**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| JULIE KIMBALL, on behalf of herself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AKTIENGESELLSCHAFT, AUDI AKTIENGESELLSCHAFT and AUDI OF AMERICA, INC.,<br><br>Defendants. | Civil Action No. 22-cv-04163-JXN-MAH |

**SECOND AMENDED CLASS ACTION COMPLAINT**
**AND DEMAND FOR JURY TRIAL**

Julie Kimball alleges on her behalf and on behalf of the class as follows:[1]

**INTRODUCTION**

1. Plaintiff Julie Kimball (hereinafter "Kimball") initiates this class action against Volkswagen Group of America, Inc. (hereinafter "VWGoA"), Volkswagen Aktiengesellschaft (hereinafter "VWAG"), Audi Aktiengesellschaft (hereinafter "Audi AG"), and Audi of America, Inc. (hereinafter "Audi America") (hereinafter collectively "Defendants"), individually and on behalf of all persons in the United States who purchased certain 2009 through and including 2014 model year Volkswagen (hereinafter "VW") or Audi vehicles as defined *infra* at ¶ 12 (hereinafter "class vehicles") incorporating the engine with a defective turbocharger (hereinafter "class

[1] These allegations are based on Plaintiff's personal knowledge as to her conduct and as to all other matters based on counsel's investigation. Counsel's investigation includes an analysis of publicly available information, including Defendants' Tech Tips, Technical Bulletins and Technical Service Bulletins (attached as exhibits to this complaint) and consumer complaints, as well as expert analysis of the defective and redesigned turbochargers, field investigations conducted by counsel and additional analysis. Plaintiff's counsel believe that a reasonable opportunity for discovery will provide further support for the claims alleged here.

engine(s)") for Defendants' violations of common and statutory law and concealment of a known defect in class engine turbochargers.[2]

**PARTIES**

2. Kimball is a citizen of the State of California and resides in Kentfield, California. On December 31, 2009, Kimball leased a 2010 model year Audi A4 equipped with a class engine in California from an authorized Audi dealership for her personal or household use. On December 31, 2012, at the expiration of the three year lease, Kimball purchased the 2010 Audi A4. On or around July 2019, at 63,683 miles, Kimball's vehicle's engine experienced the turbocharger defect (more fully described *infra* at ¶¶ 16-30) specifically caused by premature excessive wastegate linkage wear resulting in the wastegate being stuck in the partially open position. This failure caused an underboost condition (a/k/a "negative pressure deviation") as described in her repair documents and in Audi Technical Service Bulletin 21 12 10 2031245/1 (issued October 25, 2012, some three months prior to Kimball's class vehicle purchase) entitled "21 Mil on – P0299 Negative pressure deviation, turbocharger excessive wastegate play."[3] As a result of this specific turbocharger failure mode, Kimball was forced to pay approximately $3,100.00 to have her vehicle

[2] Class vehicles are equipped with EA888 and EA113 base model class engines incorporating the turbocharger defect. These base engine models have sub-models designated with a four letter code that indicate whether the engine is for an automatic transmission, manual transmission and/or whether the vehicle is 49 state emissions compliant or California compliant, *inter alia*. Kimball's EA888 engine is designated CAEB indicating her car sold new in California complies with California CARB requirements. These EA888 class engine sub designations including CBFA, CCTA, CAEB, CPLA, CPPA, CAEA, CDNC, etc. do not affect the turbocharger design, operation or the turbocharger defect. Similarly, EA113 sub-designations CRZA, etc. also do not affect the turbocharger design, operation or turbocharger defect. Class vehicle engines are using the same turbocharger wastegate linkage. The Tech Tips, Technical Bulletins, Technical Service Bulletins accompanying this complaint are applicable to all turbochargers in class engines. Kimball's vehicle was also part of the Volkswagen timing chain and water pump settlements together with other Volkswagen and Audi vehicles using the EA888 base engine indicating the sub-models share identical major components.

[3] The repair order evidencing replacement of Kimball's class engine's turbocharger for an underboost condition accompanies this complaint as Exhibit 8.

diagnosed and the defective turbocharger replaced.

3. Defendant VWGoA is a New Jersey corporation doing business throughout the United States, including California. VWGoA's corporate headquarters is located in Herndon, Virginia. VWGoA is a wholly-owned U.S. subsidiary of VWAG. VWGoA engages in business activities in furtherance of the interests of VWAG and Audi AG, including the advertising, marketing and sale of VW and Audi automobiles including class vehicles in the United States. VWGoA also acts as the warrantor of both VW and Audi vehicles in the United States, distributes VW and Audi replacement parts and disseminates service publications including Tech Tips, Technical Bulletins, Technical Service Bulletins (together with other service documents including workshop and parts manuals).

4. Defendant VWAG is a German corporation with its principal place of business in Wolfsburg, Germany. VWAG is one of the largest automobile manufacturers in the world and is in the business of designing, developing, manufacturing and selling automobiles including certain class vehicles. VWAG is the parent corporation of VWGoA and Audi AG.

5. Audi AG is a German corporation with its principal place of business in Ingolstadt, Germany and is a wholly-owned subsidiary of VWAG. Audi AG designs, develops, manufactures, and sells luxury automobiles under the Audi brand name including certain class vehicles.

6. Audi America is an operating unit of VWGoA. Audi America engages in the business of advertising, marketing and sale of Audi automobiles in the United States.

7. At all relevant times, VWGoA and Audi America acted as authorized agents, representatives, servants, employees and/or alter egos of VWAG and Audi AG while performing various activities including but not limited to advertising, administering warranties and warranty repairs at authorized VW and Audi dealerships, dissemination of technical information and monitoring the performance of VW and Audi vehicles in the United States, including substantial activities that occurred within this jurisdiction. VWGoA, VWAG and Audi AG have overlapping

corporate management boards and cooperate to design, manufacture, test and sell VW and Audi vehicles in the United States. They share employees, class vehicle parts (which are often stamped with both the VW and Audi logos) and technical knowledge including design patents. In product liability and class action litigation, the Defendants are represented by the same lawyers. Other jurisdictions have allowed service of process on VWGoA to effect service on VWAG under an agency theory. VWAG and Audi AG tell VWGoA what to do, when to do it and how to do it. VWGoA's sole function is to serve the interests of its masters in Germany and manage the distribution and sale of VW and Audi vehicles in the United States through authorized dealers. The Defendants are not involved in the design, manufacture, testing or sale of other brands of passenger motor vehicles in the United States aside from VW and Audi.[4]

8. At all times relevant to this action, VWAG and Audi AG cooperated in the design, manufacture and testing of class vehicles including the engine turbocharger and its exhaust manifold mounting. VWAG and Audi AG also cooperated in the design, manufacture and testing of replacement parts including upgraded turbochargers for class engines. VWGoA and its operating unit Audi America, distributed, sold, and warranted both VW and Audi class vehicles throughout the United States through its authorized dealers. VWGoA and Audi America, in cooperation with VWAG and Audi AG published and disseminated the Owner's Manuals and warranty booklets, USA Warranty and Maintenance schedules, advertisements, and other promotional materials relating to the class vehicles.[5]

[4] VWGoA, Audi America and their respective German parent companies (VWAG and Audi AG) knew that class engine turbochargers were defective prior to Kimball's vehicle purchase. VWGoA and Audi America, as the marketers, distributors, sellers and warrantors of class vehicles in the United States failed to inform Kimball and other class vehicle owners prior to purchase of a known material turbocharger defect that would prematurely fail shortly after the vehicle warranty expired and would cost in excess of $3,000.00 to repair.

[5] Owner's Manuals other materials accompanying class vehicles are copyrighted by VWAG and Audi AG and are printed in Germany. VWAG and Audi AG were responsible for setting class vehicle maintenance schedules.

**JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000.00 and is a class action in which there are more than 100 members.[6] Members of the proposed class (as defined below) are citizens of states different from Defendants and greater than two-thirds of the members of the proposed class reside in states other than the states in which the American corporate Defendants (e.g., VWGoA and Audi America) are citizens.

10. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(a), (b) and (c) because VWGoA is incorporated in New Jersey and VWGoA and Audi America marketed, advertised, and/or sold the class vehicles within this district through numerous dealers doing business in the district. Defendants' actions have caused harm to Kimball as well as hundreds of class members residing in New Jersey. VWGoA and Audi America maintain the following offices and/or facilities in New Jersey: (1) the "VW/Audi VCI Eastern Region" in Woodcliff, New Jersey; (2) the "VW/Audi Test Center" in Allendale, New Jersey; (3) the "Product Liaison Group" in Fort Lee, New Jersey; (4) and the "Parts/Region Distribution Center" in Cranbury, New Jersey.[7] Accordingly, VWGoA and Audi America, for themselves and as agents of their German corporate parents VWAG and Audi AG, have sufficient contacts with this district to subject Defendants to personal jurisdiction in the district and venue is proper.

**FACTUAL ALLEGATIONS**

11. VWAG and Audi AG manufacturers of vehicles sold under the VW and Audi brands throughout the United States. VWAG and Audi AG designed, manufactured and tested class vehicles. VWGoA and Audi America imported, distributed, marketed, and/or sold the class

[6] There are in excess of 500,000 class vehicles.

[7] *See Volkswagen Group of America Locations*, VOLKSWAGEN GROUP OF AMERICA, https://www.volkswagengroupofamerica.com/locations (last visited April 11, 2022).

vehicles in the United States. VWGoA and Audi America provided service and maintenance for the class vehicles through their extensive network of authorized dealers and service providers in the United States.

12. On information and belief, the turbocharger defect exists in the following VW and Audi 1.8 and 2.0L vehicles: 2012-2014 VW Beetles; 2009-2012 VW CC; 2009-2012 VW Eos; 2008-2012 VW GTI; 2008-2014 VW Jetta; 2008-2010 VW Passat; 2009-2014 VW Tiguan; 2008-2012 Audi A3; 2009-2013 Audi A4; 2009-2013 Audi A5; 2012 Audi A6; 2009-2012 Audi TT; and, 2011-2012 Audi Q5.

13. Kimball and members of the proposed class (and/or subclasses to be determined) (defined *infra* at ¶ 125) purchased and/or own class vehicles.

14. Kimball and members of the class had to pay thousands of dollars to prematurely replace the defective turbocharger and this caused Kimball and members of the proposed class to overpay for their class vehicles at the time of sale.

15. VWAG, Audi AG, VWGoA and Audi America wrongfully and intentionally concealed a defect in design, material, manufacturing, and/or workmanship in the class engine turbocharger, which is substantially certain to prematurely fail, forcing Kimball and members of the proposed class to incur out of pocket costs to repair or replace the defective turbocharger. As explained in detail *infra*, the turbocharger fails before the end of the useful life of the engine as the result of defects alleged herein. Class vehicle engine turbochargers were substantially certain to prematurely fail because of exhaust gas pulsations and vibrations within the turbocharger housing, wastegate linkage geometry and absence of adequate bushings, utilization of inadequate wastegate linkage fabrication materials including but not limited to dimensional construction and heat treatment (hereinafter "turbocharger defect"). Subsequent modifications to the turbocharger design corrected the off-set loading, dimensional fabrication deficiencies and added and/or incorporated improved bushings and other features to reduce excessive premature wear at contact

surfaces.

16. Class engines employ an exhaust-gas turbocharger with a vacuum operated internal wastegate to increase horsepower by harnessing engine exhaust gases to spin an axial turbine and compressor which in turn pre-compresses air "on demand" and supplies it to the engine cylinders for combustion after fuel is injected. *See* Figure 1, *infra* for a depiction of a turbocharged engine layout diagram. When functioning properly, the class engine turbocharger increases torque and horsepower of class engines on demand.

17. The function of a turbocharger wastegate is to bleed off excessive air pressure (a/k/a "boost pressure") by the compressor to prevent excessive overboost pressure from accumulating and resulting in likely engine damage. *See* Figure 2, infra, for a depiction of turbocharger wastegate layout diagram. Class engines use a metal linkage rod to connect the wastegate actuating arm (a/k/a "lever arm" or "link plate") to the wastegate control pod that operates on engine vacuum. This linkage assembly controls the opening and closing of the turbocharger wastegate.

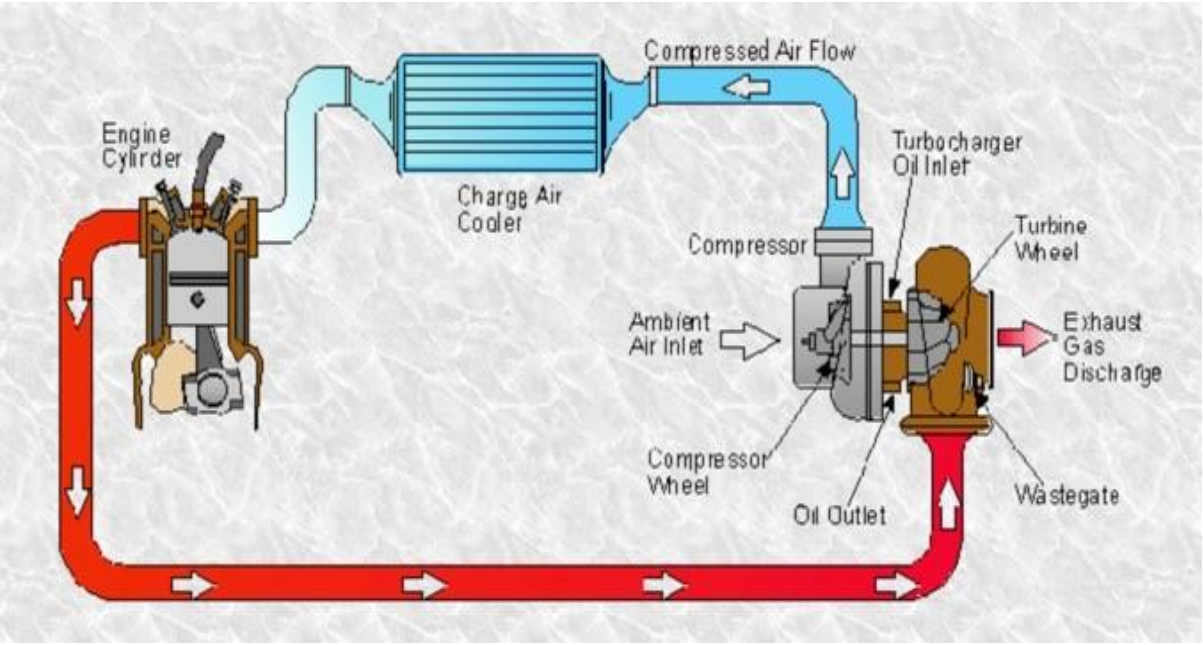


FIGURE 1
DEPICTION OF THE LAYOUT OF AN AUTOMOBILE ENGINE EQUIPPED WITH A TURBOCHARGER

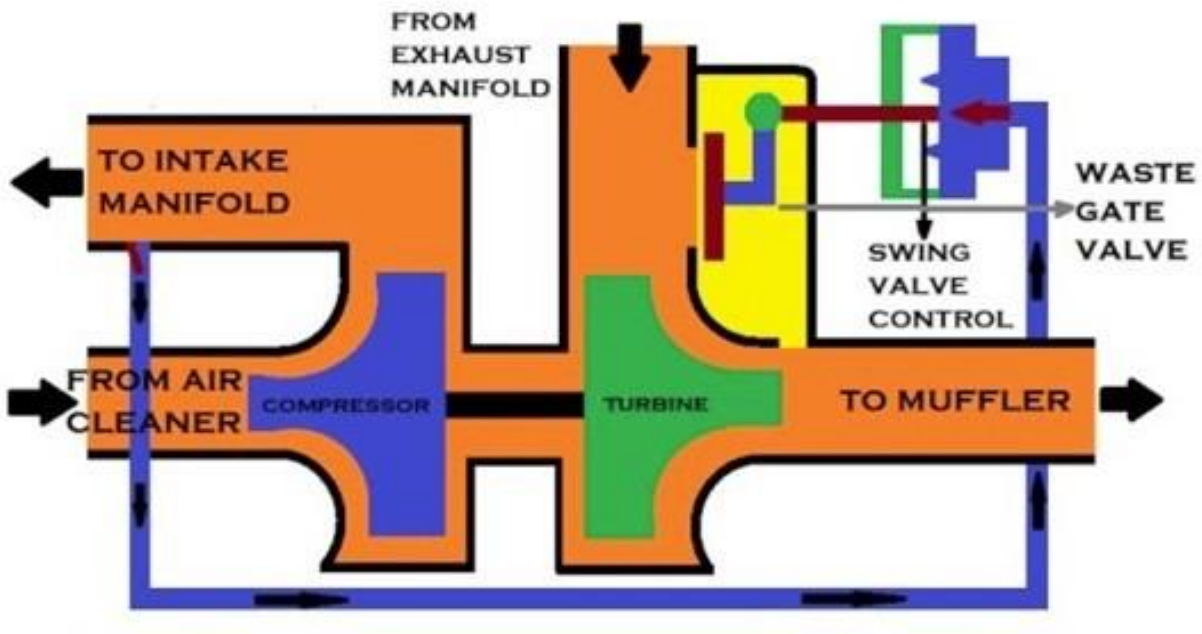


FIGURE 2
DEPICTION OF AN EXEMPLAR INTERNAL WASTEGATE TURBOCHARGER

18. The exhaust manifold and turbine side of the class engine turbochargers produce pulsations and vibrations that travel through the wastegate valve shaft and wastegate lever arm. These pulsations and vibrations cause excessive premature wear on the wastegate shaft/bushing contact surfaces and on the wastegate lever arm/wastegate actuator rod linkage connections causing the turbocharger wastegate to malfunction. This linkage wear causes the wastegate to become stuck in the partially open or closed position causing either an underboost or overboost condition, respectively. Another malfunction is where the pulsations and vibrations cause the roll pin on the turbocharger housing to back out "allowing the wastegate valve and lever to drop into the housing."[8] There are no other documented modes of class engine premature turbocharger

[8] VW Tech Tips TT 21-10-02 originally issued July 1, 2010 superseded on June 19, 2015 to update model year class vehicle application. *See* accompanying Exhibit 1. This Tech Tip evidences unusual pulsations and vibrations were occurring in the turbocharger that were causing malfunctions in the wastegate shaft and linkages. VWGoA, Audi America, VWAG and Audi AG were aware of the issue at least six to eight months before the initial Tech Tip release date (prior to January 2010) given the lead time of investigating the issue and issuing notice to authorized dealers. Consequently, the July 1, 2010 VW Tech Tip referenced in Exhibit 1 demonstrates that Defendants would have been aware of the turbocharger defect prior to Plaintiff's December 31, 2009 lease of her class vehicle.

failure resulting in turbocharger underboost or overboost conditions aside from these two conditions which require turbocharger replacement.

19. Where either condition occurs, the turbocharger is not serviceable and requires replacement since the wastegate becomes nonfunctional as either overboost or underboost occur depending on the position of the wastegate and failure mode. These failures occur shortly after the limited powertrain warranties expire. A properly functioning turbocharger is crucial to the safe and reliable operation of class vehicles.

**PRIOR KNOWLEDGE OF THE TURBOCHARGER DEFECT**

20. Knowledge and technical information concerning the turbocharger defect was in the exclusive and superior possession of VWAG, Audi AG, VWGoA and Audi America, including authorized VW and Audi dealers before Plaintiff leased and ultimately purchased her vehicle, and that information was not provided to Plaintiff and members of the class. Defendants' knowledge is evident for several reasons.

21. First, VWAG and Audi AG's routine pre-production testing and post-production monitoring are designed to reveal, or more accurately here, expose defects like the turbocharger defect that will increasingly manifest over time. VWAG operates a massive multi-departmental Quality Assurance ("QA") division headquartered in Germany that has approximately 16,000 employees at more than 100 sites around the world that support the development of its vehicles and components. VWAG's QA division is integrated throughout its brands, including VWGoA and Audi America, and works closely with VWAG's Development, Procurement, Finance, Production and Sales divisions, and its management team strategically controls the QA activities of the Volkswagen Group and its brands. The Quality Assurance division includes the following departments[9]:

[9] Information regarding VWAG's Quality Assurance division can be found at

a. Group Quality Assurance Purchased Parts: ensures that all parts required for vehicle production meet Volkswagen's required standard of quality;

b. Group Material Technology and Material Technology Volkswagen Brand; a close partner of the Development Division that combines the VWAG's Group Laboratory Management and Technology divisions to provide support for laboratories worldwide in terms of processes, tests and standards. The Group Laboratory Technology division controls processes that ensure the quality of materials worldwide;

c. Central Group Quality Assurance: key to VWAG's integration across its brands worldwide (e.g. VWGoA and Audi America), this department is responsible for the quality management system including the required certifications as a manufacturer. It also promotes the networking of the QA functions across VWAG's brands and regions and ensures that the quality of the products is maintained across the logistical process;

d. Quality Assurance Complete Vehicle: assesses vehicles from the first pre-production model through to the end of production under the most varied customer-specific operating conditions. This department also runs tests and assesses new vehicles during acceptance road tests and approves them for mass production, with the goal of achieving a fault-free vehicle, system and powertrain start-up in order to avoid complaints and recall situations;

e. Quality Assurance Product Safety: assesses damage that has been deemed to be "relevant for safety" by importers or Volkswagen partners and ensures that

https://www.volkswagen-karriere.de/en/working-at-volkswagen/corporate-divisions/quality-assurance. html *last visited September 22, 2023.*

highlighted problems are resolved quickly, and informs authorities or consumer protection organizations of this;

f. Technical Product Controlling: performs audits of the powertrains and vehicles of Volkswagen's brands, and its tasks include series production monitoring of new vehicles in relation to exhaust gas, consumption, exterior noise and on-board diagnosis, with its results reported to the responsible authorities;

g. Quality Assurance Product Emergence: responsible for ensuring the quality of new vehicles along the Product Emergence Process (PEP) with the goal of bringing concepts to the field that are without any complaints or defects in order to reduce damage cases and breakdowns; and,

h. Quality Assurance Components: controls the global component sites and manages quality projects for components including engines.

22. Thus, VWAG's extensive quality control testing of its vehicles, including class vehicles, combined with its pre- and post-production monitoring of class vehicle performance and complaints, across its brands and divisions worldwide, including VWGoA and Audi America, alerted VWAG, Audi AG, VWGoA and Audi America early on that their turbochargers wear out prematurely.

23. Moreover, as manufacturers of automobiles marketed and sold in the United States, VWAG and Audi AG completed testing that exposed the existence of the turbocharger defect, including a Failure Modes and Effects Analysis ("FMEA") and Design Validation Plan and Report ("DVP&R").

24. The purpose of FMEA is to define, based on known and established facts, potential risks of failures and rank them by severity, likelihood and ability to detect failure. Any conditions resulting in failure, including those associated with the turbocharger defect and causing failure of Defendants' turbocharger assembly, and consequently, class engines, would result in a "high risk"

priority and draw additional analysis and validation testing during the FMEA and DVP&R phases. Given the later reports of failures after sales, including those suffered by Plaintiff as well as class members, these processes were designed to show the various modes of failure caused by the turbocharger defect and confirm what Defendants already knew about its class vehicle engines and the turbocharger defect.

25. The DVP&R phase includes comprehensive testing and other processes required to validate the durability of any design, and includes three basic types of testing: (i) bench scale; (ii) engine dynamometer; and, (iii) vehicle/field testing.

26. Bench scale testing is component-specific, and is completed by the supplier in coordination with the Original Equipment Manufacturer ("OEM") to establish the strict set of specifications and guidelines to ensure that the component will operate reliably and durably in foreseeable operating conditions. During this phase of testing, Defendants' turbocharger was "bench tested"—i.e. set up on various machines to simulate certain operating extremities and conditions to confirm whether it meets the necessary specifications and guidelines set by the supplier in coordination with VWAG and Audi AG. Turbochargers are tested for their durability and tolerance of vibrations at varying frequencies, as well as exposure to changes in temperature, all with the purpose of exposing vulnerabilities and defects within the turbocharger and turbocharger assembly. In discovery, Plaintiff expects to receive documentation that, at minimum, VWAG and Audi AG, but likely all Defendants, received the detailed results of the bench testing and resulting Technical Control Documents from the supplier which outline the operating limitations of Defendants' turbochargers along with the potential risks associated with installation in the class vehicles, including the turbocharger defect. Similarly, discovery is expected to show that bench testing of the turbochargers confirmed what VWAG, Audi AG, VWGoA and Audi America already knew about its class engine turbocharger—that use of the turbocharger wastegate linkage was inappropriate because it was certain to prematurely fail.

27. Engine dynamometer testing is one of the most important types of testing to ensure durability and performance of engines and their components, including Defendants' turbocharger assembly. In the engine dynamometer test, the turbocharger is installed on a complete engine and operated under extreme conditions such as maximum temperatures or excessive vibration. Engine dynamometer testing is intended to demonstrate engine robustness and reveal necessary improvement or flaws such as the turbocharger defect. Turbocharger durability and tolerance of extreme temperature changes are tested by, among other things, cycling the engine between full throttle and idling repeatedly, which would reveal the turbocharger defect. Discovery is expected to confirm that engine dynamometer testing of the turbochargers revealed material stress, linkage arm rattle, compromised wastegate valve performance resulting in underboost or overboost, and/or the outright failure of the turbocharger.

28. Lastly, VWAG and Audi AG tested their turbocharger assembly in actual vehicles, both prototype vehicles and pre-production line vehicles, including specific engine and powertrain calibration and development. In these tests, vehicles with the turbochargers are driven through a full range of conditions and extremities that are encountered once a vehicle is sold to the public. These vehicle-specific development tests include mapping extreme engine operating conditions with high exhaust gas temperatures and high turbocharger loads, which are the kinds of modes that manifest the turbocharger defect. Testing is intended to simulate the equivalence of 10 years and 150,000 miles and would have revealed the turbocharger defect. Vehicle testing also exposes the turbocharger to hot and cold weather conditions to reveal any thermal fatigue that may exist. Discovery will evidence that turbochargers in such in-vehicle testing either failed or clearly show the turbocharger defect by virtue of linkage arm rattle and compromised wastegate valve performance resulting in underboost and/or overboost.

29. During DVP&R testing, class vehicle turbochargers were exposed to conditions that would have caused the turbocharger defect to manifest.

30. The quality management system in the Volkswagen group is based on ISO 9001 standards. These standards must be complied with to attain type approval for the manufacture and sale of Defendants' vehicles, and requires thorough documentation of the testing, testing procedures and outcomes, as well as the obligation to improve upon testing and quality standards based on prior testing and experience, which would include in-warranty failures, sales of service parts for out-of-warranty failures, and NHTSA complaints—each of which were implicated by the turbocharger defect.

31. An additional source of Defendants' knowledge of the turbocharger defect comes from the testing of turbochargers replaced under warranty and returned to Defendants for analysis and testing. Because turbochargers are anticipated to last at least 10 years or 120,000 miles, any part failing under any of the warranties is subject to additional scrutiny. Given that turbochargers are also considered an emissions part covered by California's extended emissions warranty and standards, Defendants must examine, test, analyze and report failed turbocharger assemblies under the California Air Resources Board defect reporting program. Because the turbocharger defect causes a complete failure of the turbocharger assembly and the loss of engine power, Defendants would have had to examine, test and analyze these returned parts.

32. Still another source of Defendants' knowledge of the turbocharger defect and that it causes premature engine failure comes from consumer complaints made to VWGoA and Audi America authorized dealers.

33. Also, the existence of Audi of America and VWGoA class vehicle Tech Tips, Technical Bulletins and Technical Service Bulletins evidences this prior knowledge. This information was not provided to Kimball and members of the proposed class. Therefore, the above-referenced Tech Tips, Technical Bulletins and Technical Service Bulletins, Defendants' pre-production testing, pre-production design failure mode analysis, production design failure mode analysis performed by VWAG and Audi AG, early consumer complaints made to VWGoA and

Audi America's network of exclusive dealers, aggregate warranty and replacement part data compiled from those dealers, repair order and parts data received from the dealers, consumer complaints to dealers and testing performed in response to consumer complaints, *inter alia*, are all evidence that VWAG, Audi AG, VWGoA and Audi America were aware (or should have been aware) of the turbocharger defect in class vehicle engines. VWAG, Audi AG, VWGoA, and Audi America fraudulently concealed the turbocharger defect and safety risk from Kimball and members of the proposed class. VWAG, Audi AG, VWGoA and Audi America knew, or should have known, that the turbocharger defect was material to owners of the class vehicles and was not known or reasonably discoverable by Kimball and members of the proposed class before they purchased class vehicles or before the warranties on their class vehicles expired.

33. VWAG, Audi AG, VWGoA and Audi America had actual knowledge that design, manufacturing, materials and/or workmanship defects were causing the turbocharger defect shortly after production of the class vehicles commenced. VWAG and Audi AG engaged in extensive field research, quality investigation and analysis before designing and issuing specifications for the turbocharger linkage anti-rattle/anti-wear retaining clip, bidding/sourcing the clip and manufacturing and distributing the new part, which was intended to augment the linkage previously determined to be defective. These activities took approximately one year before the retaining clip was released for sale.

**PRIOR KNOWLEDGE DEMONSTRATED THROUGH TECHNICAL BULLETINS DISSEMINATED BY DEFENDANTS**

34. Prior to Kimball's class vehicle purchase, VWGoA and Audi America, together with VWAG and Audi AG had pre-sale knowledge of the turbocharger defect. VWGoA, VWAG and Audi AG acknowledged the turbocharger defect in several Tech Tips, Technical Bulletins and Technical Service Bulletins, prior to the purchase of the vehicle by Plaintiff, which described the issue to their exclusive network of authorized dealerships beginning in or around July 1, 2010. *See*

VW Tech Tips TT 21-10-02 accompanying the complaint as "Exhibit 1" discussing the roll pin issue affecting the turbocharger wastegate released July 1, 2010 and updated June 19, 2015. Technical Bulletin 21 10 01 released on August 25, 2010 discusses the wastegate lever arm/wastegate actuator rod connection rattle. *See* Technical Bulletin 21 10 01 accompanying the complaint as "Exhibit 2."[10] Defendants also fashioned an attempted remedy to correct the turbocharger defect through installation of a retaining clip designated Part No. 06J145220A on August 27, 2011. *See* Technical Bulletin 21 13 02 dated December 3, 2013 accompanying the complaint as "Exhibit 3." This Technical Bulletin superseded an earlier bulletin addressing the identical issue released on August 27, 2011. Part No. 06J145220A and its installation location are depicted in Figure 3, *infra*. Although this clip may have partially alleviated the rattle noise at the wastegate lever arm and actuator rod connection causing customer complaints, the clip did not stop the continuing premature wear of these components at their attachment points that result in wastegate malfunction described in this complaint and accompanying exhibits.[11] Consequently, under VWGoA and Audi America's retaining clip service protocol, which was not a fix at all, it would have been futile for Kimball and proposed class members to present their vehicles for these repairs, as they would be insufficient and fail to mitigate the turbocharger defect. Moreover, even if VWGoA or Audi America replaced the turbochargers outright, they simply reinstalled identical turbochargers containing the same defect and were also substantially certain to fail.

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[10] What starts out as an annoying wastegate linkage rattle caused by abnormally premature component wear, eventually causes premature turbocharger failure and expensive attendant replacement costs when the wear eventually causes the wastegate to become nonfunctional. *See* Exhibit 4 and Exhibit 5, Figure 1, discussing and depicting excessive wastegate linkage wear causing turbocharger failure. Thus, the rattling wastegate lever arm/wastegate actuator rod connection is an underlying symptom of the turbocharger defect, and the telltale harbinger of substantially certain premature engine turbocharger wastegate failure discussed in Exhibits 4 and 9. The Defendants were fully cognizant that wastegate linkage rattle (which indicate premature linkage wear) would develop into wastegate inoperability and turbocharger underboost conditions (a/k/a "Negative Pressure Deviation"). *Id.*

[11] VWGoA publishes VW vehicle service information while Audi America publishes Audi vehicle service information.

35. VWGoA's class vehicle pre-sale turbocharger defect knowledge is specifically demonstrated in a further Technical Service Bulletin was released on October 25, 2012 (several months before Kimball purchased her vehicle not including the bulletin lead time of more than 6 months) discussing class engine turbocharger engine malfunction light code "PO299 Negative pressure deviation" (a/k/a turbocharger underboost) and "turbocharger waste gate [sic] has play."[12] *See* Technical Bulletin 21 12 10 2031245/1 accompanying the complaint as "Exhibit 4." Under Technical Background, this Technical Service Bulletin describes the condition as arising "[u]nder certain driving conditions the linkage for the waste gate [sic] actuation can encounter excessive wear which leads to play at the waste gate [sic] flap. This leads to boost escaping through a loose flap which sets the DTC P0299 Negative Pressure Deviation." This is the exact turbocharger failure mode experienced by Kimball's class engine turbocharger, which, based on the referenced Tech Tips, Technical Bulletins and Technical Service Bulletins, was substantially certain to fail shortly after the expiration of the express warranty. Exhibit 4 is specifically cited in Audi America's later implemented class engine turbocharger warranty extension AWA-14-03 announced in June of 2014. *See* accompanying Exhibit 9 at p. 2 reciting "TSB: 2031245 is applicable to this extension." This extension increases the turbocharger warranty from the initial powertrain warranty of 5 years/60,000 miles to 7 years/70,000 miles. *Id.* at pp. 3-4. This warranty extension for a known pre-sale engine turbocharger defect is simply inadequate remedy given the lifetime expectations of class vehicle purchasers under the totality of circumstances discussed in this complaint.

[12] Since class engine turbochargers are not serviceable for excessive wastegate or lever arm play, the entire turbocharger assembly must be replaced.

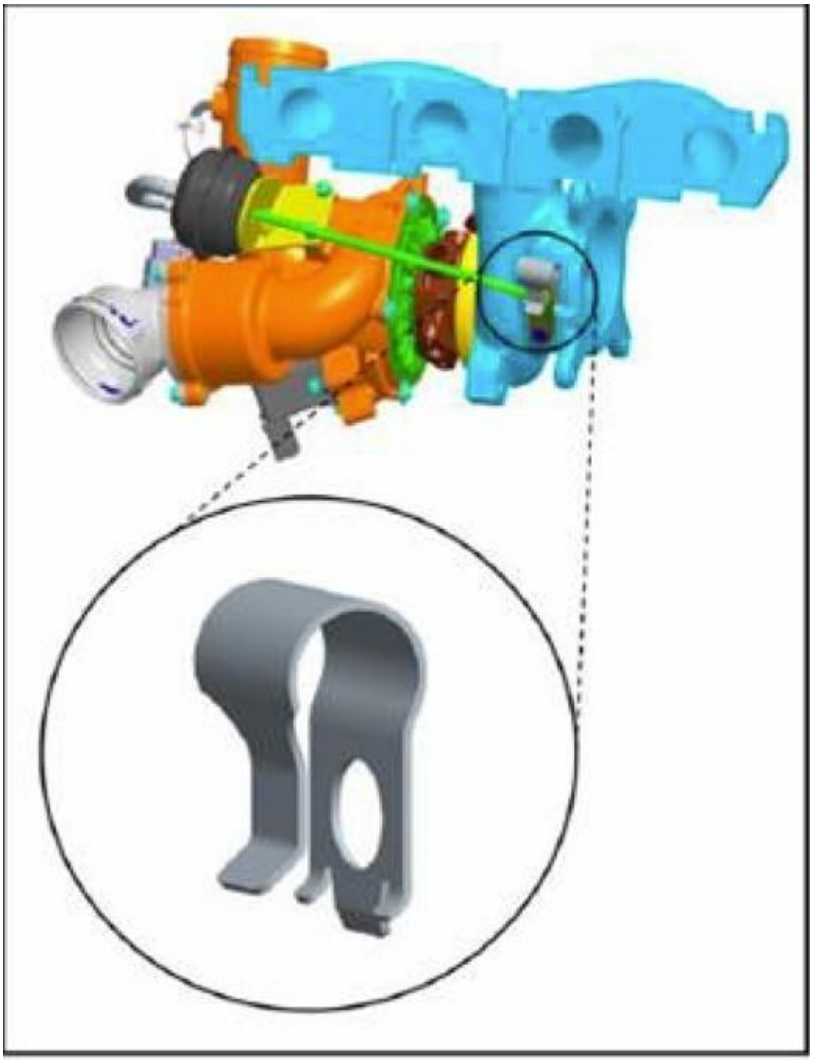

FIGURE 3
PART NO. 06J145220A AND INSTALLATION LOCATION ON THE CLASS ENGINE TURBOCHARGER ASSEMBLY AS DEPICTED IN TECHNICAL BULLETIN 21 13 02

36. Yet another Technical Service Bulletin was released on June 6, 2014 superseding an earlier bulletin dated July 9, 2013. *See* Technical Service Bulletin 21 14 18 2031245/7 accompanying the complaint as "Exhibit 5." Given the lead times to investigate the issue and propose a solution, the Defendants had knowledge of the information in Exhibit 5 before Kimball purchased her vehicle.[13] This bulletin discusses that the "linkage for the waste gate [sic] actuation can encounter excessive wear which leads to play at the waste gate [sic] flap" resulting in "Negative

[13] Exhibit 5 also instructs the technician to install a new anti-rattle/anti-wear clip on the new replacement turbocharger to prevent premature linkage wear. This further demonstrates the Defendants were aware of the relationship between linkage rattle and wastegate under boost failure.

Pressure Deviation" (turbocharger underboost).[14] *See* Figure 4, *infra*, which is an excerpt from Technical Service Bulletin 21 14 18 2031245/7 depicting the worn wastegate link plate (a/k/a lever arm).[15]

***Figure 1**. Worn eye on wastegate link plate allowing excessive play.*

FIGURE 4
EXCERPT FROM TECHNICAL SERVICE BULLETIN 21 14 18 2031245/7 DEPICTING ELONGATED WASTEGATE LINK PLATE EYE (red annotations in original)

37. The Tech Tips, Technical Bulletins and Technical Service Bulletins discussing the class engine turbocharger demonstrate long-standing knowledge of the wastegate problem. All Defendants were aware that 2010 model year class engine turbochargers were defective as described in this complaint and would fail shortly after the power train warranty expired. This is demonstrated by engineering lead times required for component testing, redesign and manufacturing. The defective class engine turbocharger wastegate linkage was subsequently

[14] There appear to be other additional materials generated by the Defendants discussing the turbocharger defect that are not currently publicly available according to reputable industry sources.

[15] All of the various Tech Tips and bulletins that were updated were done so to capture additional subsequent model year class vehicles as those vehicles accumulated sufficient miles for the turbocharger defect to manifest in failure.

redesigned in the 2015 and later model year vehicles by adding an adjustable and more durable rod end fork with a large diameter bushing together with other modifications. *See* Figure 5, immediately below.

FIGURE 5
2015 VW IS38 TURBOCHARGER LINKAGE ROD END FORK

38. Despite this pre-sale knowledge, VWGoA and Audi America and their respective authorized dealers never informed Kimball or prospective purchasers of class vehicles that the turbocharger was subject to premature failure shortly after the warranty expired and would require expensive replacement (or a new engine if the turbocharger failed in overboost and destroyed the engine). In some instances, class engine turbocharger failures occurred with vehicles having as few as 40,000 miles. VWGoA and Audi America (as did VWAG and Audi AG) concealed this expensive turbocharger maintenance cost from the general public and specifically class vehicle purchasers while informing their authorized dealerships and factory-trained mechanics of the turbocharger defect.

39. The turbocharger defect presents a significant safety risk for Kimball and members

of the proposed class because when the turbocharger suddenly and unexpectedly fails, class vehicles lose engine power which causes a significant and sudden loss in the ability to accelerate and maintain speed. Occupants of the class vehicles are at risk for rear-end collisions and other accidents as a result of Defendants' failure to disclose the existence of the turbocharger defect and corresponding safety risk.

40. Despite VWGoA, Audi America, VWAG and Audi AG's long-standing knowledge of the turbocharger defect, this defect was never disclosed to Kimball and class members. The safety implications of the turbocharger defect was also not disclosed. Notwithstanding the fact that a properly designed and manufactured turbocharger should operate normally in vehicles for a minimum of 120,000 miles[16], on information and belief, VWGoA and Audi America refused to repair or replace the turbocharger outside of the time periods covered by the respective manufacturers' warranties. VWGoA and Audi America wrongfully and intentionally transferred the cost of repair and/or replacement of the defective turbocharger to Kimball and class members by fraudulently concealing the existence of the turbocharger defect which Defendants know will typically occur shortly after the expiration of the class vehicle warranties. Turbocharger repairs cost upwards of approximately $3,000.00 depending on the model and year of the class vehicle.

41. Class vehicles are equipped with class engines that incorporate the turbocharger defect. As a result of the defect, these engines prematurely fail due to the defective turbochargers and before the end of the useful life of the engine which is in excess of 120,000 miles. VWAG and Audi AG designed, manufactured and tested class engine turbochargers. VWGoA and Audi America imported, distributed, marketed and/or sold class vehicles with the turbocharger defect.

[16] *See* Exhibits 6 and 7, 2010 model year VW and Audi scheduled maintenance intervals, respectively.

42. VWGoA and Audi America's representations in the USA Warranty and Maintenance schedules for the class vehicle engine components and service life of the turbocharger (which publications Kimball reviewed during the subject vehicle during the three year lease period when she was servicing her leased vehicle) was a substantial factor in purchasing the vehicle at the expiration of the lease. The class engine turbocharger is expected to last for the useful life of the engine or at least 120,000 miles without the need for maintenance, repair or replacement. Class vehicle Owner's Manuals and USA Warranty and Maintenance schedules do not require any turbocharger inspection or maintenance within the first 115,000-125,000 miles of vehicle operation or thereafter.[17] Indeed, the engine turbocharger is omitted from the VW and Audi maintenance schedules for class vehicles entirely. The reasonable inference is that this expensive major engine component would not have to be replaced during the reasonably expected life of the class vehicle. These representations were also buttressed by sales agents of Sonnen Motorcars at the point of purchase who specifically stated to Kimball that her vehicle was engineered with German technical prowess and that she could expect the vehicle to travel in excess of 150,000 miles without experiencing any major engine repairs. Kimball relied on these statements which also were a substantial factor in her purchase decision.

43. California, where Plaintiff purchased her class vehicle, has adopted the Uniform Commercial Code (UCC). Because California's express warranty statute (§ 2313 of the California Commercial Code) conforms to the UCC, the California Court of Appeals has taken the position that a vehicle purchaser, such as Plaintiff, need not show reliance upon the terms of her vehicle's express warranty because Cal. Com. Code § 2313 creates a presumption that the seller's

[17] *See, e.g.*, Exhibit 6 (summarizing maintenance schedule and not showing any scheduled turbocharger maintenance for 120,000 miles for VW class vehicles); *see also* Exhibit 7 (not showing any scheduled turbocharger inspection for 125,000 miles for Audi class vehicles).

affirmations go to the basis of the bargain. Consequently, no particular reliance on VWGoA nor Audi America's express warranty need be shown in order to incorporate the terms and representations of those warranties into the fabric of Plaintiff and the California class's purchase/lease agreements. Under California law, it is the seller's behavior (rather than the purchaser's) that controls what the seller in essence agreed to sell. Therefore, any affirmation, including those contained in VWGoA and Audi America's warranties, once made, is part of the agreement unless there is clear affirmative proof that the affirmation has been taken out of the agreement. Consequently, the express warranty and other materials given to Plaintiff and proposed class members at the time of delivery may be part of the basis of the bargain, even if such materials technically were delivered after Plaintiff and proposed class members paid the purchase price.

44. VWGoA and Audi America provided warranty coverage for class vehicles under one or more manufacturer's warranties. For illustrative purposes, VWGoA and Audi America provided: (1) a New Vehicle Limited Warranty that includes "virtually bumper to bumper coverage for 3 years or 36,000 miles, whichever occurs first" or 4 years or 50,000 miles, whichever occurs first; and/or (2) a Powertrain Limited Warranty for "5 years or 60,000 miles whichever occurs first" which covers "all internal [engine] parts." Under warranties provided to members of the proposed class, VWGoA and Audi America promised to repair or replace defective class engine components arising out of defects in materials and/or workmanship, such as the turbocharger defect, at no cost to owners of the class vehicles. These warranties were provided in class vehicle window labels, Owner's Manuals and brochures, and advertised on VWGoA and Audi America's websites.

45. In addition to VWGoA and Audi America's New Vehicle Limited Warranty, turbochargers are also covered under the Federal Emissions Control System Warranties and the California Emissions Control Systems Warranties.

46. The Federal Warranty provides coverage for two years or 24,000 miles, warranting

that the vehicle will pass emissions inspections (which is increased as part of most manufacture's limited warranties), and 8 years, 80,000 miles coverage for select parts (which does not include the turbocharger assembly).

47. The California Emissions Control System Warranties provide for a coverage period of three years or 30,000 miles where defective emissions components are to be replaced without charge, and 7 years, 70,000 miles for certain emissions-related components, including the turbocharger assembly. In addition to California, several other states have adopted California's Emissions Warranty, including Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and Vermont.

48. Plaintiff relied upon the representation that VWGoA and Audi America made in Plaintiff's class vehicle express warranty, which states that "[w]ith proper maintenance and care, your Audi will continue to provide you with a dependable and safe driving experience. The Maintenance section of this booklet contains Audi's recommended service intervals as well as other important information you need to know to care for your Audi properly." Neither the Maintenance section, however, nor any other section of the warranty booklet provides any recommended service intervals or information relating to the care of the vehicle's turbocharger. Thus, even if Plaintiff and members of the proposed class performed "proper maintenance" of their class vehicles that conformed with the schedules set forth in Audi America and VWGoA's warranty, the substantially certain failure caused by the latent turbocharger defect prevents Audi America and VWGoA from fulfilling its warranty promise of providing a "dependable and safe driving experience," and breaches their express warranty.

49. VWGoA and Audi America breached their express warranties through which they promised to, *inter alia*, (1) provide class vehicles fit for the ordinary purpose for which they were sold; and (2) repair and correct manufacturing defects or defects in materials or workmanship of any parts they supplied, including the turbocharger during the warranty period. Since the

turbocharger defect was present at the time of sale of the class vehicles, VWGoA and Audi America were required to repair or replace the turbocharger under the terms of the warranties. Given the latent nature of the turbocharger defect, VWGoA and Audi America knew or should have known that the majority of turbocharger failures likely would occur outside of the warranty periods and have wrongfully transferred the costs of repair or replacement to Kimball and members of the proposed class through VWGoA and Audi America's fraudulent concealment of the turbocharger defect. These costs are significant and range in the thousands of dollars. No reasonable consumer expects to incur such costs during the useful life of a modern engine, especially given VWGoA and Audi America's representations in the USA Warranty and Maintenance schedules provided to class vehicle owners.

50. VW and Audi authorized dealers were not intended to be the ultimate users of the class vehicles, and have no rights under VWGoA and Audi America's warranties. Rather, those warranties were designed by VWGoA and Audi America for and intended to benefit purchasers and lessors of the class vehicles only, not the dealers who were to act on behalf of VWGoA and Audi America in providing service to the purchasers and lessors under the warranties.

51. Knowledge and information concerning the turbocharger defect was in the exclusive possession of VWGoA and Audi America and their dealers, who possessed superior knowledge and was not provided to Kimball and class vehicle owners, who could not reasonably discover the turbocharger defect through due diligence. Based on pre-production testing, design failure mode analysis, manufacturing principles, and consumer complaints to dealers, *inter alia*, VWAG, Audi AG, VWGoA and Audi America were aware of the premature failure of the turbocharger in the class vehicles and fraudulently concealed the turbocharger defect from Kimball and members of the proposed class at the time of purchase and throughout the respective warranty periods. Nonetheless, despite this knowledge, VWGoA and Audi America continued selling

defective vehicles, failed to disclose the existence of the turbocharger defect to Kimball and members of the proposed class, have not issued a recall, service action or extended warranty and have not remedied the turbocharger defect and/or compensated class vehicle purchasers or owners for this material class engine defect.

52. VWGoA and Audi America misrepresented the standard, quality, and/or grade of class vehicles and knowingly, actively, and affirmatively concealed the existence of the turbocharger defect to increase profits and decrease costs by selling additional class vehicles and transferring the costs of repair or replacement of the turbocharger to owners of the class vehicles, including Kimball and members of the proposed class.

53. Kimball and members of the respective class assert claims against VWGoA and Audi America for violation of California consumer fraud and unfair and deceptive trade practices statutes, negligent misrepresentation and breach of express warranties.

54. VWGoA and Audi America knowingly omitted, concealed and suppressed material facts concerning the engine turbocharger defect and its corresponding safety risk and misrepresented the standard, quality, and/or grade of the class vehicles which directly caused harm to Kimball and members of the proposed class. This wrongful conduct harmed owners of class vehicles. Kimball and members of the proposed class are entitled to damages and injunctive and declaratory relief because of VWGoA and Audi America's conduct.

55. As a direct result of VWGoA and Audi America's wrongful conduct, Kimball and members of the proposed class suffered damages, including, *inter alia*: (1) deprivation of the benefit of their bargain by overpaying for the class vehicles at the time of sale; (2) out-of-pocket expenses for repair or replacement of the class engine turbocharger, other engine parts or the entire engine; (3) costs for future repairs or replacements; (4) sale of their class vehicle at a loss; and/or (5) diminished value of their class vehicles.

56. Based on VWGoA and Audi America's representations in the USA Warranty and

Maintenance schedules provided with the class vehicles, the class engine turbocharger is intended and is reasonably expected to last for the useful life of the engine of at least 120,000 miles without the need for inspection, repair or replacement. For example, the 2010 VW maintenance schedule does not require maintenance of the turbocharger within 120,000 miles (the highest number of miles shown in the maintenance schedule) and the 2010 Audi maintenance schedule (for all models) does not require maintenance of the turbocharger until beyond 125,000 miles (the highest number of miles shown in the maintenance schedule). *See* Exhibits 6 and 7, 2010 model year passenger vehicle VW and Audi maintenance schedules, respectively. Failure of the class engine turbocharger occurs prematurely and before any reasonable consumer would expect the failure to occur.

57. VWAG and Audi AG continued to use, and VWGoA and Audi America continue to market and sell, the same or substantially similar defective turbocharger components in class vehicles despite knowledge of the turbocharger defect. VWGoA and Audi America intentionally failed to disclose to Kimball and members of the proposed class that installation of the turbocharger linkage retaining clip would not cure or prevent the turbocharger defect but would merely lessen the wastegate linkage rattle, which is a clear symptom of the turbocharger defect that is substantially certain to fail.

58. In addition to the TSBs and other evidence of VWAG, Audi AG, VWGoA and Audi America's pre-sale knowledge of the turbocharger defect, they also acquired knowledge of the turbocharger defect from consumers.

59. Since the majority of complaints are made directly to VWGoA and Audi America's authorized dealerships, it is reasonable to infer VWGoA and Audi America received, either directly from customers or through their exclusive network of dealers, several times the number of complaints identified here.

60. Despite these complaints, VWGoA and Audi America have yet to issue a recall,

service action or even inform owners of the safety risk.

61. All Defendants had or should have had knowledge of this information, as VWGoA and Audi America received orders for replacement parts and communications through authorized dealerships concerning these turbocharger complaints and failures and VWAG and Audi AG would have provided those replacement parts to VWGoA and Audi America.

62. Given that it is industry practice for vehicle original equipment manufacturers to compare complaint rates to competitor vehicles, VWAG, Audi AG, VWGoA and Audi America were aware that class engine turbochargers were experiencing higher failure and complaint rates than competitor vehicles.

63. VWGoA and Audi America failed to inform class engine owners prior to purchase and during the express warranty period that the turbocharger was defective and would fail shortly after the express warranty period expired.

64. VWGoA and Audi America misrepresented by affirmative conduct and/or by omission and/or by fraudulent concealment the existence of the turbocharger defect in the class vehicles.

65. VWGoA and Audi America also failed to inform class vehicle owners at the time of purchase that the turbocharger in their class vehicles had been inadequately tested for durability given its premature failure rate prior to placing the car in production and the time of vehicle sale.

66. Kimball and other class members were informed by representatives of VWGoA and Audi America when the defect occurred that they would not provide assistance in repairing turbochargers or engines because the turbocharger failure occurred outside of the express warranty period.

67. VWGoA and Audi America refused to fully reimburse or compensate Kimball for class engine turbocharger repair expenses or provide a suitable substitute or replacement vehicle.

68. Although their class vehicles' turbocharger failure occurred outside the unilateral express warranty period (which was neither seen nor bargained for prior to purchase), class vehicles exhibited unmistakable symptoms (known only by VWGoA and Audi America) of the turbocharger defect within the express warranty period.

69. Despite actual and constructive knowledge of the turbocharger defect as described in this complaint, VWGoA and Audi America failed to cure the turbocharger defect within the express warranty period and thereby breached the terms of the express warranty.

70. Through no fault of their own, Kimball and members of the proposed class did not possess sufficient technical expertise to recognize symptoms of the turbocharger defect. This information, however, was well known to VWGoA and Audi America, but not revealed.

71. Kimball and members of the proposed class relied upon material misrepresentations, fraudulent statements and/or material omissions of employees and agents of VWAG, Audi AG, VWGoA and Audi America at the time of purchase, including but not limited to the useful and expected life of class engine turbochargers and recommended class vehicle maintenance program.

72. VWAG, Audi AG, VWGoA and Audi America's misrepresentations and fraudulent statements were received by Kimball and members of the proposed class prior to and at the point of their class vehicle purchase, including misrepresentations and omissions in the Owner's Manual and the USA Warranty and Maintenance pamphlets. The representations created a reasonable belief that the useful life expectancy of class vehicles without a major engine failure was in excess of at least 120,000 miles. These representations specifically related that the class engine turbocharger was a non-maintenance engine component. Kimball, who leased her class vehicle for three years prior to her purchase, consulted the vehicle's maintenance schedule (*see* Exhibit 7) as part of her vehicle's servicing and relied upon the absence of any information concerning turbocharger anticipated maintenance and repair costs. The scheduled maintenance did not show any scheduled

turbocharger inspection, maintenance or replacement for at least 125,000 miles. The cost of class vehicle ownership including maintenance and repairs were a substantial factor in her decision to purchase her vehicle.

73. VWAG, Audi AG, VWGoA and Audi America actively concealed the true reasonably expected duration of class vehicle components, including but not limited to the turbocharger, from the Kimball and all class vehicle purchasers. VWAG, Audi AG, VWGoA and Audi America intentionally failed to inform class vehicle purchasers that class engines incorporated defect in the turbocharger that would cause the turbocharger to prematurely fail within half the reasonably expected useful life of the vehicle.

74. VWAG, Audi AG, VWGoA and Audi America intentionally failed to inform class vehicle purchasers that the turbocharger incorporated in class vehicles results in higher operational costs than alternative turbochargers or other competitive technology because the turbocharger defect causes the turbocharger to prematurely fail within one-half of the reasonably expected useful life of the vehicle.

75. All Defendants actively and fraudulently concealed the existence of the turbocharger defect (including defects covered under class vehicle warranties concerning materials and workmanship) and that the Owner's Manual and other publications accompanying class vehicles incorporated improper maintenance recommendations and maintenance intervals.

76. Kimball and members of the proposed class did not learn their respective class vehicle was defectively designed and/or manufactured until after their turbocharger failed.

77. On information and belief, authorized VW and Audi dealers did not have knowledge of and/or were counseled by VWGoA and Audi America not to admit that any defects existed in class vehicles or that improper maintenance recommendations were incorporated in the Owner's Manual. VW and Audi dealers (who also had a vested financial interest in concealing and suppressing the actual cause of class engine turbocharger failures) improperly blamed class

engine failures on certain conditions for which VWGoA and Audi America would not be responsible and/or denied the existence of the turbocharger defect.

78. VWAG, Audi AG, VWGoA and Audi America had actual knowledge, constructive knowledge and/or should have known upon proper inquiry and testing that class vehicles were defective with respect to the engine turbocharger, suffered from the turbocharger defect during the warranty period and did not have a normal and/or reasonable useful life before sales of class vehicles commenced in the United States. This information was technical in nature, proprietary and not known by the ordinary consumer or the public, including Kimball and members of the proposed class. Kimball and members of the proposed class were ignorant of this technical information through no fault of their own.

79. VWGoA and Audi America acted to conceal the turbocharger defect during the warranty period so that repair costs would be shifted to Kimball and members of the proposed class once the warranty expired and the turbocharger failed.

80. Although VWAG, Audi AG, VWGoA and Audi America knew the turbocharger defect in class engines caused premature failure of the turbocharger, they knowingly and actively concealed material information from prospective and actual purchasers with the intent to deceive purchasers and promote class vehicle sales.

81. VWGoA and Audi America's knowledge of the turbocharger defect was derived from warranty claims, claims supervisors, customer complaints, and monitoring of performance of class vehicles by VWGoA and VWAG quality assurance employees. Additionally, the number of replacement components and subsequent component revisions would have placed VWAG, Audi AG, VWGoA and Audi America on notice of the turbocharger defect in class vehicles. Knowledge of the turbocharger defect is further imputed to VWAG, Audi AG, VWGoA and Audi America prior to the sale of certain model year class vehicles because predecessor models using substantially similar turbocharger components were also prematurely failing within their

reasonably expected life. VWAG, Audi AG, VWGoA and Audi America elected to place into the stream of commerce class vehicles with engine turbochargers that they knew were substantially certain to fail shortly after the expiration of the express warranty.

82. Additional information supporting allegations of fraud and fraudulent conduct is in the control of VWAG, Audi AG, VWGoA and Audi America. This information includes but is not limited to technical root cause analyses, communications with class vehicle owners, remedial measures, warranty claims and internal corporate communications concerning how to deal with consumers who claim their class engine's turbocharger was defective.

83. Material information was fraudulently concealed and/or actively suppressed in order to sell class vehicles to uninformed consumers (including Kimball and members of the proposed class) premised on affirmations and representations of reliable, high quality, long-life vehicles with low maintenance, inexpensive operating costs, superior performance and durability and to thereby shift the burden of expense of repair to Kimball and class members. Class vehicles incorporated a known turbocharger defect that would severely affect the useful life of the vehicle.

84. Defendants (and particularly the sales and marketing executives at VWGoA and Audi America) advertised and otherwise created the reasonable expectation (including but not limited to scheduled class engine maintenance recommendations) that class vehicles would last over 120,000 miles or ten years before experiencing turbocharger failure. Material information was fraudulently concealed and/or actively suppressed in order to protect Defendants' (and authorized vehicle dealers') corporate profits from loss of sales from adverse publicity, to reduce warranty repair costs and to limit VW and Audi's brand disparagement.

85. VWAG, Audi AG, VWGoA and Audi America had a duty to disclose the turbocharger defect to class vehicle owners and that the Owner's Manuals set forth the wrong maintenance recommendations and maintenance intervals.

86. This duty arose because VWAG, Audi AG, VWGoA and Audi America knew that

there were defects in the class vehicles and inaccuracies in the Owner's Manual that affected vehicle operation and safety while class vehicle owners were not, and could not reasonably be, cognizant of these defects and dangers.

87. VWAG, Audi AG, VWGoA and Audi America continuously and affirmatively concealed the actual characteristics of class vehicles from Kimball and other purchasers. VWAG, Audi AG, VWGoA and Audi America breached their affirmative duty of disclosure to class vehicle owners.[18]

88. VWGoA and Audi America breached express warranties and actively and affirmatively misrepresented, fraudulently concealed and suppressed the existence of the turbocharger defect in class vehicles and omissions in the accompanying Owner's Manual and USA Warranty and Maintenance pamphlet in order to shift the expense of engine turbocharger repairs to Kimball and class members.

89. The warranties accompanying class vehicles were procedurally and substantively unconscionable under the Uniform Commercial Code § 2-302 and other applicable state warranty laws because of the disparity in bargaining power of the parties, the purchasers' lack of knowledge that class engine turbochargers were defective, the inability of class vehicle purchasers to bargain with VWGoA and Audi America to increase durational warranties, their lack of knowledge, their lack of meaningful alternatives, disparity in sophistication of the parties, unfair terms in the warranty (including but not limited to durational warranties that unfairly favored VWGoA and Audi America particularly where there were class vehicle defects known only to Defendants and the warranty unfairly shifted repair costs to consumers when class vehicles prematurely fail during their reasonably expected life), absence of effective warranty competition, and the fact that class

[18] Since unexpected engine failure is a serious safety issue, there was an affirmative duty by VWGoA and Audi America to disclose the turbocharger defect together with associated risks.

vehicles fail with substantially fewer miles of operation than competitive vehicles from other manufacturers or models substantially similar to the class vehicles without the turbocharger defect.

90. Given the conduct of VWAG, Audi AG, VWGoA and Audi America and the design, manufacture, materials and/or workmanship defects in class engine turbochargers (that were known to be defective prior to the time of sale), the durational limitations of the warranties are oppressive, unreasonable and unconscionable because the warranty disclaimers of the proposed class representative and members of the proposed class were neither knowing nor voluntary.

91. The contractual terms were unreasonably favorable to VWGoA and Audi America since VWGoA and Audi America were fully aware of defects in the class vehicles that substantially reduced the expected useful life of the vehicle. Kimball and members of the proposed class were unaware of defects in the class vehicles at the time of purchase.

92. The bargaining position of VWGoA and Audi America for the sale of class vehicles was grossly disproportionate and vastly superior to that of individual vehicle purchasers, including Kimball and members of the proposed class. This is because VWGoA and Audi America knew there were defects in class vehicles.

93. VWGoA and Audi America included unfair contractual provisions concerning the length and coverage of the express warranty when they knew that class vehicles were inherently defective and dangerous.

94. VWGoA and Audi America knew defects in class vehicle components would cause certain expensive repair failures within one-half of the useful expected life of the vehicle. VWGoA and Audi America artificially limited the duration of the warranty period to avoid performing warranty repairs in order to maximize profits through the sale of defective vehicles.

95. VWGoA and Audi America unconscionably sold defective class vehicles to Kimball and members of the proposed class without informing these purchasers that the class vehicles were defective and that the turbochargers in their class vehicles should be replaced prior

to the expiration of the warranty.

96. VWGoA and Audi America's conduct renders the vehicle purchase contract so one-sided as to be unconscionable under the circumstances existing at the formation of the vehicle purchase contract.

97. The durational limitation of the express warranties accompanying class vehicles is unreasonable and unconscionable since VWGoA and Audi America actively concealed known vehicle defects and issued incorrect maintenance recommendations and maintenance intervals. Kimball and members of the proposed class had no notice of or ability to detect class engine turbocharger defects.

98. VWGoA and Audi America restricted the limited power train warranty (including the class engine) duration for class vehicles in an effort to avoid the cost of repairs because they were cognizant of class vehicle defects that existed at the time of sale.

99. Turbochargers in competitive vehicles manufactured and sold at the time the class vehicles were manufactured and sold ordinarily last longer than warranted by the limited power train warranty accompanying class vehicles.

100. VWGoA and Audi America are engaged in a continuing fraud concerning the true underlying cause of class engine turbocharger failures.

101. VWAG and Audi AG failed to adequately test class engines in appropriate consumer environments prior to marketing, distribution and sale.

102. VWAG, Audi AG, VWGoA and Audi America's unconscionable conduct precludes any exclusion of incidental and consequential damages or any other limitation of remedies.

103. Even if class engines do not fail entirely, class vehicle owners have sustained an ascertainable financial loss, including but not limited to overpayment damages at the time of sale, increased maintenance costs for turbocharger inspections, and/or premature replacement of the

turbocharger, related parts or the entire engine, and/or substantially reduced engine performance, as well as diminution of the resale value of their class vehicles.

104. VWGoA and Audi America created an over-all misleading impression through their failure to disclose material information concerning the fact that class vehicles incorporated the turbocharger defect and were accompanied by an Owner's Manual and USA Warranty and Maintenance pamphlet that incorporated incorrect engine service and maintenance recommendations in order to shift the expense of class vehicle engine turbocharger repairs to Kimball and class members. Kimball and members of the proposed class were deceived by VWGoA and Audi America's conduct as described in this complaint with respect to their purchase of class vehicles.

105. VWGoA and Audi America violated the consumer protection laws of California with their oppressive and unconscionable conduct described in this complaint including but not limited to their failure to disclose material information that caused ascertainable financial harm to Kimball and members of the proposed class.

106. VWGoA and Audi America were under a duty to disclose defects in class vehicles and associated safety risks as described in this complaint but failed to disclose to Kimball and members of the proposed class the characteristics of class vehicles with respect to defects in violation of the consumer protection laws of California. VWGoA and Audi America's omissions (that turbochargers were defective and that this defect constituted a safety risk) deceived purchasers (including but not limited to Kimball and members of the proposed class). Those disclosure omissions include the fact that class vehicle defects had a significant impact on the value, durability, and future care of class vehicles. This failure to disclose additional information concerning class vehicle defects had the capacity to, and in fact did, deceive purchasers (including Kimball and members of the proposed class) in a material respect.

107. If Kimball and members of the proposed class had been made aware of the

turbocharger defects in their respective class vehicles and the attendant ramifications of value, durability, maintenance expenses, safety and care, they would not have purchased the class vehicles or would have paid less for their vehicles since members of the proposed class were led to believe that they were purchasing a vehicle that was free of major defects and were not fully informed of the true characteristics and attributes of class vehicles.

108. VWGoA and Audi America fraudulently, intentionally, negligently and/or recklessly concealed from Kimball and members of the proposed class defects in class vehicles even though VWGoA and Audi America knew or should have known that information concerning these defects was material and central to the marketing and sale of class vehicles to prospective purchasers including Kimball and members of the proposed class.

109. VWGoA and Audi America violated the consumer protection laws of California by failing to inform class vehicle owners at the time of purchase that class vehicles had known defects, that the vehicles would prematurely require major engine repairs and/or prematurely fail with resulting catastrophic failure and/or would have a significant effect on the vehicle's value.

110. The wrongful conduct of VWGoA and Audi America in violation of the consumer protection laws of California occurred within the limitations period set out in the respective statutes and/or the limitations period is tolled by VWGoA and Audi America's conduct.

**What the Omissions Were:**

111. VWGoA and Audi America fraudulently omitted to disclose material facts basic to both the purchase and warranty service concerning class vehicles, including information concerning the turbocharger defect, in an effort to deceive purchasers as described in this complaint. At the time of purchase, VWGoA and Audi America fraudulently omitted to disclose material matters concerning the turbocharger defects in class vehicles, including their impact on future repairs, costs and vehicle reliability. VWGoA and Audi America fraudulently concealed from Kimball and members of the proposed class defects in class vehicles even though VWGoA

and Audi America knew or should have known that information concerning these defects was material and central to the marketing, sale of class vehicles to prospective purchasers, including Kimball and members of the proposed class. VWGoA and Audi America concealed from Kimball and members of the proposed class during their warranty periods that a defect existed with the turbocharger which could have and should have been fixed during the warranty period, particularly as it was a safety issue, and VWGoA and Audi America's withholding of this material information deprived Kimball and members of the proposed class of the right to have such defective part replaced for free under the warranty.

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

112. VWGoA and Audi America's sales, marketing, engineering, and warranty departments and their executives were involved in the omissions. This is particularly true given their recent conduct involving compliance certification and pollution control defeat devices involved in the sale of diesel powered passenger vehicles around the world and particularly in the United States.

**The Context of the Omissions and the Manner in which they Misled:**

113. Material information was fraudulently concealed and/or actively suppressed in order to sell class vehicles to uninformed consumers (including Kimball and members of the proposed class) premised on affirmations and representations as described in this complaint.

114. If Kimball and members of the proposed class had been informed of defects in their class vehicles, they would not have purchased their respective class vehicles or would have paid substantially less. If Kimball and members of the proposed class had been made aware of the turbocharger defects in their respective class vehicles and the attendant ramifications of their respective vehicle's diminution in value, future cost of repairs, durability and care, they would not have purchased the class vehicles since each class member believed they were purchasing vehicles without major defects and were not fully informed of true characteristics and attributes of class

vehicles. If Kimball and members of the proposed class had been informed of the turbocharger defect during the warranty period, they would have had the defective part replaced under warranty. VWGoA and Audi America's conduct violated the consumer fraud statutes alleged here and deprived Kimball and members of the proposed class of their warranty remedy.

**What Defendants Obtained through the Fraud:**

115. Material information concerning class vehicles was concealed and/or actively suppressed in order to protect VWGoA and Audi America's corporate profits from loss of sales, purchase refunds, warranty repairs, adverse publicity and limit brand disparagement. Purchasers believed they were obtaining vehicles as having different attributes than described and purchased and were accordingly deprived of economic value and paid a price premium for their class vehicles. VWGoA and Audi America had a uniform policy of not properly disclosing class vehicle defects in order to promote sales and increase profits as described in this complaint.

116. As a proximate and direct result of VWGoA and Audi America's unfair and deceptive trade practices, Kimball and members of the proposed class purchased class vehicles and sustained an ascertainable loss, including but not limited to financial harm as described in this complaint.

117. Any applicable statute of limitations has been tolled by VWGoA and Audi America's knowing and active concealment of the turbocharger defect and the misrepresentations and omissions alleged here. Through no fault or lack of diligence, Kimball and members of the proposed class were deceived concerning the turbocharger defect and could not reasonably discover the latent nature of the turbocharger defect.

118. Kimball and members of the proposed class could not reasonably discover the deception with respect to the turbocharger defect in the class vehicles prior to experiencing a failure and being informed of the reason for the failure. Within the time period of any applicable statutes of limitations, Kimball and members of the proposed class could not have discovered

through the exercise of reasonable diligence the concealed turbocharger defect.

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

120. Kimball and members of the proposed class did not discover and did not know of any facts that would have caused a reasonable person to suspect that VWGoA and Audi America were concealing a latent defect and/or that the class vehicles incorporated a turbocharger that would prematurely fail and create a safety risk. The existence of the turbocharger defect and safety risk were material to Kimball and members of the proposed class at all relevant times.

121. At all times, VWGoA and Audi America are and were under a continuous duty to disclose to Kimball and members of the proposed class the true standard, quality and grade of the class vehicles and to disclose the turbocharger defect and potential safety risk associated with the premature failure of the system.

122. VWGoA and Audi America knowingly, actively, and affirmatively concealed the facts alleged in this complaint including the turbocharger defect. Kimball and members of the proposed class reasonably relied on this knowing, active and affirmative concealment.

123. VWGoA and Audi America fraudulently attributed the turbocharger failures to other factors and/or exculpating conditions for which they had no responsibility when, in reality, the turbocharger defect was due to VWAG and Audi AG's design, manufacture, materials and/or workmanship defects.

124. For these reasons, all applicable statutes of limitation have been tolled based on the discovery rule and VWGoA and Audi America's fraudulent concealment and they are estopped from relying on any statutes of limitations in defense of this action.

## CLASS ACTION ALLEGATIONS

125. Kimball initiates this proposed action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3) on behalf of herself and on behalf of the following California class (or any other class and/or subclass authorized by the court) defined as follows:

> California Class: All persons or entities that purchased a class vehicle in the State of California (hereinafter "California Class").

126. Excluded from the California Class, are VWAG, Audi AG, VWGoA and Audi America and their subsidiaries and corporate affiliates, officers, directors, employees, assigns, and successors, the court, court staff, Defendants' counsel, and all respective immediate family members of the excluded entities described above. Kimball reserves the right to revise the definitions of the proposed class definitions based upon subsequently discovered information and reserve the right to establish additional subclasses where appropriate.

**Numerosity of the Class: Federal Rule of Civil Procedure 23(a)(1)**

127. The proposed class members are so numerous that individual joinder of all potential members is impracticable under Federal Rules of Civil Procedure 19 or 20. It is estimated there are in excess of 500,000 class vehicles. Additional information concerning class vehicles will be obtained through discovery from the Defendants.

**Existence of Common Questions of Law and Fact: Federal Rule of Civil Procedures 23(a)(2) and 23(b)(3)**

128. Common questions of law and fact exist as to all members of the proposed class and predominate over any issues solely affecting individual members. The common and predominating questions of law and fact include, but are not limited to:

(a) Whether there is a defect in the class engine turbocharger;

(b) Whether the turbocharger installed in the class engine contains a design defect and/or a defect in material, manufacturing and/or workmanship;

(c) Whether the turbocharger defect presents a safety risk;

(d) Whether VWAG, Audi AG, VWGoA and Audi America knew or should have known that the turbocharger incorporated in class vehicles was defective;

(e) Whether VWAG, Audi AG, VWGoA and Audi America had a duty to disclose the turbocharger defect, that the turbocharger will prematurely fail, and/or that the turbocharger defect presents a safety risk;

(f) Whether VWAG, Audi AG, VWGoA and Audi America intentionally and knowingly falsely misrepresented, concealed, suppressed and/or omitted material facts including the turbocharger defect;

(g) Whether VWGoA and Audi America negligently or falsely misrepresented or omitted material facts concerning the turbocharger defect at the time of purchase;

(h) Whether VWGoA and Audi America made material misrepresentations and/or omissions concerning the standard, quality or grade of class vehicles and the turbocharger;

(i) Whether class vehicles were sold with an Owner's Manual and/or USA Warranty and Maintenance pamphlet that incorporated incorrect inspection and service intervals for the turbocharger;

(j) Whether VWGoA and Audi America breached their express warranties (including but not limited to the powertrain limited warranty) in that class vehicles were defective with respect to the turbocharger design and manufacture, including workmanship and materials;

(k) Whether members of the proposed class would pay less for a class vehicle if VWGoA and Audi America, at the time of purchase, disclosed the turbocharger defect;

(l) Whether members of the proposed class would have purchased a class vehicle if VWGoA and Audi America, at the time of purchase, disclosed the turbocharger defect;

(m) Whether members of the proposed class would have had the turbocharger repaired or replaced if VWGoA and Audi America had disclosed, prior to the expiration of the

warranty periods, the turbocharger defect;

(o) Whether VWGoA and Audi America actively concealed or omitted material facts from Kimball and members of the proposed class in order to, *inter alia,* sell more class vehicles and/or transfer the costs associated with repair or replacement of the turbocharger and/or the entire engine to Kimball and class;

(p) Whether VWGoA and Audi America committed unfair and deceptive business act practices by failing to inform owners of class vehicles prior to purchase and/or during the post-sale express warranty period that the turbocharger was defective and would fail shortly after the warranty period;

(q) Whether VWGoA and Audi America violated the California Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.*; and,

(r) Whether VWGoA and Audi America violated the California Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq*.

**Typicality of Claims or Defenses of a Definable Class: Federal Rule of Civil Procedure 23(a)(3)**

129. Plaintiff's claims and defenses are typical of the claims and defenses of the class (or subclass) Kimball seeks to represent. Class claims arise out of ownership of class vehicles as defined supra. Kimball and the proposed class sustained damages arising out of the same illegal actions and conduct by VWAG, Audi AG, VWGoA and Audi America as described here. VWAG, Audi AG, VWGoA and Audi America have no claims or defenses unique to Kimball or different from the proposed members of the proposed class.

**Adequate Representation: Federal Rule of Civil Procedure 23(a)(4)**

130. Kimball currently owns her class vehicle and has no conflicting interests with any other proposed class member. The claims of Kimball and members of the proposed class are so interrelated that the interests of members of the proposed class will be fairly and adequately

protected in their absence.

131. Kimball is willing and prepared to serve the proposed class in a representative capacity with all of the obligations and duties material thereto. Kimball will fairly and adequately protect the interests of the proposed class and has no interests adverse to or in conflict with the interests of the other members of the class.

132. Plaintiff's interests are co-extensive with and are not antagonistic to those of absent class members. Kimball will undertake to represent and protect the interests of absent class members and will vigorously prosecute this action. Kimball has engaged the services of the undersigned counsel. Plaintiff's counsel is experienced in complex litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, Kimball and absent members of the proposed class.

**Superiority of a Class Action and Predominance of Common Questions: Federal Rule of Civil Procedure 23(b)(3)**

133. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Kimball knows of no difficulty to be encountered in the management of this litigation that would preclude its maintenance as a class action.

134. Maintenance of a class action in one court is the most economical procedural device to litigate the class vehicle claims for class vehicle owners. Prosecution of separate actions by individual members of the proposed class could create risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the proposed class(es) as recognized by Federal Rule of Civil Procedure 23(b)(1)(A).

135. Prosecution of separate actions by individual members of the class could create risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members of the class who are not parties to the

adjudications or substantially impair or impede their ability to protect their interests as recognized by Federal Rule of Civil Procedure 23(b)(1)(B).

136. Class action status is warranted under Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to members of the class predominate over any questions affecting any individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

137. The class may also be certified under Rule 23(b)(2) because VWAG, Audi AG, VWGoA and Audi America have acted on grounds generally applicable to the class, thereby making it appropriate to award final injunctive relief or corresponding declaratory relief with respect to the class.

138. There is a substantial likelihood that the VWAG, Audi AG, VWGoA and Audi America will oppose this class action and will further act or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole impractical as recognized by Federal Rule of Civil Procedure 23(b)(2).

139. The interest of members within the class in individually controlling the prosecution of separate actions is theoretical and not practical. The class have a high degree of similarity and are cohesive, and Kimball anticipates no difficulty in the management of this matter as a class action.

140. The nature of notice to the proposed class is contemplated to be by direct mail upon certification or if such notice is not practicable, by the best notice practicable under the circumstance including, *inter alia*, email, publication in major newspapers and/or on the internet.

## CLAIMS FOR RELIEF

### COUNT I

### VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT ("CLRA"), CAL CIV. CODE § 1750 *ET SEQ.* (ON BEHALF OF KIMBALL AND THE CALIFORNIA CLASS)

141. Kimball incorporates and re–alleges each preceding paragraph as though fully set forth here.

142. Kimball asserts this count on behalf of herself and members of the California Class. CLRA "protect[s] consumers against unfair and deceptive business practices." *See* CAL. CIV. CODE § 1760.

143. Kimball and members of the California Class are persons within the context of the CLRA, *see* CAL. CIV. CODE § 1761(d), who purchased class vehicles for personal, family, or household use.

144. Class vehicles are goods within the meaning of CAL. CIV. CODE § 1761(a).

145. VWGoA and Audi America violated and continue to violate the CLRA by engaging in unfair and deceptive trade practices, including, *inter alia*: (1) representing that class vehicles have characteristics which they do not; (2) representing that class vehicles are of a particular standard when they are of another; and (3) advertising class vehicles with the intent not to sell them as advertised. *See* CAL. CIV. CODE § 1770.

146. VWGoA and Audi America further violated the CLRA by failing to disclose within the warranty period, or any time thereafter, the material fact that class vehicles possessed the turbocharger defect and its corresponding safety hazard.

147. When the turbocharger defect occurs, the vehicle has the propensity to, without notice, lose engine power unexpectedly, and experience an immediate loss of speed or ability to accelerate and/or maintain speed; placing the vehicle at risk for a rear end collision or loss of control.

148. VWGoA and Audi America also violated the CLRA by actively concealing the material fact that class vehicles possessed the turbocharger defect and its corresponding safety hazard and/or transferring the cost of repair or replacement of the turbocharger defect to Kimball and members of the California Class.

149. The fact that the turbocharger defect exists in class vehicles and exposes consumers to a corresponding safety hazard is material because Kimball and members of the California Class had a reasonable expectation that class vehicles would not suffer from a defect that may cause catastrophic engine failure and its corresponding safety hazard.

150. VWGoA and Audi America knowingly and willfully engaged in deceptive and unfair trade practices, including but not limited to, deception, fraud, false pretense, false promise, misrepresentation and the knowing concealment, suppression and omission of materials facts concerning the class vehicles' turbocharger defect and corresponding safety risk in connection with the sale and/or advertisement of class vehicles. VWGoA and Audi America unconscionably marketed class vehicles to uninformed consumers in order to maximize profits by selling additional class vehicles incorporating the undisclosed turbocharger defect and corresponding safety hazard.

151. VWGoA and Audi America fraudulently, intentionally, negligently, and/or recklessly misrepresented to Kimball and members of the California Class that the turbocharger in class vehicles would not require maintenance, repair or replacement within its expected life and/or a minimum of 120,000 miles and wrongfully omitted the turbocharger from maintenance schedules.

152. Upon information and belief, VWGoA and Audi America's decisions to fraudulently, intentionally, negligently, and/or recklessly misrepresent to Kimball and members of the California Class that the turbocharger in class vehicles would not require maintenance, repair or replacement and to fraudulently omit the turbocharger from its maintenance schedules was made in New Jersey in consultation with VWAG and Audi AG.

153. Information concerning the turbocharger defect as described in this complaint is material to consumers in that the defect results in expensive repair or replacement costs, will cause catastrophic engine failure and poses a safety risk.

154. VWGoA and Audi America's unlawful/wrongful acts and practices affect the public interest and trade and commerce in the State of California and present a continuing safety hazard to Kimball and the members of the California Class.

155. As a proximate and direct result of VWAG, Audi AG, VWGoA and Audi America's violations of the CLRA, Kimball and members of the California Class suffered premature failure of the turbocharger and/or engine failure, diminution of class vehicle resale value, increased repair and maintenance costs, and other substantial monetary damages and inconvenience.

156. With this filing, and on this count, Kimball and members of the California Class seek an order enjoining VWGoA and Audi America's unfair and deceptive practice.

157. VWGoA and Audi America's violations of the CLRA were willful and oppressive.

158. Kimball provided VWAG, Audi AG, VWGoA and Audi America with notice of their violations of the CLRA pursuant to CAL. CIV. CODE § 1782(a) by certified letter on May 2, 2022. More than 30 days have passed from such notice without any response to relief demanded in the letter.

159. Kimball and members of the California Class request judgment against the VWAG, Audi AG, VWGoA and Audi America for monetary damages and injunctive relief including a declaratory judgment and an appropriate court order prohibiting further deceptive acts and practices described in this complaint. Kimball and California Class members further request costs and attorneys' fees and all other relief, in addition to monetary damages authorized by Consumers Legal Remedies Act together with such additional relief as appropriate and necessary.

**COUNT II**

**VIOLATION OF UNFAIR COMPETITION LAW (THE "UCL"), CAL BUS. & PROF. CODE § 17200 *ET SEQ.* (ON BEHALF OF KIMBALL AND THE CALIFORNIA CLASS)**

160. Kimball incorporates and re–alleges each preceding paragraph as though fully set forth here.

161. Kimball asserts this count on behalf of herself and members of the California Class.

162. The California Business & Professions Code § 17200 *et seq*. (hereinafter "UCL") prohibits "any unlawful, unfair or fraudulent business act or practice."

163. VWGoA and Audi America violated the UCL by engaging in unlawful, unfair and fraudulent business acts or practices. This conduct was approved by their German parent corporations VWAG and Audi AG.

164. In violation of the UCL, VWGoA and Audi America employed unfair, unlawful, and deceptive acts or practices, fraud, false pretense, misrepresentations, or concealment, suppression, or omission of a material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of class vehicles. VWGoA and Audi America knowingly concealed, suppressed and/or omitted material facts concerning the turbocharger defect and corresponding safety hazard and misrepresented the standard, quality, or grade of the class vehicles, which directly caused harm to Kimball and members of the California Class.

165. VWGoA and Audi America actively suppressed the fact of the turbocharger defect's existence in class vehicles and that it presents a safety hazard because of materials, workmanship, design and/or manufacturing defects. VWGoA and Audi America employed unfair, unlawful, and fraudulent business practices to deny repair or replacement of the defective turbocharger within a reasonable time in violation of the UCL.

166. VWGoA and Audi America breached the CLRA as alleged in this complaint in violation of the UCL.

167. VWGoA and Audi America's unfair, unlawful and fraudulent business practices were likely to deceive a reasonable consumer. Kimball and members of the California Class had no reasonable way to know that class vehicles incorporated the turbocharger defect and that class vehicles were defective in materials, workmanship, design, and/or manufacture and posed a corresponding safety risk. VWGoA and Audi America possessed superior knowledge as to the quality and characteristics of class vehicles, including the turbocharger defect and its associated safety risk, and any reasonable consumer would have relied on VWGoA and Audi America's misrepresentations and omissions as did Kimball and members of the California Class.

168. VWGoA and Audi America intentionally and knowingly misrepresented and omitted facts concerning the turbocharger defect in class vehicles and its associated safety hazard with the intent to mislead Kimball and the members of the California Class. VWGoA and Audi America knew, or should have known, that class vehicles possessed the turbocharger defect and exposes consumers to a corresponding safety hazard.

169. VWGoA and Audi America owed a duty to disclose the turbocharger defect and its corresponding safety hazard to Kimball and the members of the California Class because VWGoA and Audi America possessed superior knowledge concerning the defect and the corresponding safety hazard. VWGoA and Audi America also owed a duty to disclose the turbocharger defect because VWGoA and Audi America made partial representations concerning the safety of class vehicles and thus owed a duty to reveal the complete truth to Kimball and members of the California Class. VWGoA and Audi America had a duty to disclose any information relating to the safety, quality, functionality and reliability of class vehicles because they consistently marketed class vehicles as safe.

170. Once VWGoA and Audi America made representations to the public concerning

class vehicle safety, quality, functionality and reliability, VWGoA and Audi America were under a duty to disclose these omitted facts, because where one does speak, one must speak the whole truth and not conceal any facts which materially qualify facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud. Rather than disclose the turbocharger defect, VWGoA and Audi America engaged in unfair, unlawful, and fraudulent business practices in order to sell additional class vehicles and avoid the cost of repair or replacement of the defective turbocharger and/or the damaged engines.

171. VWGoA and Audi America's unfair, unlawful, and fraudulent acts or practices, affirmative misrepresentations and/or material omissions concerning the turbocharger defect were intended to mislead consumers and misled Kimball and members of the California Class.

172. At all relevant times, VWGoA and Audi America's unfair and deceptive acts or practices, affirmative misrepresentations and/or omissions concerning the turbocharger defect and its corresponding safety hazard were material to Kimball and members of the California Class. When Kimball and members of the California Class purchased their class vehicles, they reasonably relied on the reasonable expectation that class vehicles would be free from defects that pose an unavoidable safety hazard. Had VWGoA and Audi America disclosed that class vehicles incorporated the turbocharger defect and/or pose an unavoidable safety hazard, Kimball and members of the California Class would not have purchased the class vehicles or would have paid less.

173. VWGoA and Audi America owed a continuous duty to Kimball and members of the California Class to refrain from unfair, unlawful, and fraudulent practices under the UCL and to disclose the turbocharger defect and associated safety hazard. VWGoA and Audi America's unfair, unlawful, and fraudulent acts or practices, affirmative misrepresentations and/or material omissions concerning the turbocharger defect and corresponding safety hazard are substantially injurious to consumers. As a result of VWGoA and Audi America's knowing, intentional

concealment and/or omission of the turbocharger defect and associated safety hazard in violation of the UCL, Kimball and members of the California Class suffered damages to be determined at trial. Owners of class vehicles also suffered an ascertainable loss in the form of, *inter alia*, out-of-pocket costs for diagnosis and repair or replacement of the defective turbocharger, loss of the benefit of the bargain and diminished value of their vehicles as a result of VWGoA and Audi America's unfair, unlawful, and fraudulent acts and practices in the course of its business.

174. VWAG, Audi AG, VWGoA and Audi America knowingly and willfully engaged in the unfair, unlawful, and fraudulent business practices alleged in this complaint. VWGoA and Audi America unconscionably marketed class vehicles to uninformed consumers in order to maximize profits by selling additional class vehicles incorporating the undisclosed turbocharger defect and corresponding safety hazard. VWAG and Audi AG continued to manufacture and sell class vehicles with defective engine turbochargers to VWGoA and Audi America to market, distribute and sell in the United States.

175. These unfair, unlawful, and fraudulent acts and practices harmed and continue to harm Kimball and members of the California Class, have negatively affected the public interest, and present a continuing safety hazard to Kimball and members of the California Class.

176. Kimball and members of the California Class seek an order enjoining VWAG, Audi AG, VWGoA and Audi America's unfair, unlawful, and fraudulent practices and award costs, attorneys' fees and restitution, disgorgement of funds and any other just and proper relief available under the UCL and California law.

## COUNT III

## FRAUD BY OMISSION OR FRAUDULENT CONCEALMENT (ON BEHALF OF KIMBALL AND THE CALIFORNIA CLASS)

177. Kimball incorporates and re-alleges each preceding paragraph as though fully set forth here.

178. Kimball asserts this count on behalf of herself and members of the California Class.

179. VWAG, Audi AG, VWGoA and Audi America intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the fact that class vehicles contain a turbocharger defect and corresponding safety risk, with the intent that Kimball and members of the California Class rely on these omissions. As a direct result of this fraudulent conduct, Kimball and members of the California Class have suffered actual damages.

180. VWGoA and Audi America knew (at the time of sale and thereafter) that class vehicles incorporated the turbocharger defect, concealed the turbocharger defect and never intended to repair or replace the turbocharger during the warranty periods. To date, VWGoA and Audi America have not provided Kimball and members of the California Class with a repair or remedy for the turbocharger defect.

181. VWGoA and Audi America owed a duty to disclose the turbocharger defect and its corresponding safety risk to Kimball and members of the California Class because VWAG, Audi AG, VWGoA and Audi America possessed superior and exclusive knowledge concerning the defect. VWGoA and Audi America had a duty to disclose any information relating to the safety, quality, functionality, and reliability of class vehicles because they consistently marketed class vehicles as safe.

182. Once VWGoA and Audi America made representations to the public concerning class vehicle safety, quality, functionality, and reliability, they were under a duty to disclose these omitted facts, because where one does speak, one must speak the whole truth and not conceal any facts which materially qualify facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud. Rather than disclose the turbocharger defect, VWGoA and Audi America intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the presence

of the turbocharger defect and corresponding safety risk, to sell additional class vehicles and avoid the cost of repair or replacement.

183. The turbocharger defect is material to Kimball and members of the California Class because Kimball and members of the California Class had a reasonable expectation that class vehicles would not contain a defect, such as the turbocharger defect, that leads to expensive repair costs and exposes them and other vehicle occupants to a safety risk. No reasonable consumer expects a vehicle to contain a concealed defect in design, manufacture, materials, or workmanship, such as the turbocharger defect, that will lead to thousands of dollars in repair or replacement costs, and will cause catastrophic engine failure with little to no warning or time to take preventative measures or safely remove the vehicle from the road.

184. Kimball and members of the California Class would not have purchased class vehicles but for VWGoA and Audi America's omissions and concealment of material facts concerning the nature and quality of class vehicles and existence of the turbocharger defect and corresponding safety risk, or would have paid less for the class vehicles.VWGoA and Audi America knew their concealment and suppression of material facts was false and misleading and knew the effect of concealing those material facts. VWGoA and Audi America knew their concealment and suppression of the turbocharger defect would sell more class vehicles and would discourage Kimball and members of the California Class from seeking replacement or repair of the turbocharger defect during the applicable warranty periods. VWGoA and Audi America intended to induce Kimball and members of the California Class into purchasing class vehicles and to discourage them from seeking replacement or repair of the turbocharger defect in order to decrease costs and increase profits.

185. VWGoA and Audi America acted with malice, oppression, and fraud.

186. Kimball and members of the California Class reasonably relied upon VWGoA and Audi America's knowing concealment and omissions. As a direct and proximate result of VWGoA

and Audi America's omissions and active concealment of material facts concerning the turbocharger defect and associated safety risk, Kimball and members of the California Class suffered actual damages in an amount to be determined at trial.

**COUNT IV**

**NEGLIGENT MISREPRESENTATION**
**(ON BEHALF OF KIMBALL AND THE CALIFORNIA CLASS)**

187. Kimball incorporates and re-alleges each preceding paragraph as though fully set forth here.

188. Kimball asserts this count on behalf of herself and members of the California Class.

189. VWGoA and Audi America owed a duty to disclose the turbocharger defect and its corresponding safety risk to Kimball and members of the California Class because VWGoA and Audi America possessed superior and exclusive knowledge concerning the turbocharger defect and the risks associated with the turbocharger's failure. VWGoA and Audi America also made partial disclosures concerning the safety of class vehicles while knowing that class vehicles possessed the turbocharger defect and failed to disclose its existence and its corresponding safety hazard.

190. VWGoA and Audi America negligently misrepresented and omitted material facts including the standard, quality, or grade of class vehicles and the fact that the engine turbocharger installed in class vehicles is defective and will prematurely fail, exposing drivers, occupants, and members of the public to safety risks. As a direct result of VWGoA and Audi America's negligent conduct, Kimball and members of the California Class suffered actual damages.

191. As a result of VWGoA and Audi America's failure to disclose the material fact that the class engine turbocharger is defective and will prematurely fail in Owner's Manuals, maintenance schedules, or elsewhere, Kimball and members of the California Class are required to spend thousands of dollars to repair or replace the turbocharger, other engine parts, and/or the

entire engine, or sell their vehicles at a substantial loss. The fact that the class engine turbocharger will prematurely fail is material because no reasonable consumer expects that he or she will have to spend thousands of dollars for diagnosis, repair or replacement of the turbocharger before the end of the useful life of the engine, and because Kimball and members of the California Class had a reasonable expectation that the vehicles would not suffer from a premature failure of the turbocharger.

192. The fact that the class engine turbocharger will prematurely fail is also material because it presents a safety risk and places the driver and occupants at risk of serious injury or death. When the turbocharger fails, drivers may be unable to accelerate or maintain speed or may experience catastrophic engine failure. Drivers and occupants of class vehicles are at risk for rear-end collisions or other accidents caused by the inability to maintain an appropriate speed, and the general public is also at risk for being involved in an accident with a class vehicle that suddenly stops or is unable to maintain an appropriate speed. No reasonable consumer expects a vehicle to contain a defect in design, manufacture, materials, or workmanship, such as the turbocharger defect, that will cause catastrophic engine failure with little to no warning or time to take preventative measures or safely remove the vehicle from the road.

193. Kimball and members of the California Class would not have purchased class vehicles but for VWGoA and Audi America's negligent omissions of material facts concerning the nature and quality of class vehicles and existence of the turbocharger defect and corresponding safety risk, or would have paid less for the class vehicles. Kimball and members of the California Class justifiably relied upon VWGoA and Audi America's negligent false representations and omissions of material facts.

194. As a direct and proximate result of VWGoA and Audi America's negligent false representations and omissions of material facts concerning the standard, quality, or grade of the class vehicles, and/or the turbocharger defect, Kimball and members of the California Class

suffered an ascertainable loss and actual damages in an amount to be determined at trial.

**COUNT V**

**BREACH OF EXPRESS WARRANTY**
**(ON BEHALF OF KIMBALL AND THE CALIFORNIA CLASS)**

195. Kimball incorporates and re-alleges each preceding paragraph as though fully set forth here.

196. Kimball asserts this count on behalf of herself and members of the California Class.

197. VWGoA and Audi America were and are at all relevant times "merchant[s]" with respect to motor vehicles under CAL. COM. CODE §§ 2104(1) and 10103(c), and a "seller" of motor vehicles under § 2103(1)(d).

198. Class vehicles are and were at all relevant times "goods" within the meaning of CAL. COM. CODE §§ 2105(1) and 10103(a)(8).

199. VWGoA and Audi America provided Kimball and members of the California Class with one or more express warranties. For illustrative purposes, VWGoA and Audi America provided: (1) a New Vehicle Limited Warranty that includes "virtually bumper to bumper coverage for 3 years or 36,000 miles, whichever occurs first" or 4 years or 50,000 miles, whichever occurs first; and/or (2) a Powertrain Limited Warranty for "5 years or 60,000 miles whichever occurs first" which covers "all internal [engine] parts" including the turbocharger. Under express warranties provided to members of the class, VWGoA and Audi America promised to repair or replace covered defective engine components arising out of defects in materials and/or workmanship, including the turbocharger, at no cost to owners of the class vehicles. However, given the latent nature of the turbocharger defect, VWGoA and Audi America knew or should have known that the majority of turbocharger failures occur outside the warranty periods.

200. VWGoA and Audi America represented in the maintenance schedules and warranty guides for class vehicles that there would be no need to inspect, repair, replace, or service the

turbocharger prior to 120,000 miles. Such representations formed the basis of the bargain in Kimball and members of the California Class' decisions to purchase the class vehicles.

201. VWGoA and Audi America also marketed class vehicles as high quality, reliable, and safe vehicles and that VWGoA and Audi America would stand behind the quality of their products and promptly repair any defects. These statements helped conceal the existence of the turbocharger defect and its corresponding safety risk from Kimball and members of the California Class in order to shift the expense of class vehicle engine turbocharger repairs to Kimball and class members.

202. In connection with the purchase each of the class vehicles, VWGoA and Audi America provided maintenance schedules and warranty guides which omit any mention of the turbochargers as requiring routine inspection, service, or replacement within the first 115,000 miles (for Audi class vehicles) or 120,000 miles (for VW class vehicles).

203. VWGoA and Audi America's express warranty for Kimball's vehicle states that "[w]ith proper maintenance and care, your Audi will continue to provide you with a dependable and safe driving experience. The Maintenance section of this booklet contains Audi's recommended service intervals as well as other important information you need to know to care for your Audi properly." Neither the Maintenance section, however, nor any other section of the warranty pamphlet provides any recommended service intervals or information relating to the care of the vehicle engine turbocharger. Thus, even if Plaintiff and members of the proposed class performed "proper maintenance" of their class vehicles that conformed with the schedules set forth in Audi America and VWGoA's warranty, the substantially certain failure caused by the latent turbocharger defect prevents Audi America and VWGoA from fulfilling its warranty promise of providing a "dependable and safe driving experience."

204. Under California law, it is the seller's behavior (rather than the purchaser's) that

controls what the seller in essence agreed to sell. Therefore, any affirmation, including those contained in VWGoA and Audi America's warranties claiming "dependable and safe driving experience", once made, is part of the agreement unless there is clear affirmative proof that the affirmation has been taken out of the agreement. Consequently, the express warranty and other materials given to Plaintiff and proposed class members at the time of delivery may be part of the basis of the bargain, even if such materials technically were delivered after Plaintiff and proposed class members paid the purchase price.

205. Under the express warranties provided to Kimball and members of the California Class, VWGoA and Audi America promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the turbocharger defect, at no cost to owners of class vehicles and within a reasonable time. As alleged in this complaint, VWGoA and Audi America breached its express warranties.

206. VWGoA and Audi America's express warranties formed a basis of the bargain that was reached when Kimball and members of the California Class purchased their respective class vehicles. Given the latent nature of the turbocharger defect, VWGoA and Audi America knew or should have known that the majority of the turbocharger failures (and corresponding engine damage) would occur outside of the warranty periods.

207. Kimball and members of the California Class experienced the existence of the turbocharger defect within the warranty periods but had no knowledge of the existence of the turbocharger defect and associated safety risk, which were known and concealed by VWGoA and Audi America. Despite the existence of the express warranties, VWGoA and Audi America failed to adequately inform Kimball and members of the California Class that class vehicles incorporated the turbocharger defect and failed to provide a suitable repair or replacement of the turbocharger free of charge within a reasonable time.

208. VWGoA and Audi America breached the express warranty promising to repair and

correct a manufacturing defect or defect in materials or workmanship of any parts it supplied.

209. On information and belief, VWGoA and Audi America have not suitably repaired or replaced the defective turbocharger free of charge for Kimball and members of the California Class despite the existence of the turbocharger defect in class vehicles at the time of sale.

210. VWGoA and Audi America further breached their express warranties by selling class vehicles that were defective with respect to engine materials, workmanships, design and manufacture, and were accompanied by an Owner's Manual and/or maintenance schedule that incorporated no inspection and service materials for the turbocharger for the first 115,000 miles (for Audi class vehicles) or 120,000 miles (for VW class vehicles) although VWGoA and Audi America knew of the turbocharger defect and that the turbocharger required periodic inspection and service.

211. Class vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because the engine materials, workmanship, design and/or manufacturing defects which cause engine failure and/or failure to perform as warranted.

212. Kimball and members of the California Class had sufficient direct dealings with VWGoA and Audi America and their agents and/or their authorized dealerships, to establish privity of contract between VWGoA and Audi America, on the one hand, and Kimball and members of the California Class, on the other hand. Nonetheless, privity is not required here because Kimball and each of the other members of the California Class are intended third-party beneficiaries of contracts between VWGoA and Audi America and their dealers, and specifically, of their warranties. The authorized dealers were not intended to be the ultimate users of class vehicles and have no rights under the warranty agreements provided with the class vehicles; the warranty agreements were designed for and intended to benefit purchasers of class vehicles only.

213. VWGoA and Audi America were provided notice of the turbocharger defect by numerous consumer complaints made to their authorized dealers in the United States and through

their own testing. Affording VWGoA and Audi America a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because VWGoA and Audi America have known of and concealed the turbocharger defect and have failed to provide a suitable repair or replacement of the defective turbocharger free of charge within a reasonable time.

214. VWGoA and Audi America were provided notice by letter on May 2, 2022 that Kimball would pursue claims related to the turbocharger defect on behalf of a class. Kimball also provided notice by presenting her Audi A5 for repair to Sonnen Motorcars on July 23, 2019 in San Rafael, California. Sonnen Motorcars is an authorized dealer of VWGoA and Audi America and its duly authorized agent to perform warranty repairs. Despite this notice, VWGoA and Audi America did not cure their breach of express warranties and failed to provide a suitable repair or replacement of the defective turbocharger free of charge within a reasonable time.

215. Any attempt by VWGoA and Audi America to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, VWGoA and Audi America's warranty limitation is unenforceable because they knowingly sold a defective product without informing consumers of the turbocharger defect. The time limits incorporated in VWGoA and Audi America's warranty periods were also unconscionable and inadequate to protect Kimball and members of the California Class. Kimball and members of the California Class did not determine these time limitations, the terms of which unreasonably favored VWGoA and Audi America. A gross disparity in bargaining power existed between VWGoA and Audi America and members of the California Class, and VWGoA and Audi America knew or should have known that class vehicles were defective at the time of sale and that the turbocharger defect posed a safety risk.

216. The limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Kimball and members of the California Class whole because, on information and belief, VWGoA and Audi

America failed and/or have refused to adequately provide the promised remedies within a reasonable time.

217. VWGoA and Audi America knew that class vehicles were inherently defective and did not conform to their warranties and Kimball and members of the California Class were induced to purchase class vehicles under false and/or fraudulent pretenses.

218. Kimball and members of the California Class experienced the existence of the turbocharger defect within the warranty periods but had no knowledge of the existence of the turbocharger defect which was known and concealed by VWGoA and Audi America. Despite the existence of express warranties, VWGoA and Audi America failed to inform Kimball and members of the California Class that class vehicles incorporated the turbocharger defect during the warranty periods and wrongfully transferred the costs of repair or replacement of the turbocharger and damaged engine Kimball and members of the California Class.

219. Because of the turbocharger defect, class vehicles are not reliable and owners of these vehicles have lost confidence in the ability of class vehicles to perform the function of safe, reliable transportation.

220. Kimball and members of the California Class could not have reasonably discovered the turbocharger defect.

221. As a direct and proximate result of VWGoA and Audi America's breach of express warranties, Kimball and members of the California Class have been damaged in an amount to be determined at trial.

222. Finally, because VWGoA and Audi America's breach of express warranty as set forth in this complaint, Kimball and members of the California Class assert, as additional and/or alternative remedies, the revocation of acceptance of goods and the return to Kimball and members of the California Class of the purchase price of all class vehicles currently owned, and for such other incidental and consequential damages as allowed.

**RELIEF REQUESTED**

WHEREFORE, Kimball, on behalf of herself and all others similarly situated, respectfully requests that this Court enter judgment against VWAG, Audi AG, VWGoA and Audi America and in favor of herself and the respective class and award the following relief:

A. An order certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Kimball as the representative of the California Class, and Kimball's counsel as counsel for the class and California Class;

B. An order awarding declaratory relief and enjoining VWAG, Audi AG, VWGoA and Audi America from continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged in this complaint;

C. Injunctive and equitable relief in the form of a comprehensive program to repair or replace the turbocharger in all class vehicles, and/or buyback all class vehicles, and to fully reimburse and make whole all members of the California Class for all costs and economic losses;

D. A declaration that VWAG, Audi AG, VWGoA and Audi America are financially responsible for all class notice and the administration of class relief;

E. An order awarding costs, restitution, disgorgement, punitive damages, treble damages, and exemplary damages under applicable law, and compensatory damages for economic loss, overpayment damages, and out-of-pocket costs in an amount to be determined at trial;

F. An order awarding any applicable statutory and civil penalties;

G. An order requiring VWAG, Audi AG, VWGoA and Audi America to pay both pre- and post-judgment interest on any amounts awarded;

H. An award of costs, expenses, and attorneys' fees as permitted by law; and,

I. Such other or further relief as the Court may deem appropriate, just, and equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Kimball and the California Class demand a trial by jury of any and all issues in this action so triable of right.

Respectfully submitted,

*s/ Gary S. Graifman*

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