandal...this is my 3rd Volkswagen purchase.

Annette Leigh

#Volkswagon#Carproblems#Tiguan#Carreviews



1

b. On July 1, 2017, Stephen Thaddeus Piorkowski complained to VW on its Facebook Page about his Tiguan's leaky sunroof which "fills" his car "with water" and causes the car to be "moldy." Mr. Piorkowski's full post was as follows:



Stephen Thaddeus Piorkowski ▸ Volkswagen ✓

July 1, 2017 · 🌐



Do not by Volkswagon our Tiguan sunroof leaks and Volkswagon could not care about any way of helping us fix the problem . Our car fills with water and is moldy , Never again Volkswagon is Europes version of Chrysler — with [Geraldine Reitz](#) and [7 others](#).



3

- c. On July 9, 2017, Meka Valmadre directly reported to VW about the constant issues she was experiencing with her new Tiguan. She had already had the sunroof replaced and she then experienced leaking. The sunroof caused multiple trips to the dealer and she was left without a solution or answers. VW actually responded to Meka's complaint and demonstrates knowledge and receipt of this consumer issue. Ms. Valmadre's full post was as follows:



Meka Valmadre ▸ Volkswagen ✓

July 9, 2017 · 🌐



Hi, I have been waiting for 3 weeks for the service team at Springwood Volkswagen to call me back about an issue with my new Tiguan. It has already had the sunroof replaced and now the car is leaking. I have had it back to the dealership 2 times and then contacted them again 3 weeks ago about it leaking again.

They said that they would call me back as they were seeking further advice. I was told on 2 occasions when I called during the last 3 weeks that someone would call me back but have not had a call back.

I am really pissed off and disappointed at the lack of service and consideration given. I have 2 small kids and paid for my car seats to be installed and have basically wasted my money as I have had to swap them out 4 times now.

If it was a fridge I would have been given a replacement or a refund by now. It is ridiculous how I have been treated and I just want a solution. Just a simple returned call to give me an update at the start would have been appreciated.

1 Comment



Like



Comment



Share



Oldest ▾



Volkswagen ✓ Hi Meka, thanks for getting in touch. Can you please Private Message us your VIN and phone number so we can arrange for someone from our Customer Experience team to contact you directly regarding this matter? Cheers, Tash@Volkswagen

Like · Reply · 2y

d. On October 11, 2018, Laura Oconnor contacted VW America explaining that the panoramic sunroof leak in her daughter's Tiguan floods the car, has caused mold, and presents safety and health risks. Ms. Oconnor explains that VW has known of this issue and fails to correct it – "VW does not care." VW did not publicly responds to Ms. Oconnor, but the comments indicate that VW's response was to merely block Ms. Oconnor in an attempt to ignore her and not address the issue.



Laura Oconnor doesn't recommend Volkswagen Group of America. October 11, 2018 · 🌐

Our Volkswagen Tiguan pano sunroof grommets drain tubes have been leaking Volkswagen will do nothing - the car has been a saturated fish bowl. This is a known issue, similar issue to the class action lawsuit with a 69 million settlement. This company refuses to let me speak to anyone about Eric Waldowski who was absolutely no help. The grommet attaches to drain hose, comes loose, floods my daughter's car. VW does not care. We have 65k miles on car, and they consider that high mileage??? We have Hondas and Toyotas with over 100K that have never had issues like this. The car is currently at Brazos Valley Imports, they thought it was fixed, parked it outside, and it flooded again. The car has been at the dealership 2 weeks. How can VW refuse any help. It amazes me. This is a known issue. There was a warranty extension, the warranty extension expired, then we had the issue and they basically told me have a nice day. Not sure what else to do to get this company's attention, go to media??? When I called, reporting a known problem, how about your company doing the right thing. I cannot believe that when I call VW in Virginia the receptionist will only allow me to speak to Eric, this company has no customer service, is not interested in keeping a Loyal customer base, there are now health issues with my daughter with the mold growing in her car.

4 Comments

Like Comment Share

Laura Oconnor I would love to see if someone is going to take the time to contact me, take care of this problem, or ignore the major health and safety issue. What has happened to companies just doing the right thing. If you have now made grommets and drain tubes b... [See More](#)

Like · Reply · 1y

Laura Oconnor Interesting, I have been blocked from your site

Like · Reply · 1y

Laura Oconnor VW has admitted that the sunroof drains/grommets are defective - and only covered repairs up to 24K miles, how can a company get away with this

Like · Reply · 1y

Alayna O'Connor So VW has blocked me from writing any more reviews, the car is defective, they have admitted to it, and will not help me

Like · Reply · 1y

e. On December 21, 2018, Anne Lowry wrote directly to VW about her Tiguan's panoramic sunroof letting water "get[] in all over the car." After the frame and drain tubes were replaced by the VW dealer, at Ms. Lowry's expense, Ms. Lowry experienced a steady leak when taking her car through the car wash. She was informed this was a drain failure in the sunroof and it would not be covered under warranty. She states that VW knows there is a problem with the sunroofs, but "Volkswagen of America would rather screw people out of money than admit this and deal with it properly." Ms. Lowry's full post was as follows:



Anne Lowry ▸ Volkswagen ✓

December 21, 2018 · 🌐



Today is December 21, 2018. I have a 2012 Volkswagen Tiguan with a panoramic sunroof. In March of this year water was getting in all over the car. Smith Volkswagen, in Wilmington, Delaware, said this was due to a cracked sunroof frame. They charged \$2139.34 to replace the frame and the drain tubes. The car only had 46K miles on it at the time. No offer to make it right or anything. Early last week, only 9 months later I went through a car wash. Water leaked in from the roof, to the left of the sun-visor, in a steady stream, straight down into my lap. My shirt, pants and seat were soaked. Today was the first available appointment time, so I took the car in thinking whatever the problem was, it would be covered. I get a call telling me one of the drains failed and the repair cost is \$500. Not covered because I put about 20K miles on the car since March. It would have only been covered if I had driven under 12K miles since March. The person who called to tell me this acted like this was no big deal. I got really upset. Another \$500 on top of what they already charged??? There is a major issue with these sunroofs. It is clearly a design flaw, but Volkswagen of America would rather screw people out of money than admit this and deal with it properly. Funny that the car the shuttle driver used to take me home after I dropped my car off was a brand new Tiguan and as I was telling him why my car was in the shop, water began to leak from the middle of the roof, just above the touch screen, so years have gone by and Volkswagen still hasn't figured out how to make a better sunroof which drains properly. I couldn't believe the new one was doing the same thing my car was in for, for the second time. So after I got really upset and the service manager kept telling sorry it's not covered, he said they would cover the labor and I would have to pay for parts. \$170 for two drain tubes. I said I don't have it. He said they would put the car back together and I could come get it, and when I was willing or ready or whatever he said to pay for the parts, to come back and get it fixed. Like I would ever go back there. Oh and since I got upset and used curse words I was told I would get more bees with honey. Seriously? I don't know anyone who wouldn't be angry and upset about this happening. The guy that first called me to tell me what the problem supposedly is and the price for to get it fixed acted like this was no big deal. Sure only \$500 MORE and your car won't leak. I am beyond disappointed. Thanks a lot VW of America and Smith VW.

128. These are only a sampling of Facebook complaints relating to certain VW model cars. Consumers made similar complaints about other Class Vehicles.

129. VW knew or should have known about these and other consumer complaints as they were made directly to VW, consumers filed warranty claims, dealers informed VW, and/or the complaints were posted on sites that VW monitors as a part of industry practice, such as NHTSA.

130. If Plaintiffs and Class Members had known about the Defect at the time of the sale or lease, Plaintiffs and Class Members would not have purchased or leased the Class Vehicles or would have paid less given the Defect.

9 *C. VW's Deceptive Warranty Practices*

131. VW offers a minimum 3 year/36,000 mile New Vehicle Limited Warranty on all of its cars.²⁰

132. VW warrants to make “any repair to correct a defect in the manufacturer’s material or workmanship.”²¹

133. Volkswagen broadened its warranty for its Atlas and Tiguan and then “[b]uilding on the success of the new Atlas and Tiguan’s guarantee,” VW introduced “the People First Warranty” which “comes standard on all 2018 [and 2019] Volkswagen models, with the exception of the electric 2018 [and 2019] e-Golf.”²²

134. The People First bumper-to-bumper New Vehicle Limited Warranty is a 6 year/72,000 mile warranty.²³

²⁰ <https://www.vwannarbor.com/warranty-information.html> (last accessed 3.10.2020).

²¹ *Id.*

²² <http://newsroom.vw.com/vehicles/volkswagen-unveils-the-people-first-warranty-the-new-industry-leader/> (last accessed 1.15.2020); see also <https://www.cars.com/articles/volkswagen-nixes-6-year-warranty-what-shoppers-need-to-know-407046/> (last accessed 3.10.2020) (“Effective for the 2018 and 2019 model years across virtually the entire Volkswagen lineup, the outgoing warranty furnished bumper-to-bumper coverage (including powertrain) for six years or 72,000 miles, whichever comes first....It’s also fully transferrable with no loss in coverage” to subsequent owners.

²³ *Id.*

135. The new People First Warranty was introduced “to win back American customers” after the company “struggle[ed]” “since it admitted in 2015 [that] the company installed secret software that allowed vehicles to cheat emissions tests for six years.”²⁴

136. The People First Warranty was touted as “the best SUV Bumper-to-Bumper Transferable Warranty in America!”²⁵

137. The Executive Vice President of Sales and Marketing for Volkswagen Group of America stated that “VW has always stood for strong value, and this warranty proves our commitment to that goal” and “[n]ow” people “don’t have to buy a luxury car to get a luxury-level warranty.”²⁶

138. VW’s CEO of the North American Region claimed “VW is the people’s car, and this warranty puts our people first”²⁷—it “addresses the needs of American buyers head-on.”²⁸

139. VW advertised the 2018 Tiguan as being accompanied by “America’s Best SUV Bumper-to-Bumper Transferable Warranty” referring to the 6 year/72,000 mile warranty.



The king deserves a big warranty. And this one fits the bill. The transferable New Vehicle Limited Warranty covers you for 6 years or 72,000 miles, whichever occurs first.*



29

140. VW was aware of the Defect prior to Plaintiffs and Class Members purchasing their Class Vehicles and experiencing damage as a result of the Defect in their vehicles.

²⁴ <https://www.cnbc.com/2017/04/12/volkswagen-offers-6-year-warranty-to-win-back-us-customers.html> (last accessed 3.10.2020).

²⁵ <https://www.vwannarbor.com/warranty-information.html> (last accessed 3.10.2020).

²⁶ <http://newsroom.vw.com/vehicles/volkswagen-unveils-the-people-first-warranty-the-new-industry-leader/> (last accessed 3.10.2020).

²⁷ *Id.*

²⁸ <https://www.cnbc.com/2017/04/12/volkswagen-offers-6-year-warranty-to-win-back-us-customers.html> (last accessed 3.10.2020).

²⁹ 2018 Tiguan brochure available at <https://www.leithvwraleigh.com/volkswagen-brochures-pdf.html> (last accessed 3.10.2020).

141. VW chose not to inform Plaintiffs and Class Members of the Defect prior to their purchase of the Class Vehicles and, VW chose not to inform them of the Defect while under warranty.³⁰

142. Despite knowing about the sunroof leak issue and issuing a TSB to repair the panoramic sunroof in the event of a water leak, VW stated that the repair was only to be done in response to a “customer complaint” about the issue – so no preventative measure would be taken – and that if the “[v]ehicle [is] outside any Warranty” then the “Technical Bulletin is informational only.” *E.g.*, September 28, 2016 TSB.

143. Plaintiffs and Class Members reasonably expected that any and all damage that resulted from the sunroof Defect would be covered under warranty, and that they would not be charged for necessary repairs.

144. VW systematically denies coverage and/or refuses or is unable to adequately repair the Class Vehicles with respect to the defective sunroofs.

145. Class Members have been forced to incur substantial repair bills and other related damages, including being forced to make claims under their automotive insurance policies and incurring substantial deductibles.

D. VW’s Deceptive Advertising Practices

146. In addition to VW’s failure to disclose the Defect; failure to warn of the Defect; omissions as to the Defect; and deceptive warranty statements, VW also engaged in a deceptive advertising campaign.

147. For example, VW advertised that “[t]he Golf Alltrack has the features needed to stay in touch with the tech you love.”³¹

148. When in reality, VW provided the Golf Alltrack with a defective sunroof prone to leak which can result in damage to the electrical components within the vehicle (*i.e.*, “the tech you love.”).

³⁰ While VW recently sent out letters regarding an available repair, VW did not disclose that the issue being addressed is a defect and the majority of purchasers are no longer under warranty.

³¹ https://www.vw.com/content/dam/vwcom/brochures/2017/VWA_MY17_Alltrack_Digital.pdf (last accessed 3.10.2020).

1 149. VW touted that it got a “high-five” from NHTSA “for high performance” “earn[ing]
2 a 5-star overall safety rating.”³²

3 150. The reality is that the Class Vehicles’ safety performance is lacking given the
4 dangers posed to drivers, passengers, and others on the roads due to the Defect.

5 151. VW advertised “the Golf Alltrack [a]s a fun-to-drive, ready-for-adventure, über-
6 versatile wagon.”³³

7 152. When in reality, it is not fun to drive a vehicle that is prone to leak.

8 153. Plaintiffs and Class Members describe the hassle involved with driving a leak-prone
9 vehicle like the Class Vehicles.

10 154. VW states that with the Golf Alltrack one can expect “[s]moother sailing, even on
11 rough terrain and in inclement weather.” VW claims that the Golf Alltrack is engineered to handle
12 “rough road conditions and inclement weather.” VW represents that it is “a car designed for the
13 outdoors” and “ready for almost anything.”³⁴

14 155. In reality, the Class Vehicles, including the Golf Alltrack, are not ready for any
15 adventure if rain or other precipitation are involved.

16 156. VW represents that the Golf Alltrack is designed to “help weather the storms,”
17 “[h]elp[] you stay out of trouble,” and “check[] all the boxes.”³⁵

18 157. This is simply not true as Plaintiffs and Class Members cannot weather storms in
19 their Class Vehicles without risking and/or suffering injury to themselves, others, their vehicles, or
20 other physical property.

21 158. Plaintiffs and Class Members cannot even weather a carwash.

22 159. Due to the defective nature of the sunroof, the car brings trouble and diminution in
23 value to all owners and lessees due to the Defect.

26 ³² *Id.*

27 ³³ *Id.*

28 ³⁴ *Id.*

³⁵ *Id.*

160. A reasonable consumer would expect that to “check all the boxes,” a vehicle with a sunroof would not suffer from a leak Defect that the manufacturer refuses to properly and permanently remedy.

161. Aside from these examples of misleading individual statements, the advertising campaign for the VW Golf Alltrack focused on how well the car was equipped for the outdoors and adventure.

162. The brochure for the 2017 Golf Alltrack features photographs of the vehicle parked next to mountains, near a campsite, by a lake, driving through the woods, and making its way through the mud. It also includes a photograph of a couple snowshoeing. The brochure imparts a vision of “[t]aking a detour off the highway to traverse previously uncharted territories.... Scenery. Fresh air. Tranquility.”; “looking for adventure off the beaten path”; “a car designed for the outdoors”; “sporty,” “rugged,” “all-wheel adventurer”; “[t]he great outdoors meets the great indoors.” VW stated that “[w]hether you’re exploring new pavement or taking a detour onto a dirt road, the Golf Alltrack is the key to unlocking destinations that were once out of reach.” It “was designed to take the road less graveled. No matter how you adventure, it’s safe to say you’ll be doing so with a turbocharged smile on your face.”³⁶

163. VW also released a series of commercials designed to show off “the rugged build” and “the sporty style and performance [of the Golf Alltrack]...[that could take drivers] on excursions that take them off the beaten path.”³⁷ The commercials are titled “Foggy Road,”³⁸

³⁶ *Id.*

³⁷ <https://www.neftinvw.com/blog/2017-volkswagen-golf-alltrack-commercials/> (last accessed 3.10.2020).

³⁸ <https://abancommercials.com/ad/9189/volkswagen-golf-alltrack-foggy-road-commercial-tv-spot> (last accessed 3.10.2020).

1 “Snowy Road,”³⁹ “Mountain Bike,”⁴⁰ “Snowboard,”⁴¹ “Salmon,”⁴² and “Terrarium”⁴³ meant to
2 convey that the Alltrack is “built for adventure.”⁴⁴

3 164. The Class Vehicles are not equipped for this type of rugged adventure given their
4 Defect and Plaintiffs and Class Members whose Class Vehicles have already experienced leaks are
5 not adventuring with or smiling because of their vehicle. Instead, they are dealing with the aftermath
6 of the Defect and dreading driving their vehicles in rain, inclement weather, or through a car wash.

7 165. VW made similar representations about the 2018 Tiguan.

8 166. For example, VW represented that, with the Tiguan, “[o]n a variety of roads and in
9 challenging conditions, you can be confident and comfortable,”⁴⁵ a driver will have “greater peace
10 of mind” and a “panoramic sunroof that blends seamlessly into the cabin,”⁴⁶ the car “balances sleek
11 and rugged” and “[t]ransforms drives into journeys” – it is “Superlative. All the way.” As it is “built
12 with 100% galvanised steel and the stringent of manufacturing processes. That, along with the
13 choicest of design elements make the Tiguan truly perfect in every way.”⁴⁷

14 167. At least one VW authorized dealer represented that the VW Tiguan sunroof “gives
15 you that convertible feel without having to worry about the bugs.”⁴⁸

18 ³⁹ <https://www.ispot.tv/ad/Auzk/2017-volkswagen-golf-alltrack-snowy-road> (last accessed
19 3.10.2020).

20 ⁴⁰ <https://www.ispot.tv/ad/AFN7/2017-volkswagen-golf-alltrack-mountain-bike-song-by-joywave>
(last accessed 3.10.2020).

21 ⁴¹ <https://www.ispot.tv/ad/AFNL/2017-volkswagen-golf-alltrack-snowboard-song-by-powersolo>
(last accessed 3.10.2020).

22 ⁴² https://www.ispot.tv/ad/A_Nw/2017-volkswagen-golf-alltrack-salmon (last accessed
23 3.10.2020).

24 ⁴³ <https://www.ispot.tv/ad/AECb/2017-volkswagen-golf-alltrack-terrariums-song-by-eddie-rabbitt>
(last accessed 3.10.2020).

25 ⁴⁴ <https://www.neftinvw.com/blog/2017-volkswagen-golf-alltrack-commercials/> (last accessed
26 3.10.2020).

27 ⁴⁵ 2018 Tiguan brochure available at [https://www.leithvwraleigh.com/volkswagen-brochures-
pdf.html](https://www.leithvwraleigh.com/volkswagen-brochures-pdf.html) (last accessed 3.10.2020).

28 ⁴⁶ <https://www.vw.com/models/tiguan/section/technology/> (last accessed 3.10.2020).

⁴⁷ <https://www.volkswagen.co.in/en/models/tiguan.html#item=3&gallery=150339998013542611>
(last accessed 3.10.2020).

⁴⁸ <https://www.facebook.com/TEDDYVOLKSWAGEN/videos/696518864055018/> (last accessed
3.10.2020).

168. The advertising associated with the Class Vehicles taken as a whole conveys an image of the Class Vehicles that they cannot live up to given the sunroof Defect.

169. VW's marketing and advertising campaigns associated with the Class Vehicles are deceptive.

E. The Defect Presents a Safety Risk and Causes Plaintiffs & Class Members to Suffer Damages

170. Plaintiffs and Class Members relied on VW's deceptive warranty practices, advertising campaigns, and/or material omissions of the existence of the Defect to their detriment.

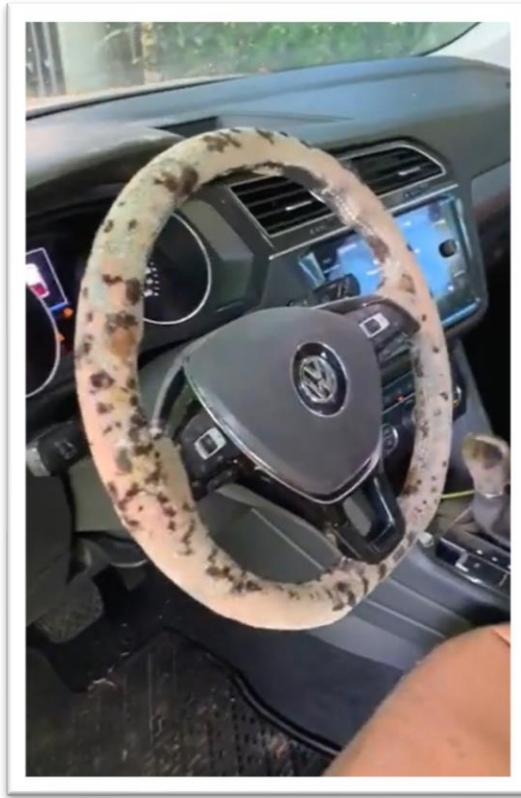
171. Omission of the Defect prevented Plaintiffs and Class Members from making an informed decision about whether or not to purchase their Class Vehicles.

172. Plaintiffs and Class Members have suffered and continue to suffer due to their leak-prone sunroofs as a result of the defective design, manufacturing, and/or workmanship of VW's sunroofs in the Class Vehicles.

173. The Defect typically makes itself known to owners and lessees with water leakage as the first sign noticeable to Class Members. Leakage results in water dripping into the vehicle from the sunroof during rainstorms, other extreme weather conditions, carwashes, etc.; if the leaking occurs while the vehicle is on the road, it may distract the driver making already dangerous driving conditions more dangerous for all drivers and passengers on public roadways; the Defect also causes excessive condensation resulting in the windshield fogging up during dangerous weather conditions, thereby limiting driver visibility; when the water drips into the vehicle it can damage the car's electrical systems which can cause parts of the car to malfunction resulting in the car slamming on the breaks and stopping motion abruptly on its own; leakage can damage the car's interior lining and create mold in a short amount of time.

174. Consumers complain about the smell of mold and mold growth which appears to be rapid in the defective Class Vehicles, especially those contained in warm climates.

175. Here is a photograph of the mold build up in a 2018 Tiguan, equipped with the defective leaking sunroof, after staying closed for only one month in Miami:



49

176. As explained herein, the Defect presents a safety risk to Plaintiffs, Class Members, and other drivers, passengers, and individuals on public streets and highways.

177. All Class Members with the defective sunroofs have suffered damages in that the value of the vehicle they purchased (*i.e.* with a defective sunroof) was worth less than the amount they paid for the vehicle.

178. Class Members suffer lost time and energy to address the Defect and get VW to repair it.

179. Class Members lost money for repairs done to the Class Vehicles, even though the Defect should be repaired at no cost to them under the VW warranties.

⁴⁹ <https://www.youtube.com/watch?v=iuraGvF8yP0> (last accessed 3.10.2020)

180. Class Members are damaged because the current and future re-sale value of their Class vehicle is significantly reduced due to the existence of the sunroof Defect and the damages incurred.

181. Class Members did not receive the benefit of their bargain when they purchased their defective Class Vehicles.

PLAINTIFFS' EXPERIENCES

Jessica Cole

182. Plaintiff Jessica Cole purchased her VW Golf Alltrack complete with a movable, panoramic sunroof on approximately December 26, 2018 from Hansel Volkswagen – a VW dealer located in Santa Rosa, California.

183. Plaintiff purchased her Class Vehicle for personal, family, and/or household use.

184. Plaintiff reasonably expected to be able to use her Class Vehicle for normal and ordinary purposes.

185. Plaintiff Cole expected that her Class Vehicle would be able to withstand extreme weather conditions and inclement weather, including rain.

186. At no time prior to, during, or after her purchase, did VW inform Plaintiff Cole that her Class Vehicle contained the sunroof Defect.

187. In fact, before purchasing her vehicle, VW specifically informed Plaintiff Cole that she would not have any sunroof leaks.

188. Relying on that omission and representation along with VW's other representations described herein, Plaintiff Cole purchased her Class Vehicle.

189. Less than a year after she purchased her Class Vehicle she discovered her sunroof was leaking. It was raining outside and Plaintiff Cole's Class Vehicle was parked outside exposed to the weather. Plaintiff Cole got in her vehicle and saw that the vehicle was leaking.

190. Plaintiff Cole immediately returned to Hansel Volkswagen for diagnosis and repair of her Class Vehicle's sunroof leak.

191. The VW dealer told her that the drains in her sunroof were clogged.

1 192. The cause for the issue, according to the dealer, varied. The VW dealer claimed the
2 fires happening in California were the cause. At one point, the VW dealer also claimed that it was
3 Plaintiff Cole's fault for failing to maintain the sunroof drains. But when Plaintiff Cole asked to
4 see how to perform the maintenance on the drains, the VW representative could not show her.

5 193. The VW dealer did not mention the Defect or that this was a widespread problem.
6 Yet, the VW dealer told her that what people had been doing was submitting this as an insurance
7 claim and that she should do the same as it would not be covered under any warranty.

8 194. The VW dealer kept the car for approximately 2 weeks. Plaintiff Cole drove a rental
9 car during this time.

10 195. Plaintiff Cole understands that due to the damage caused by the sunroof Defect, the
11 VW dealer replaced all sunroof drain nipples and clipped them to make them narrower, put in a
12 new headliner, replaced the flooring, and put in new padding.

13 196. The VW dealer informed her that the new altered sunroof drain nipples *would* be
14 noiser, but *should* prevent any sunroof leaks from occurring again.

15 197. VW provided no guarantee, warranty, or promise that the sunroof would not leak in
16 the future.

17 198. After the VW dealer allegedly diagnosed and repaired her Class Vehicle, Plaintiff
18 Cole inspected her own vehicle and she found that the rear spare tire wheel well – where certain
19 vehicle electronics are housed – was full of water.

20 199. Plaintiff Cole fears that, in addition to the damage already incurred, her Class
21 Vehicle has suffered electrical/electronic issues, some of which may pose a safety risk to her, her
22 passengers, and others on the road.

23 200. Due to the issues she has experienced with her Class Vehicle as a result of the
24 sunroof Defect, Plaintiff Cole feels vulnerable continuing to drive her Class Vehicle, but feels
25 financially locked-in to owning, and therefore driving, the car.

26 201. Plaintiff Cole has spent her valuable time trying to address the issues resulting from
27 the sunroof Defect, including taking her car to various VW dealers and contacting VW North
28 America.

1 202. Plaintiff Cole has lost use of her Class Vehicle due to the sunroof Defect.

2 203. Plaintiff Cole does not like to operate her Class Vehicle in the rain or inclement
3 weather anymore due to the sunroof Defect. She is concerned leakage will occur, her Class Vehicle
4 will incur more damage, and that her safety may be compromised.

5 204. Plaintiff Cole has been damaged as a direct and proximate cause of the sunroof
6 Defect.

7 205. Due to the sunroof Defect, Plaintiff Cole's Class Vehicle was and is worth less than
8 what she paid for it.

9 206. Due to the sunroof Defect, the current and future re-sale value of Plaintiff Cole's
10 Class Vehicle has been significantly reduced.

11 207. Plaintiff Cole did not receive the benefit of her bargain with VW for her Class
12 Vehicle.

13 208. At no time prior to her purchase or "repair" of her Class Vehicle, did VW
14 acknowledged the existence of the Defect to Plaintiff Cole or disclosed, warned, or otherwise
15 informed Plaintiff Cole of the Defect.

16 209. Had VW informed Plaintiff Cole of the sunroof Defect, Plaintiff Cole would not
17 have purchased her Class Vehicle.

18 210. VW's latest communication to Plaintiff Cole in March 2020 offering to inspect,
19 clean, and modify her front sunroof drains in no way helps her as the defective sunroof already
20 leaked in her vehicle, caused damage, and required repair.

21 **Karen Werner**

22 211. Plaintiff Karen Werner purchased her 2017 VW Golf Alltrack complete with a
23 movable, panoramic sunroof in approximately October 2016 in California.

24 212. Plaintiff purchased her Class Vehicle for personal, family, and/or household use.

25 213. Plaintiff reasonably expected to be able to use her Class Vehicle for normal and
26 ordinary purposes.

27 214. Plaintiff Werner expected that her Class Vehicle would be able to withstand extreme
28 weather conditions and inclement weather, including rain.

1 215. At no time prior to, during, or after her purchase, did VW inform Plaintiff Werner
2 that her Class Vehicle contained the sunroof Defect.

3 216. Relying on that omission and VW's representations described herein, Plaintiff
4 Werner purchased her Class Vehicle.

5 217. Less than one year after she purchased her Class Vehicle, VW issued the September
6 6, 2017 TSB entitled "Water Leak from Panoramic Sunroof" which superseded the November 22,
7 2016 TSB and now included the Golf Alltrack, which is Plaintiff Werner's Class Vehicle.

8 218. The September 6, 2017 TSB discussed that one cause of water leaking into the
9 vehicle from the sunroof was due to an "[i]ncorrect rework in production." "Spot welds around the
10 perimeter of the sunroof opening may be too large. This prevents the outer sunroof seal from
11 properly adhering to the body of the vehicle, allowing water to leak through the seal." The TSB
12 also indicated there was an "[i]nsufficient cleaning process prior to applying outer sunroof seal.
13 The sunroof frame opening may have been improperly cleaned prior to application of the acrylic
14 tape on the outer sunroof seal. This prevents the outer sunroof seal from properly adhering to the
15 body of the vehicle, allowing water to leak through the seal."

16 219. In mid-March of 2019, on a rainy weekend day, Plaintiff Werner discovered her
17 Class Vehicle's sunroof was leaking.

18 220. On Monday, March 11, 2019, after conducting some research, Plaintiff Werner took
19 the car to Broadway Volkswagen for diagnosis and repair of her Class Vehicle's sunroof leak armed
20 with the September 6, 2017 TSB.

21 221. While her Class Vehicle was at the dealer, Plaintiff Werner contacted VWoA. In the
22 first conversation with VWoA, Plaintiff Werner was informed that the problem was the result of
23 clogged drains which should be checked as part of the routine service maintenance and that the cost
24 would be Plaintiff Werner's responsibility. However, Plaintiff Werner had already informed
25 VWoA(and the dealer) that her husband had confirmed the drains were not clogged.

26 222. On March 14, 2019, the VW dealer contacted Plaintiff Werner to let her know that
27 it took them a while to identify the problem, but they found the cause of the leak was the result of
28

1 a welding issue – as Plaintiff Werner had predicted. The dealer said the remedy would be to replace
2 the sunroof frame, headliner, rear drain, carpet, and padding for a cost of \$3621.

3 223. The dealer would not cover the repairs under warranty even though Plaintiff Werner
4 had owned her vehicle less than 3 years, and despite the fact she had a leak occur while her vehicle
5 was under warranty, and despite the fact that VW issued the relevant September 6, 2017 TSB less
6 than a year after Plaintiff Werner’s purchase.

7 224. Had VW notified Plaintiff Werner at the time VW issued the TSB specific to her
8 vehicle, she would have taken the vehicle in for preventative repair. Instead, VW elected not to
9 notify customers and chose to treat this known problem as a service issue to be addressed *if* the
10 consumer ever complained. VW also included crafty language so that if the vehicle was out of
11 warranty, the TSB was merely advisory.

12 225. VW chose not to notify consumers and to passively wait for any consumer
13 complaints in an attempt to repair less vehicles in total and a lot less free of charge. By not
14 informing consumers, VW was playing the odds that the Defect would not leak and/or the owner
15 would not present the car for repair until after the Class Vehicle’s warranty expired. By adopting
16 this passive approach, VW only obligated itself to fix vehicles where a leak occurred, a consumer
17 complained and brought the vehicle in, and no warranty limit (miles or years) passed.

18 226. This severely limits the number of repairs VW has to make under warranty free of
19 charge and this approach left many Plaintiffs and Class Members to fend for themselves.

20 227. Plaintiff Werner paid \$968.29 out-of-pocket for VW to make the necessary repairs
21 to her Class Vehicle as a result of her defective sunroof.

22 228. The dealer had the vehicle for approximately 10 days to complete the work.

23 229. VW provided no guarantee, warranty, or promise that the sunroof would not leak in
24 the future.

25 230. Plaintiff again contacted VW of America and spoke to multiple representatives,
26 including a supervisor about her dissatisfaction and asking that VW cover the repair of the Defect
27 at no charge to her. VW refused.
28

231. Plaintiff Werner has spent her valuable time trying to address the issues resulting from the sunroof Defect, including communicating with VW of America by phone and in writing.

232. Plaintiff Werner has lost use of her Class Vehicle due to the sunroof Defect.

233. Plaintiff Werner is concerned leakage will occur again and her Class Vehicle will incur more damage.

234. Less than a month prior to the visible leakage in her Class Vehicle, a USB port went bad and her husband replace it – another out-of-pocket expense. It is unknown to what extent her Class Vehicle’s electronics and electrical functionalities have been impacted by the sunroof Defect.

235. Plaintiff Werner has been damaged as a direct and proximate cause of the sunroof Defect.

236. Due to the sunroof Defect, Plaintiff Werner’s Class Vehicle was and is worth less than what she paid for it.

237. Due to the sunroof Defect, the current and future re-sale value of Plaintiff Werner’s Class Vehicle has been significantly reduced.

238. Plaintiff Werner did not receive the benefit of her bargain with VW for her Class Vehicle.

239. At no time prior to Plaintiff Werner’s leak, complaint, or “repair” did VW acknowledge the existence of the Defect to Plaintiff Werner or disclose, warn, or otherwise inform her of the Defect.

240. Had VW informed Plaintiff Werner of the sunroof Defect, she would not have purchased her Class Vehicle.

241. VW’s latest communication to Plaintiff Werner in March 2020 offering to inspect, clean, and modify her front sunroof drains in no way helps her as the defective sunroof already leaked in her vehicle, caused damage, and required repair.

CLASS ACTION ALLEGATIONS

242. Pursuant to Federal Rule of Civil Procedure 23, this action is brought individually by Plaintiffs and on behalf of the following Class of similarly situated individuals. The California Class is defined as and consists of:

All individuals who, during the maximum time period allowed by law, purchased or leased VW vehicles with sunroofs in the state of California, including but not necessarily limited to the following makes or models: Audi A1 Mk2, Audi A3 Mk3, Audi TT Mk3, Audi Q2, Audi Q3, Volkswagen Arteon, Volkswagen Atlas/Teramont, Volkswagen Golf, Volkswagen Jetta, Volkswagen Passat, Volkswagen Polo, Volkswagen Tiguan, Volkswagen Touran, and the Volkswagen Touareg.

243. Excluded from the proposed Classes are VW; any affiliate, parent, or subsidiary of VW; any entity in which VW has a controlling interest; any officer, director, or employee of VW; any successor or assign of VW; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse; members of the judge's staff; and anyone who purchased a Class Vehicle solely for the purpose of resale.

244. Plaintiffs anticipate amending Class definition based on discovery and the relevant vehicles identified by VW.

245. Members of the proposed Class are readily ascertainable because the Class definition is based upon objective criteria.

246. Numerosity. This action is brought by Plaintiffs and by all other persons similarly situated whose joinder in this action is impracticable because the Class is so numerous. VW sold tens of thousands of Class Vehicles to people all across the nation, including California. VW continues to sell the defective Class Vehicles. Thus, there are too many members to practically join in a single action.

247. Commonality and Predominance. Common questions of law and fact exist as to all proposed members of the Class and predominate over questions that might affect only individual Class Members. These common questions include but are not limited to:

- a. Whether the sunroofs have a propensity to leak;
- b. Whether VW knew or should have known that the sunroofs had a propensity to leak, and, if so, when this Defect was discovered by VW;
- c. Whether VW failed to disclose, failed to warn, and actively concealed the existence of the Defect(s) from potential customers;
- d. Whether VW had a duty to disclose the Defect;

- e. Whether VW breached any express or implied warranties;
- f. Whether the Court may enter an injunction requiring VW to notify owners and lessees about the Defect(s);
- g. Whether the Court may enter an injunction requiring VW to cease its practice of replacing defective sunroofs with identically defective sunroofs;
- h. Whether VW had a duty to disclose the true character, quality, and nature of the Class Vehicles and the sunroof Defect(s);
- i. Whether VW's conduct, as alleged herein, violates the MMWA;
- j. Whether VW's conduct, as alleged herein, violates the consumer protection laws of California, such as the CLRA, UCL, and/or the Song-Beverly Act;
- k. Whether VW's conduct, as alleged herein, entitles Plaintiffs and Class Members to restitution under the laws of California.

248. Typicality. Plaintiffs' claims are typical of the claims of the proposed Class. Plaintiffs and Class members all purchased or leased Class Vehicles with sunroofs that have a propensity to leak due to a defect in design, manufacturing, and/or workmanship.

249. Adequacy. Plaintiffs are adequate representatives of the proposed Class because their interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiffs have retained counsel who are competent and experienced in complex class action litigation and will prosecute vigorously on behalf of the Class.

250. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class Member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of the individual actions against VW economically feasible. Even if Class Members themselves could afford individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the defective sunroofs, individualized litigation increases delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents fewer management difficulties and provides benefits of single adjudication,

economy of scale, and comprehensive supervision by a single court. Further, prosecution of separate actions would create a substantial risk of inconsistent and varying adjudications.

251. In the alternative, the proposed Class may be certified because:

- a. The prosecution of separate actions by the individual members of the proposed Class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for VW;
- b. The prosecution of individual actions could result in adjudications that as a practical matter would be dispositive of the interests of non-party Class Members, or which would substantially impair their ability to protect their interests; and
- c. VW acted or refused to act on grounds generally applicable to the proposed Class, thereby making appropriate final and injunctive relief with respect to members of the proposed Class as a whole.

TOLLING OF THE STATUTES OF LIMITATIONS

252. Discovery Rule. Plaintiffs and Class Members' claims accrued upon discovery that the sunroofs in their Class Vehicles were prone to leaking. While VW knew and concealed the defect, Plaintiffs and Class Members could not and did not discover this fact through reasonable diligence prior to the purchase of their Class Vehicles.

253. Active Concealment. Any relevant statutes of limitations are tolled by VW's knowing and active concealment of the fact that the sunroofs suffered from the Defect. In August 2017, VW notified dealers that the Defect was substantial enough that "dealer stock vehicles" could not "be delivered to consumers" until the dealer had attempted a repair, but actively hid the Defect from consumers, stating, "Volkswagen is not notifying consumers" of the problem. VW had a duty to disclose this Defect and its consequent performance and safety problems to Plaintiffs and Class Members because VW had knowledge of this Defect and the Defect was not known or easily discoverable by Plaintiffs or Class Members. Despite its affirmative duty to disclose the nature and existence of this Defect, VW kept Plaintiffs and Class Members ignorant of vital information. A significant portion of evidence demonstrating VW's efforts to conceal the Defect is in the possession, custody, and control of VW to the exclusion of Plaintiffs and Class Members.

254. Estoppel. VW was and is under a continuous duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the sunroofs installed in the Class Vehicles. At all relevant times, VW knowingly, affirmatively, and actively concealed the true character, quality, and nature of the sunroofs installed in the Class Vehicles. The details of VW's efforts to conceal its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiffs and Class Members. Plaintiffs and Class Members reasonably relied upon VW's active concealment. Based on the foregoing, VW is estopped from relying on any statutes of limitation in defense of this action.

255. Equitable Tolling. VW took active steps to conceal the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold, and leased Class Vehicles with defective sunroofs. Significant details of VW's efforts to conceal its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiffs and Class Members. VW's failure to disclose and active concealment of the Defect amounts to bad faith and deception in and of itself. When Plaintiffs learned about this material information, they exercised due diligence by thoroughly investigating the situation, retaining counsel, and pursuing their claims. VW fraudulently concealed its above-described wrongful acts. Therefore, all applicable statutes of limitation are tolled under the doctrine of equitable tolling.

CLAIMS FOR RELIEF

COUNT I – BREACH OF EXPRESS WARRANTIES UNDER THE U.C.C. (On Behalf of Plaintiffs individually and on behalf of the California Class)

256. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

257. VW provides all purchasers and lessees of the Class Vehicles with the express warranties described herein, which became part of the basis of the bargain. This includes its written warranty provided at the time of sale as well as affirmations of fact, promises, or descriptions about the Class Vehicles made in advertising or other materials, and other representations by VW concerning the Class Vehicles.

258. VW manufactured and/or distributed the defective sunroofs included in the Class Vehicles.

1 259. The Class Vehicles are non-conforming goods in that, at a minimum, they do not
2 conform to descriptions provided by VW and they are defective as described herein.

3 260. Any repair or replacement of the defective sunroofs or parts therein to make them
4 conform to VW's representations, affirmations, promises, descriptions, and warranties are or
5 should have been provided to Plaintiffs and Class Members for the Class Vehicles free of charge.

6 261. VW breached its express warranties by providing non-conforming goods.

7 262. VW breached its express warranties by manufacturing, selling, leasing, and
8 distributing the Class Vehicles with the sunroof Defect; requiring repair or replacement within the
9 applicable warranty periods; refusing to honor the warranties with free repairs or replacements
10 outside the applicable warranty periods without informing consumers of the Defect during their
11 respective warranty periods; refusing or being unable to repair, replace, or otherwise remedy the
12 defective sunroofs during the applicable warranty periods; and/or simply refusing or being unable
13 to repair, replace, or otherwise remedy the Defect free of charge.

14 263. VW further breached these warranties by not correcting the Defect. Although VW
15 warranted that it would correct defects in materials and workmanship in the Class Vehicles, VW
16 instead repaired the defective sunroofs in the Class Vehicles with defective sunroof repair kits,
17 made repairs that did not fix the Defect permanently or at all, used parts for repair that were
18 defective in the same manner as the original parts, or failed to make any repairs at all. In each
19 scenario, VW did not correct the Defect. VW has failed and/or refused to conform the sunroofs in
20 the Class Vehicles to the express warranties.

21 264. Plaintiffs and Class Members notified VW of the breach within a reasonable time
22 or were not required to do so, because VW is the manufacturer and/or affording VW a reasonable
23 opportunity to cure its breach of written warranty would have been futile. VW knew of the Defect,
24 chose to conceal it, and failed to comply with its warranty obligations and other express warranties.

25 265. To the extent the defective Class Vehicles and warranties thereof fail their essential
26 purposes, the written warranty terms are void.

27 266. The time limits and other terms contained in VW's warranty are unconscionable and
28 inadequate to protect Plaintiffs and Class Members. Among other things, Plaintiffs and Class

Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favor VW. A gross disparity in bargaining power exists between VW and Class Members, and VW knew or should have known that the sunroofs in the Class Vehicles were defective at the time of sale. Moreover, VW carefully designed its conduct to conceal the Defect from consumers so that less repairs would need to be made free of charge under warranty.

267. Plaintiffs and Class Members have complied with all obligations under the warranties, or otherwise have been excused from performance of those obligations as a result of VW's conduct described herein.

268. Plaintiffs and each member of the Class have had sufficient direct dealings with VW or its agents (including dealerships) to establish privity of contract with VW.

269. Privity is not required here because Plaintiffs and each member of the Class are intended third-party beneficiaries of contracts between VW and its distributors and dealers, and specifically, of VW's express warranties.

270. VW's dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles.

271. The warranties were designed for an intended to benefit consumers only.

272. As a direct and proximate cause of VW's breaches, Plaintiffs and Class Members bought or leased Class Vehicles they otherwise would not have purchased, overpaid for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered diminution in value. Plaintiffs and Class Members have also incurred and will continue to incur costs for repair and replacement of defective sunroofs and damage resulting from the leaking sunroofs.

273. Plaintiffs and Class Members are entitled to legal and equitable relief against VW, including damages, consequential damages, specific performance, attorney fees, costs of suit, and such further relief as the Court may deem just or proper.

**COUNT II – BREACH OF IMPLIED WARRANTIES UNDER THE U.C.C.
(On Behalf of Plaintiffs individually and on behalf of the California Class)**

274. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

1 275. VW warranted that its Class Vehicles were of merchantable quality and fit for their
2 ordinary purpose.

3 276. VW warranted that its Class Vehicles had been properly made and the sunroofs
4 would not leak water into the interior of the vehicles while the sunroofs were closed.

5 277. VW breached these implied warranties:

- 6 a. The Class Vehicles were not merchantable because the sunroofs leaked;
- 7 b. The Class Vehicles were not properly designed, not properly manufactured, and/or
8 suffered from poor workmanship because the sunroofs leaked water into the interior
9 of the vehicle while the sunroofs were closed;
- 10 c. The Class Vehicles were not fit for their ordinary purpose, including driving in rain,
11 inclement weather, and through car washes.

12 278. Plaintiffs and each member of the Class have had sufficient direct dealings with VW
13 or its agents (including dealerships) to establish privity of contract with VW.

14 279. Privity is not required here because Plaintiffs and each member of the Class are
15 intended third-party beneficiaries of contracts between VW and its dealers, and specifically, of
16 VW's implied warranties.

17 280. VW's dealers were not intended to be the ultimate consumers of the Class Vehicles
18 and have no rights under the warranty agreements provided with the Class Vehicles.

19 281. The warranties were designed for an intended to benefit consumers only.

20 **COUNT III – BREACH OF EXPRESS UNDER THE SONG-BEVERLY**
21 **CONSUMER WARRANTY ACT**
22 **(On Behalf of Plaintiff Werner individually and on behalf of the California Class)**

23 282. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

24 283. Class Vehicles are “consumer goods” within the meaning in Cal. Civ. Code §
25 1791(a).

26 284. Plaintiff and Class Members are “buyers” within the meaning in Cal. Civ. Code §
27 1791(b).

28 285. VW is a “manufacturer,” “distributor,” or “retail seller” within the meaning in Cal.
Civ. Code § 1791(e), (j), (l).

286. As described herein, VW knowingly and willfully breached its express warranties in violation of the California Song-Beverly Consumer Warranty Act.

287. VW's actions have deprived Plaintiff and Class Members of the benefit of their bargains and have caused Class Vehicles to be worth less than what they paid for them.

288. As a direct and proximate result of VW's conduct as described herein, Plaintiff and Class Members received goods in a condition that substantially impairs their value. Plaintiff and Class Members have been damaged due to the diminished value of their Class Vehicles, *inter alia*.

289. Plaintiff and Class Members are entitled to damages and other legal and equitable relief, including, at their election, the right to revoke acceptance of Class Vehicles, replacement of the Class Vehicle, the overpayment or diminution in value of their Class Vehicles, and/or the cost to make the goods conform. They are also entitled to all incidental and consequential damages resulting from VW's conduct, as well as reasonable attorneys' fees and costs.

**COUNT IV – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
UNDER THE SONG-BEVERLY CONSUMER WARRANTY ACT
(On Behalf of Plaintiffs individually and on behalf of the California Class)**

290. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

291. Class Vehicles are "consumer goods" within the meaning in Cal. Civ. Code § 1791(a).

292. Plaintiff and Class Members are "buyer[s]" within the meaning in Cal. Civ. Code § 1791(b).

293. VW is a "manufacturer," "distributor," or "retail seller" within the meaning in Cal. Civ. Code § 1791(e), (j), (l).

294. The implied warranty of merchantability included with the sale of each Class Vehicle under the Act means that VW warranted that each Class Vehicle:

- a. would pass without objection in trade under the contract description;
- b. was fit for the ordinary purposes for which the Class Vehicle would be used;
- c. were adequately contained, packaged, and labeled; and
- d. conformed to the promises or affirmations of fact made.

Civ. Code § 1791.1(a)

1 295. As described herein, VW knowingly and willfully breached its implied warranties
2 in violation of the California Song-Beverly Consumer Warranty Act.

3 296. The Class Vehicles are not merchantable at the time of sale.

4 297. The Class Vehicles would not pass without objection in the automotive trade
5 because their sunroofs are inherently defective in that they have a propensity to leak, making them
6 unfit for the ordinary purpose for which the Class Vehicles are normally used.

7 298. The Class Vehicles cannot be said to be adequately labeled because nothing
8 discloses the sunroofs' propensity to leak nor advises Plaintiffs or Class Members of the existence
9 of the Defect.

10 299. The Class Vehicles do not conform to the promises or affirmations made by VW.

11 300. The Class Vehicles cannot pass the core test of merchantability – fitness for the
12 ordinary purpose for which the goods are used – because they are not substantially free of defects
13 and that are not safe.

14 301. VW's actions have deprived Plaintiffs and Class Members of the benefit of their
15 bargains and have caused Class Vehicles to be worth less than what Plaintiffs and Class Members
16 paid for them.

17 302. As a direct and proximate result of VW's conduct as described herein, Plaintiffs and
18 Class Members received goods in a condition that substantially impairs their value. Plaintiffs and
19 Class Members have been damaged by the diminished value of their Class Vehicles, *inter alia*

20 303. Plaintiffs and Class Members are entitled to damages and other legal and equitable
21 relief, including, at their election, the right to revoke acceptance of Class Vehicles or the
22 overpayment or diminution in value of their Class Vehicles. They are also entitled to all incidental
23 and consequential damages resulting from Nissan's conduct, as well as reasonable attorneys' fees
24 and costs.

25 304. Plaintiff and Class Members are entitled to damages and other legal and equitable
26 relief, including, at their election, the right to revoke acceptance of Class Vehicles, replacement of
27 the Class Vehicle, the overpayment or diminution in value of their Class Vehicles, and/or the cost
28

1 to make the goods conform. They are also entitled to all incidental and consequential damages
 2 resulting from VW's conduct, as well as reasonable attorneys' fees and costs.

3 **COUNT V – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**
 4 **15 U.S.C. § 2301, et. seq.**
 5 **(On Behalf of Plaintiffs individually and on behalf of the California Class)**

6 305. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

7 306. The Magnuson-Moss Warranty Act provides a federal cause of action for any
 8 consumer who is damaged by the failure of a supplier or warrantor to comply with a written or
 9 implied warranty in the sale of a consumer product.

10 307. Plaintiffs and Class Members are "consumers" as defined in 15 U.S.C. § 2301(3).

11 308. VW is a "supplier" and "warrantor" as defined in 15 U.S.C. § 2301(4), (5).

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

13 310. Plaintiffs and each member of the Class have had sufficient direct dealings with VW
 14 or its agents (including dealerships) to establish privity of contract with VW. However, privity is
 15 not required here because Plaintiffs and each member of the Class are intended third-party
 16 beneficiaries of contracts between VW and its dealers, and specifically, of VW's implied
 17 warranties. These dealers were not intended to be the ultimate consumers of the Class Vehicles and
 18 have no rights under the warranty agreements provided with the Class Vehicles; the warranty
 19 agreements were designed for and intended to benefit consumers only.

20 311. VW's express and implied warranties are satisfy the definitions set forth by 15
 21 U.S.C. § 2301(6) & (7).

22 312. VW breached these warranties as described in more detail above.

23 313. The Class Vehicles share a common Defect in that the sunroofs suffer from defective
 24 design manufacture, or workmanship such that they are prone to leak.

25 314. Under the MMWA, VW was obligated to disclose known defects within the Class
 26 Vehicles to Plaintiffs and Class Members.

27 315. Under the MMWA, VW was obligated to repair or otherwise remedy the Defect.

28 316. VW failed to meet its disclosure and remedy obligations, despite reasonable
 opportunity to do so.

1 317. Plaintiffs provided notice to VW that they would pursue their MMWA claims on
2 behalf of a class.

3 318. VW's violation of the MMWA caused damage to Plaintiffs and Class Members and
4 entitles them to statutory relief.

5 **COUNT VI – Violation of the Unfair Competition Law (“UCL”),**
6 **Cal. Bus. & Prof. Code § 17200, et seq.**
7 **(On Behalf of Plaintiffs individually and on behalf of the California Class)**

8 319. Plaintiffs incorporate by reference all previous allegations as if set forth herein.

9 320. VW has violated and continues to violate California's UCL, Cal. Bus. & Prof. Code
§ 17200, et seq., which prohibits unlawful, unfair, and fraudulent business acts or practices.

10 321. VW's acts and practices, alleged in this complaint, constitute unlawful, unfair, and
11 fraudulent business practices, in violation of the UCL. In particular, VW sold Class Vehicles to
12 Plaintiffs and Class Members even though the sunroofs installed in those Class Vehicles are
13 defective and pose a safety hazard, and failed to disclose its knowledge of the Defect and the
14 attendant risks of the Defect at the point of sale or otherwise.

15 322. VW's business acts and practices are unlawful in that they violate the Consumers
16 Legal Remedies Act, Cal. Civil Code § 1750, et seq. for the reasons set forth below.

17 323. VW's acts and practices also constitute fraudulent practices in that they are likely to
18 deceive a reasonable consumer. As described above, VW knowingly concealed, continues to
19 conceal, failed, and continues to fail to disclose at the point of sale and otherwise that Class
20 Vehicles' sunroofs have a propensity to leak. Had VW disclosed that information, Plaintiffs and
21 Class Members would not have purchased Class Vehicles or would have paid significantly less for
22 them. Furthermore, VW charges for repairs of the sunroof Defect without disclosing that the
23 problem is, indeed, a defect and it is widespread.

24 324. VW owed a duty to disclose the Defect and its corresponding safety risk to Plaintiffs
25 and members of the Class because VW possessed superior and exclusive knowledge regarding the
26 defect. Further, VW had a duty to disclose any information relating to the safety, quality,
27 functionality and reliability of Class Vehicles because they consistently marketed the Class
28

Vehicles as safe, reliable, and able to withstand being in the rain without allow water to penetrate the passenger compartment.

325. VW's conduct also constitutes unfair business practices for at least the following reasons:

- a. The gravity of potential harm to Plaintiffs and Class Members as a result of VW's acts and practices far outweighs any legitimate utility of VW's conduct;
- b. VW's conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and Class Members; and
- c. VW's conduct undermines or violates stated policies underlying the UCL—to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace.

326. As a direct and proximate result of VW's business practices described herein, Plaintiffs and Class Members suffered a foreseeable injury-in-fact and were damages (*e.g.*, lost money or property) because they purchased and paid for Class Vehicles that, had they known of the Defect, they would not have purchased or, in the alternative, they only would have purchased for a lower amount.

327. Plaintiffs and Class Members are entitled to equitable relief, including an order directing VW to disclose the existence of the Defect inherent in its sunroofs and to provide restitution and disgorgement of all profits paid to VW as a result of its unfair, deceptive, and fraudulent practices, reasonable attorneys' fees and costs, and a permanent injunction enjoining such practices.

**COUNT VII – Violation of the Consumers Legal Remedies Act (“CLRA”),
Cal. Civ. Code § 1750, *et seq.*
(On Behalf of Plaintiffs individually and on behalf of the California Class)**

328. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

329. VW is a “person” within the meaning of Cal. Civ. Code §§ 1761(c) and 1770, and has provided “goods” within the meaning of Cal. Civ. Code §§ 1761 (b) and 1770.

330. Plaintiffs and Class Members are “consumers” within the meaning of Cal. Civ. Code §§ 1761(d) and 1770 and have engaged in a “transaction” within the meaning of Cal. Civ. Code §§ 1761 and 1770.

331. VW’s acts and practices, which were intended to result and which did result in the sale of Class Vehicles with defective sunroofs, violate the CLRA for at least the following reasons:

- a. VW represents that its vehicles with sunroofs had characteristics, values, or benefits which they do not have;
- b. VW advertises its goods with intent not to sell them as advertised;
- c. VW represents that its vehicles and sunroofs are of a particular standard, quality, or grade when they are not;
- d. VW represents that a transaction conferred or involved rights, remedies, or obligations which they do not; and
- e. VW represents that its goods have been supplied in accordance with a previous representation when they have not.

332. As described herein, VW sold vehicles to Plaintiffs and Class Members even though the sunroofs installed in those Class Vehicles are defective and pose a safety hazard, and VW failed to disclose its knowledge of its sunroof Defect and further failed to disclose the attendant risks associated with that Defect at the point of sale or otherwise. VW intended that Plaintiffs and Class Members rely on this omission in deciding to purchase their vehicles. Plaintiffs and Class Members did in fact rely on said omission.

333. VW owed a duty to disclose the Defect and its corresponding safety risk to Plaintiffs and members of the Class because VW possessed superior and exclusive knowledge regarding the defect. Further, VW had a duty to disclose any information relating to the safety, quality, functionality and reliability of Class Vehicles because they consistently marketed the Class Vehicles as safe, reliable, and able to withstand being in the rain without allow water to penetrate the passenger compartment.

334. Had VW adequately disclosed the Defect inherent in its sunroofs, Plaintiffs and Class Members would not have purchased their Class Vehicles or, in the alternative, they would

1 have only been willing to pay less for their Class Vehicles. Furthermore, VW charges consumers
 2 for the repair and replacement of the defective sunroofs without disclosing that leaking problem is
 3 a widespread Defect.

4 335. Pursuant to the provisions of the CLRA, Plaintiffs will give notice of the Defect to
 5 VW and upon the expiration of the period described in Cal. Civ. Code Section 1782, subd. (d),
 6 Plaintiffs will amend this Complaint to state a claim for damages under the CLRA.

7 336. Pursuant to Cal. Civ. Code § 1780, Plaintiffs seek an order enjoining VW for the
 8 unlawful practices described above and a declaration that VW's conduct violates the Consumer
 9 Legal Remedies Act, as well as actual and punitive damages and attorneys' fees and costs.

10 **COUNT VIII – Fraud by Omission and/or Fraudulent Concealment**
 11 **(On Behalf of Plaintiffs individually and on behalf of the California Class)**

12 337. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth
 13 herein.

14 338. At all relevant times, VW had a duty to disclose the Defect to Plaintiffs and Class
 15 members. VW owed a duty to disclose the Defect and its corresponding safety risk to Plaintiffs and
 16 members of the Class because VW possessed superior and exclusive knowledge regarding the
 17 defect. Further, VW had a duty to disclose any information relating to the safety, quality,
 18 functionality and reliability of Class Vehicles because they consistently marketed the Class
 19 Vehicles as safe, reliable, and able to withstand being in the rain without allow water to penetrate
 20 the passenger compartment.

21 339. Once VW made representations to the public about safety, quality, functionality,
 22 and reliability, VW were under a duty to disclose these omitted facts, because where one does speak
 23 one must speak the whole truth and not conceal any facts which materially qualify those facts stated.
 24 One who volunteers information must be truthful, and the telling of a half-truth calculated to
 25 deceive is fraud. Rather than disclose the defect, VW intentionally and knowingly concealed,
 26 suppressed and/or omitted material facts including the standard, quality or grade of the Class
 27 Vehicles and the presence of the Defect and corresponding safety risk, to sell additional Class
 28 Vehicles and avoid the cost of repair or replacement.

1 340. VW omitted, concealed, and/or suppressed the existence of the sunroof Defect in
2 the Class Vehicles.

3 341. VW's concealment of the Defect was done knowingly, intentionally, and with the
4 intent to induce consumers to purchase the defective Class Vehicles for a price more than their
5 actual worth.

6 342. VW knew their concealment and suppression of material facts was false and
7 misleading and knew the effect of concealing those material facts. VW knew their omission,
8 concealment and suppression of the Defect would sell more Class Vehicles and would discourage
9 Plaintiffs and members of the Class from seeking replacement or repair of the Defect during the
10 applicable warranty periods. Further, Defendants intended to induce Plaintiffs and members of the
11 Class into purchasing or leasing the Class Vehicles and to discourage them from seeking
12 replacement or repair of the Defect in order to decrease costs and increase profits.

13 343. Plaintiffs and Class members were unaware of the Defect, in part because VW did
14 not issues press releases and did not make its Tech Tips, TSBs, and other internal communications
15 available to the public, to consumers, or to the owners and lessees of Class Vehicles via direct
16 communications.

17 344. Had VW not omitted, concealed or suppressed the Defect from Plaintiffs and Class
18 members, then Plaintiffs and Class members would would not have purchased the vehicles or would
19 have paid less for them, had they been informed of the Defect prior to their purchases.

20 345. VW acted with malice, oppression, and fraud.

21 346. Plaintiffs and members of the Class reasonably relied upon Defendants' knowing
22 concealment and omissions.

23 347. As a result of VW's concealment and/or suppression of the existence of the Defect,
24 Plaintiffs and Class members sustained damage as described herein.

25 **COUNT IX - Unjust Enrichment**
26 **(On Behalf of Plaintiffs individually and on behalf of the California Class)**

27 348. Plaintiffs incorporate by reference all previous allegations as if set forth herein.
28

1 349. As described above, VW sold Class Vehicles to Plaintiffs and Class Members even
2 though the sunroofs installed in those Class Vehicles were defective and posed a safety hazard.

3 350. VW failed to disclose its knowledge of the sunroof defect and the Defect's attendant
4 risks – at the point of sale or otherwise.

5 351. VW unjustly charged and charges Class Members for repairs and/or replacement of
6 the defective sunroofs without disclosing that the Defect is widespread and that the repairs do not
7 address the root cause of the Defect.

8 352. As a result of its acts and omissions related to the defective sunroofs, VW obtained
9 monies that rightfully belong to Plaintiffs and Class Members.

10 353. As a result of its wrongful acts, concealments, and omissions of the Defect in its
11 Class Vehicles, as set forth above, VW charged a higher price for the Class Vehicles than their true
12 value. Plaintiffs and members of the Class paid that higher price for their vehicles to VW's
13 authorized dealers, which are in VW's control. VW also reaps huge profits from the sales of its
14 vehicles through its authorized dealers, netting €30 billion for the fiscal year ending December 31,
15 2019 alone.

16 354. VW appreciated, accepted, and retained the non-gratuitous benefits conferred by
17 Plaintiffs and Class Members who, without knowledge of the Defect, paid a higher price for their
18 vehicles than those vehicles were worth. VW also received monies for vehicles that Plaintiffs and
19 Class Members would have paid less for, not purchased with the sunroof feature (if the model was
20 also available without one), or would not have purchased the Class Vehicles at all had they been
21 aware of the Defect.

22 355. It would be inequitable and unjust for VW to retain these wrongfully obtained
23 profits.

24 356. VW's retention of these wrongfully-acquired profits would violate fundamental
25 principles of justice, equity, and good conscience.

26 **PRAYER FOR RELIEF**

27 Therefore, Plaintiffs seek judgment against VW and requests relief as follows:

28 A. An Order certifying this case as a Class Action;

- B. An Order appointing Plaintiffs as Class Representatives of the California Class;
- C. An Order appointing Plaintiffs' counsel as Class Counsel;
- D. Damages and other relief under statutory or common law;
- E. Attorneys' fees and costs;
- F. Pre- and post- judgment interest;
- G. Declaratory, injunctive, and equitable relief; and
- H. Such other relief as is just and proper.

JURY DEMAND

Plaintiffs, individually and on behalf of the proposed California Class, hereby demand a trial by jury as to all matters so triable.

DATE: March 25, 2020

Respectfully submitted,

/s/ Crystal Foley
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Crystal Foley

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JESSICA COLE and KAREN WERNER, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Sonoma County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Crystal Foley, SIMMONS HANLY CONROY
100 N. Sepulveda Blvd., Suite 1350
Los Angeles, CA 90245; (310)322-3555

DEFENDANTS
VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, and VOLKSWAGEN AG, a foreign corporation,

County of Residence of First Listed Defendant Fairfax County, VA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment Of Veteran's Benefits ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☒ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury -Medical Malpractice CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities--Employment ☐ 446 Amer. w/Disabilities--Other ☐ 448 Education	PERSONAL INJURY ☐ 365 Personal Injury -- Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty OTHER ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee--Conditions of Confinement	☐ 625 Drug Related Seizure of Property 21 USC § 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC § 158 ☐ 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent--Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS--Third Party 26 USC § 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC § 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced & Corrupt Organizations ☐ 480 Consumer Credit ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation--Transfer ☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
23 U.S.C. § 1332 (d)
Brief description of cause:
Class action lawsuit alleging, inter alia, strict liability (failure to warn), negligence, and consumer fraud

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE