

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

SOKOL GJONBALAJ, individually
and on behalf of all other similarly situated,

Plaintiff,

v.

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

Defendants.

Civil Action No.: 1:19-cv-7165

Jury Demand

COMPLAINT FOR:

1. Breach of Express Warranties
2. Breach of Implied Warranties
3. Violation of MMWA
4. Violation of NY GBL § 349
5. Violation of NY GBL § 350
6. Unjust Enrichment

CLASS ACTION COMPLAINT

Plaintiff, individually and on behalf of all others similarly situated, by and through his undersigned counsel, brings this Class Action Complaint against Defendants Volkswagen Group of America, Inc. (“Volkswagen America”) and Volkswagen AG (“Volkswagen Global”) (collectively “VW”). Plaintiff alleges the following based upon personal knowledge as to his own acts, and based upon investigation of counsel as to all other allegations.

I. SUMMARY OF THE CASE

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

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

¹ <https://knowledge.wharton.upenn.edu/article/volkswagen-diesel-scandal/> (last accessed 12.20.2019).

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

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

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

6. VW has not honored this warranty statement when it comes to the following VW vehicle models: 2015-present Audi A1 Mk2, Audi A3 Mk3, Audi TT Mk3, Audi Q2, Audi Q3, Volkswagen Arteon, Volkswagen Atlas/Teramont, Volkswagen Golf, Volkswagen Jetta, Volkswagen Passat, Volkswagen Polo, Volkswagen Tiguan, and Volkswagen Touran that are sold with a sunroof (collectively, the “Class Vehicles”).⁵

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

8. Consumers purchase the Class Vehicles reasonably expecting that their vehicles can be used in the normal and ordinary manner in which cars are used, including driving in the rain. Consumers reasonably expect that the Class Vehicles, all equipped with sunroofs, will not suffer water damage in the interior of the car when the sunroof is closed during inclement weather.

9. Despite these reasonable consumer expectations, VW knowingly, through the use of deceptive practices, sold (and continues to sell) tens of thousands of Class Vehicles equipped

² *Id.*

³ *Id.*

⁴ *Id.*

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

with sunroofs that have inherent design and manufacturing flaws that cause leaks resulting in damage to the vehicles' interior, including electrical systems, audio systems, upholstery, carpet, roof headliners, seats, and more. Damage to the electrical systems causes certain features of the car to malfunction. Consumers have experienced the forward/front and rear sensors malfunctioning which causes the vehicle to slam on its brakes and stop on its own – even when the vehicle is moving at high speeds in the middle of the road.

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

11. VW refuses to disclose, fails to warn, and never informs consumers of the defect, despite VW's knowledge of the defect and the problems associated with it and despite the fact that a diligent consumer could not reasonably learn of the defect, safety risks, and potential damages on his own.

12. VW also refuses to repair, correct, or otherwise remedy the sunroof defect on the Class Vehicles, despite its promise to do so in express warranties to consumers.

13. VW may have intended its new warranty to win over consumers after Dieselgate, but given that VW will not acknowledge or repair the known sunroof defect, the warranty has not restored Class Vehicle consumers' faith in VW.

14. VW has created another scandal through its deceptive and fraudulent business practices wherein they profit and consumers suffer.

15. Plaintiff, individually and on behalf of a class of all consumers who purchased or leased the Class Vehicles with the same or substantially similar component sunroof parts, seek recovery for damages suffered as a result of VW's defective sunroof. Thus, Plaintiff, on behalf of himself and all Class, Members bring this class action against VW for breach of express and implied warranties; violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; violation of New York General Business Law §§ 349 and 350; and unjust enrichment.

II. JURISDICTION AND VENUE

16. This Court has personal jurisdiction over the Defendants because VW has regular and systematic contacts in the state of New York, in which it does business and placed the Plaintiff's vehicle into the stream of commerce.

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

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

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

III. PARTIES

20. Plaintiff Sokol Gjonbalaj is a resident of Ridgewood, New York located in Queens County.

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

22. Volkswagen America through its various entities designs, manufactures, markets, distributes, and sells Volkswagen automobiles, including the Class Vehicles, in multiple locations across the United States, including New York.

23. Volkswagen America and/or its agents designed, manufactured, and installed the defective sunroofs in the Class Vehicles.

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

25. Defendant Volkswagen Global is a German corporation headquartered in Wolfsburg, Germany.

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

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

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

29. Volkswagen Global is the parent of, controls, and communicates with Volkswagen America concerning virtually all aspects of the Volkswagen vehicles distributed in the United States.

30. Volkswagen America acts as the sole distributor for Volkswagen vehicles in the United States, purchasing those vehicles from Volkswagen Global for sale in this country.

31. Volkswagen Global also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Class Vehicles.

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

33. Volkswagen America is a wholly owned subsidiary of Volkswagen Global.

IV. FACTUAL BACKGROUND

A. The VW Sunroof Defect

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

35. The VW automobile models that make up the Class Vehicles in this case are the 2015-present Audi A1 Mk2, Audi A3 Mk3, Audi TT Mk3, Audi Q2, Audi Q3, Volkswagen Arteon, Volkswagen Atlas/Teramont, Volkswagen Golf, Volkswagen Jetta, Volkswagen Passat, Volkswagen Polo, Volkswagen Tiguan, and Volkswagen Touran that are sold with a sunroof. Plaintiff anticipates amending the Class Vehicles' definition upon VW identifying in discovery all of its vehicles manufactured and sold with the relevant defective sunroofs.

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

37. The defective sunroofs present manufacturing, design, and safety issues.

38. The VW sunroofs were defectively designed and manufactured such that they are prone to leak water into the interior of the vehicle.

39. The VW sunroofs are defective due to their defective drainage systems and defective seals.

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

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

42. All the while, VW profits.

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

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

44. VW wrongly profits on its defective sunroofs because it has known or should have known of the sunroofs' defective nature for years and VW never informs consumers of the defect; never warns about the consequences of the defect; actively conceals the defect from consumers; and fails to live up to the express and implied warranties it made through its warranty materials, advertisements, and other contractual agreements and promises made to consumers.

45. VW has been aware of the sunroof design and manufacturing defects since at least 2016.

46. VW issued a number of technical service bulletins (“TSBs”) related to the defective sunroofs.

47. In general, TSBs contain a manufacturer’s diagnosis of a particular problem as well as the manufacturer’s recommended procedures for addressing and/or repairing the known problem.

48. VW issued no less than five (5) TSBs relating to the sunroof feature in the Class Vehicles.

49. On March 11, 2016, VW issued a TSB to dealers with tips for procedures to replace faulty sunroof frames.

50. On April 28, 2016, VW issued a TSB to dealers relating to product support requests from VW of America investigating complaints from water leaks from sunroof drain tubes.

51. On May 18, 2016, VW issued a TSB informing dealers that the sunroof frame was manufactured in a fashion that permits the “shade” to twist during operation resulting in the bands of the shade becoming displaced.

52. On September 28, 2016, VW issued a TSB providing dealers with a “PANORAMIC SUNROOF INSPECTION AND REPAIR PROCEDURE” in the event of a water leak.

53. On January 4, 2017, VW issued a TSB to dealers which consisted of a “special notice” to “inform dealers to return all sunroof repair kits” labeled 5GM898041, and to order repair kit 5GM898041A going forward.

54. On August 7, 2017, VW issued a notice to dealers with specific repair instructions on sunroofs “to prevent water leaks into the interior of the vehicle that could be caused by cracks in the sunroof frame.”

55. The August 7, 2017 Notice to dealers issued a stop sale order, informing dealers that “each vehicle should be completed when it comes into the dealer for maintenance or any other

service visit[.]” and “[d]ealer stock vehicles cannot, however, be delivered to consumers until the Update is completed.”

56. The August 7, 2017 Notice to dealers also actively advised dealers to conceal the defects, stating, “Volkswagen is not notifying consumers.”

57. Plaintiff anticipates discovery will reveal additional internal documents, exclusively within the possession and control of VW, that demonstrate VW’s knowledge and the extent of the cover up and concealment of the defect from consumers.

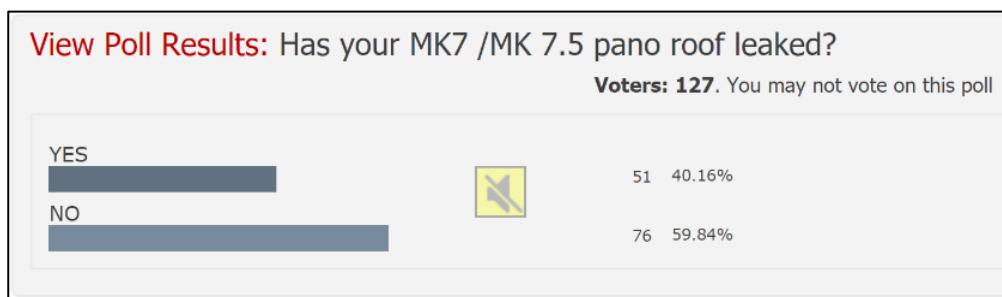
58. Consumer complaints also demonstrate that VW knew or should have known of the defect since at least 2016.

C. Consumer Complaints Demonstrate the Extent and Magnitude of the Defect

59. Consumers complained publicly and directly to VW about the sunroof defect and manifestations thereof via blogs, VW group websites, the National Highway Traffic Safety Administration (“NHTSA”), social media, and other forums.


60. One VW group website demonstrates that sheer volume of consumers experiencing VW sunroof leaks, the frustration and lack of help from VW dealers, and the lack of any permanent solution to the problem. Indeed, a search for “Sunroof Leak” at forums.vwvortex.com, a website dedicated to VW owners and enthusiasts, returns a maximum 3,000 results, and a search limited to user-posts in the past year returns 649 results. Sample posts include the following:

- a. In an informal poll of MK 7 / MK 7.5 owners, 40.16 percent of respondents indicated that they had suffered leaks from the VW Sunroof.




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

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

<p>blbo ◯</p> <p>n00b</p> <p>Join Date: Oct 5th, 2015</p> <p>Posts: 5</p>	<p> "Permanently" sealing a leaky sunroof 06-22-2019 09:29 AM Reply #1</p> <p>Hi,</p> <p>My car is at the dealer for the third time with a sunroof leak, with the third one appearing less than 2 month after the 3y warranty expired... I am hoping that VWoA will cover the repair, but I am also ready for the worse.</p> <p>At this point, I am about done with the sunroof, which I never open anyway, so I am thinking of tapping it shut by covering the whole roof with some form of plastic file. Maybe the type of material that is used to make hood "bras". Has anybody done this?. What kind of film can I use? It should leave no residue when removed, possibly a couple of years from now, and resist Louisiana sunlight. Are the fuses for the curtain and the roof the same? I'd rather be able to open the curtain.</p> <p>Blaise</p>
--	---

<https://forums.vwvortex.com/showthread.php?9323775-quot-Permanently-quot-sealing-a-leaky-sunroof&highlight=sunroof+leak>

- c. On December 16, 2018, user Houdinize posted sharing his/her personal story and seeking solutions as he/she "searched" but could not find that anyone had gotten their sunroof leak "fixed for good." Houdinize's full post was as follows:

<p>Houdinize ◯</p> <p>Junior Member</p> <p>Join Date: Nov 15th, 2018</p> <p>Posts: 20</p>	<p> Has anyone had a water leak actually fixed12-16-2018 08:44 PM Reply #1</p> <p>My 3rd VW in a row is leaking!</p> <p>I've searched the forums and read multiple threads about water leaks but can't seem to find anyone stating that they had one fixed for good. Here's my story: I had a 2017 Golf Sportwagen SE that started leaking from the sunnroof in May at 20k miles, after over a month in the shop VW agreed to replace it with an 18 SEL in August, that one started leaking a week in and while in the shop had the drain tube flaps removed and yet still leaked so it was then replaced just last week with a 2019 Tiguan SEL (figured I'd change models for better luck and had to wait a bit for the 2019 in the color I wanted). I would've gone down to an SE without a sunroof but I'd already been upgraded to the SEL and am enjoying all the features like ACC and the digital cockpit. Welp, I picked up the car last Tuesday and on Friday there was water coming in from around the dome lights, grip handle, and A column. I heard about Golf sunroof welds being too high and interfering with the seals and also the drain tube flaps, but the thing is they told me when I picked up the Tiguan that the drain flaps had been removed, in hopes of preventing this issue. So, has anyone had a leak and had it completely resolved? I'm desperate and beyond frustrated and just want to enjoy my car. I'm happy to take a new one every 4 months but this is getting ridiculous.</p>
--	--

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

61. Numerous complaints were submitted to the NHTSA. Examples include the following:

- a. December 8, 2016 in a 2015 Golf Sportwagen
MARCH 10, 2019 - BEGINNING ON 12/08/2016, MY VW HAS BEEN TO SERVICE FOR A LEAKING SUNROOF 4 TIMES (THE CAR WAS LESS THAN 3.5 YEARS OLD!). THE WATER HAS FILLED THE SPARE TIRE/SUBWOOFER WELL FULL, DRIPPED THROUGH THE LIGHTING AND ELECTRICAL SWITCHES OF THE ROOF, DRAINED INTO THE DASH AND SHIFTER AS WELL AS MY LAP WHILE DRIVING. AND IT PRESENTS SO MUCH MOISTURE IN THE CAR THE WINDOWS WILL NOT DEFOG WITH THE A/C ON. VW MAINTENANCE DEPARTMENTS ALWAYS BLAME ME FOR DEBRIS CLOGGING THE ROOF DRAINS. I'VE SINCE BEEN INFORMED OF TWO TSBS ON THIS ROOF ADDRESSING THE FLAWED ENGINEERING. ALL THE DEALERSHIPS HAVE DONE IS CLEARED MY DRAIN HOSES AND ON THE 4TH RETURN, PRESENTED A \$1,600 BILL FOR REMOVING AND REPLACING MY DRAINS. I REFUSED THE REPAIR AND HAVE DUCT TAPED MY ROOF TO PREVENT FURTHER WATER DAMAGE UNTIL THIS MATTER IS FORMALLY RESOLVED. VW CUSTOMER CARE HAS REFUSED TO PAY FOR THIS SERVICE CLAIMING IT IS A MAINTENANCE ISSUE. GIVEN WHERE I LIVE, THE CALIFORNIA CENTRAL VALLEY, DURING THE FIRST THREE YEARS OF OWNING THIS VEHICLE, WE RARELY HAD RAIN. APPROXIMATELY EVERY 8 MONTHS THE CAR HAS BEEN TAKEN TO A VW DEALERSHIP TO ADDRESS THE LEAKING ROOF.
- b. July 1, 2018 on a 2017 VW Alltrack
PANORAMIC SUNROOF LEAKS. HEADLINER I AND CARPET IS BADLY STAINED WITH VISIBLE MOLD GROWTH. PILLAR STAINING AS WELL. WATER LEAKS FROM DOME LIGHT AND SUNROOF CONTROL BUTTONS. WATER ALSO LEAKS INTO FOOT WELL. TAKEN TO TWO DIFFERENT DEALERSHIP WHO HAVE SAID THAT IT IS LIKELY THE SUNROOF DRAINS ARE BLOCKED BY DEBRIS AND REPAIR WOULD NOT BE COVERED BY WARRANTY. THERE IS NO WAY FOR THE CONSUMER TO ACCESS THE SUNROOF DRAINS TO KEEP THEM CLEAR, PARTICULARLY THE REAR DRAINS, WHICH ENTAILS DISMANTLING PART OF THE CAR. THIS IS A KNOWN ISSUE WITH MANY REPORTED COMPLAINTS BY OWNERS WITH A TECHNICAL SERVICE BULLETIN BEING ISSUED. PLEASE ENCOURAGE AN INVESTIGATION AND REPARATIONS FROM VW.
- c. November 4, 2018 on a 2017 VW Alltrack
PANORAMIC SUNROOF LEAKS WHEN DRIVING IN THE RAIN. WINDOWS FOG UP, STAINS HEADLINER AND MOISTURE WILL OVER TIME CAUSE MOLD IN VEHICLE. IN COLD TEMPERATURE FROZEN CONDENSATION OBSERVED INSIDE OF VEHICLE WINDSHIELD AND BACK WINDOW MAKING IT DIFFICULT TO SEE OUT.
- d. November 21, 2018 on a 2017 VW Alltrack

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

- e. November 14, 2018 in a 2018 VW Tiguan
PANORAMIC MOONROOF LEAKAGE. WATER DRIPPING INSIDE VEHICLE ABOVE HEAD ON REAR RIGHT SIDE AND GOING DOWN INTO SEATBELTS COMPARTMENT. VEHICLE WAS STATIONARY. WATER DRIPPING INSIDE SEAT BELT COMPARTMENT IN MY OPINION MAY CAUSE SHORT SINCE SOME ELECTRICAL GOING THRU SAME COMPARTMENT.
- f. September 23, 2018 in a 2015 VW Golf Sportwagen
LEAKING PANORAMIC SUNROOF CAUSES MOISTURE AND MOLD ON THE INTERIOR OF THE VEHICLE. HAPPENED IN THE RAIN WHEN PARKED AND DRIVING.
- g. December 12, 2018 in a 2015 VW Sportwagen
PROBLEM NOTICED DECEMBER 12TH WHEN ONE BY ONE ALL THE WARNING LIGHTS CAME ON INCLUDING THE AIR BAG, THE STABILIZATION SYSTEM, THE HEADLIGHT SYSTEM AND OTHERS. THEN WHEN I STOPPED AT A RED LIGHT, THE CAR WOULD NOT SHIFT OUT OF 1ST GEAR. I ENDED UP HAVING TO HAVE MY VEHICLE TOWED BACK HOME. THE NEXT DAY A MECHANIC SCANNED IT AND SAID THERE WAS A PROBLEM IN THE EMISIONS SYSTEM WHICH DISABLED THE CAR BY MAKING IT NOT ABLE TO DRIVE. I THEN HAD IT TOWED TO THE NEAREST VW DEALER WHO TOLD ME THAT THE WHOLE PROBLEM, INCLUDING THE FAILURE OF THE SAFETY SYSTEMS, WAS CAUSED BY A LEAK IN THE SUNROOF. WATER RAN DOWN THE A-PILLER AND SHORTED SOME WIRING. THEY GAVE ME A PRINT OUT WHERE VW ADMITS THAT THIS IS THE RESULT OF A PRODUCTION DEFECT BUT THEY SAID THAT IF THE DEFECT WAS NOT FOUND BEFORE THE WARRANTY RAN OUT THAT VW WOULD NOT ALLOW IT TO BE FIXED UNLESS I PAID THEM OVER \$1,0000. AS IT IS, I HAD TO PAY THEM \$240 TO TAKE THE TRIM OFF OF THE A-PILLER AND DRY THE WIRING OUT. THIS MADE THE CAR RUN NORMALLY FOR THE TIME BEING BUT NOW I AM AFRAID THAT IT WILL HAPPEN AGAIN.
- h. September 27, 2018 2017 VW Alltrack
TL* THE CONTACT OWNS A 2017 VOLKSWAGEN GOLF ALLTRACK. THE CONTACT STATED THAT THE SUN ROOF WAS BLOCKED AND LEAKED WATER INTO THE VEHICLE WHEN IT RAINED. THE VEHICLE WAS TAKEN TO VOLKSWAGEN OF THE WOODLANDS (855-436-0113, LOCATED AT 16785 INTERSTATE 45 SOUTH, THE WOODLANDS, TX 77385) WHERE IT WAS STATED THAT THE FAILURE WAS DUE TO NEGLIGENCE BY THE CONTACT. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND STOOD BY THE DEALER'S RULING. THE VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS APPROXIMATELY 23,000. *DT UPDATED 11/2/18*JB THE CONSUMER STATED THE MANUFACTURER ADVISED ANY TIME THE VEHICLE WAS

DRIVEN THROUGH MUD IT WAS POSSIBLE FOR THE DRAINS TO BECOME BLOCKED, WHICH THE CONSUMER WOULD BE RESPONSIBLE FOR REPAIRING.

- i. May 14, 2018 on 2017 VW Golf Alltrack
2017 VW GOLF ALLTRACK: HAVE HAD THIS CAR FOR FOUR MONTHS NOW AND JUST HAD THREE DAYS WORTH OF RAIN HERE IN MICHIGAN. THE FRONT OF THE HEADLINER IS COMPLETELY SOAKED ON BOTH A-PILLARS AND AROUND THE OVERHEAD CONSOLE OF THE VEHICLE. DEALERSHIP SAID IT WAS MORE THAN LIKELY WELDS THAT DIDN'T GET SMOOTHED DOWN AND THEREFORE PINCH THE TUBES THAT DRAIN THE TROUGH IN THE SUNROOF AREA NOT ALLOWING IT TO FLOW BACK INTO THE OPENING IN THE CAR. IN OTHER WORDS, VW SOLD ME A CAR WITH A KNOWN DEFECT! NOW I HAVE TO TURN MY CAR IN FOR SOME UNKNOWN AMOUNT OF TIME, HAVE THEM TEAR THE INSIDE APART, TAKE THE CAR TO A BODY SHOP AND HAVE THE BODY SHOP GRIND THE WELDS DOWN SMOOTH, THEN INSTALL A NEW HEADLINER IN THE CAR. THAT'S ALL GREAT (NOT REALLY), BUT WATER IS INCREDIBLY DESTRUCTIVE, SO WHAT ABOUT THE WATER THAT'S RUN DOWN THE A-PILLARS AND GOTTEN IN TO THE INSULATION IN THE DOORS? OR THE WATER THAT RAN LIKE A FAUCET OUT OF MY OVERHEAD CONSOLE THIS MORNING WHEN I STARTED DRIVING THAT DUMPED ALL OVER MY ELECTRONICS AND TRANSMISSION COLUMN? WHAT ABOUT THE POSSIBILITY OF WATER THAT WON'T BE LOOKED FOR IN THIS APPARENT FIX OF A KNOWN PROBLEM THAT THEN TURNS INTO BLACK MOLD THAT I AND MY FAMILY BREATHE EVERY DAY FOR THE LIFE OF THE CAR?! THIS HAS TO BE CORRECTED AS THERE IS NO WAY THIS CAR SHOULD HAVE BEEN SOLD TO ME AND MY FAMILY WITH A KNOWN DEFECT.
- j. December 25, 2018 2017 VW Golf Sportwagen
PANORAMIC SUNROOF IS LEAKING WATER IN MULTIPLE PLACES. WHILE VEHICLE IS STATIONARY AND EXPOSED TO RAIN OR SNOW THE INSIDE OF PASSENGER CABIN GETS FILLED WITH WATER, SPECIFICALLY ON REAR RIGHT PASSENGER SIDE AND TRUNK AREA. THE SPARE TIRE COMPARTMENT GET FILLED UP WITH WATER EVERY TIME IT RAINS.
- k. July 28, 2018 on a 2016 VW Golf Sportwagen
THE DRAIN ON RETRACTABLE ROOF BECAME BLOCKED. RAINWATER DRAINED INTO CAR SATURATING CARPETS. WATER FLOWED INTO CONTROL SYSTEM CAUSING AN EMERGENCY DASHBOARD ALERT TO STOP DRIVING IMMEDIATELY WHILE DRIVING ON HIGHWAY. THIS EVENT OCCURRED TWICE: FIRSTLY IN NEW YORK THEN TWO WEEKS LATER IN PA. VW SERVICE IN PA REPLACED CONNECTORS. VW SERVICE IN BROOKLYN NY AND WESTCHESTER PA EXPLAINED THAT THERE IS A DESIGN FAULT IN THE DRAINAGE SYSTEM IN THE RETRACTABLE ROOF.
- l. October 8, 2019 2017 VW Alltrack
TL THE CONTACT OWNED A 2017 VOLKSWAGEN GOLF ALLTRACK. THE CONTACT STATED THAT THE SUN ROOF LEAKED AND CAUSED MOLD TO FORM INSIDE THE VEHICLE. THE VEHICLE WAS TAKEN TO

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

m. September 20, 2019 on a 2017 VW Alltrack

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

n. April 30, 2019 on a 2017 VW Alltrack

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

o. May 4, 2019 on a 2017 VW Alltrack

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

- p. October 10, 2019 in a 2018 VW Tiguan
WATER LEAKS FROM SUNROOF AND DOORS. WATER FROM THE ROOF LANDS OF START ENGINE BUTTON. FLOORS FLOODED WITH WATER MAKES FOOT SLIPPERY.
- q. September 21, 2019 in a 2018 VW Tiguan
PANORAMIC SUNROOF DEFECTIVE AND CAUSED MAJOR LEAKAGE OF WATER INTO VEHICLE. IN ADDITION, IT SEEMS LIKE CHEMICALS POSSIBILITY FROM WINDSHIELD FLUID LEAKING INSIDE VEHICLE. THIS RESULTED ON BLACK MOLD TO DEVELOP THROUGHOUT THE VEHICLE. ALL CARPETS REPLACED ON MY VEHICLE; HOWEVER, EXTREME FOUL CHEMICAL ODOR CONTINUES IN THE INTERIOR AND MAKES IT DIFFICULT TO BREATHE. THE DEALER HAS MY VEHICLE FOR MORE THAN 9 DAYS AND STILL NO RESOLUTION. ISSUE STARTED WITH LESS THAN 1 YEAR OF OWNERSHIP OF THIS BRAND NEW CAR. EVEN WHEN VEHICLE IS PARKED ON MY DRIVEWAY WITH WINDOWS CLOSED YOU CAN SMELL THE CHEMICAL ODOR AROUND THE VEHICLE. FIRST OCCURRENCE REPORTED ON 7/3/19 AND NO RESOLUTION. SECOND OCCURRENCE: 9/21/19 AND STILL ONGOING.

62. Customers also complained on Facebook directly to VW via VW's Facebook Page.

Examples of those consumer complaints include the following:

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



Annette Leigh ▸ Volkswagen ✓

May 19, 2016 · 🌐



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

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

Annette Leigh

[#Volkswagon](#)[#Carproblems](#)[#Tiguan](#)[#Carreviews](#)



1

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



Stephen Thaddeus Piorkowski ▸ Volkswagen ✓

July 1, 2017 · 🌐



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



3

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



Meka Valmadre ▸ **Volkswagen** ✓

July 9, 2017 · 🌐

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

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

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

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

1 Comment



Like



Comment



Share



Oldest ▾



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

Like · Reply · 2y

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

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

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

4 Comments

 Like  Comment  Share

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

Like · Reply · 1y

 **Laura Oconnor** Interesting, I have been blocked from your site

Like · Reply · 1y

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

Like · Reply · 1y

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

Like · Reply · 1y

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



Anne Lowry ▸ Volkswagen ✓
December 21, 2018 · 🌐



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

63. These are only a sampling of Facebook complaints relating to the Tiguan. Other Class Vehicles had similar complaints.

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

65. If Plaintiff and Class Members had known about the defect at the time of the sale or lease, Plaintiff and Class Members would not have purchased or leased the Class Vehicles or would have paid less for their vehicles.

D. VW's Deceptive Warranty Practices

66. Volkswagen offers a minimum 3 year/36,000 mile New Vehicle Limited Warranty on all of its cars.⁶

67. Volkswagen warrants to make “any repair to correct a defect in the manufacturer’s material or workmanship.”⁷

68. Volkswagen broadened its warranty for its Atlas and Tiguan and then “[b]uilding on the success of the new Atlas and Tiguan’s guarantee,” Volkswagen introduced “the People First Warranty” which “comes standard on all 2018 [and 2019] Volkswagen models, with the exception of the electric 2018 [and 2019] e-Golf.”⁸

69. The People First bumper-to-bumper New Vehicle Limited Warranty is a 6 year/72,000 mile warranty.⁹

⁶ <https://www.vwannarbor.com/warranty-information.html> (last accessed 12.20.2019).

⁷ *Id.*

⁸ <http://newsroom.vw.com/vehicles/volkswagen-unveils-the-people-first-warranty-the-new-industry-leader/> (last accessed 12.20.2019); *see also* <https://www.cars.com/articles/volkswagen-nixes-6-year-warranty-what-shoppers-need-to-know-407046/> (last accessed 12.20.2019) (“Effective for the 2018 and 2019 model years across virtually the entire Volkswagen lineup, the outgoing warranty furnished bumper-to-bumper coverage (including powertrain) for six years or 72,000 miles, whichever comes first....It’s also fully transferrable with no loss in coverage” to subsequent owners.

⁹ *Id.*

70. The new People First Warranty was introduced “to win back American customers” after the company “struggle[ed]” “since it admitted in 2015 [that] the company installed secret software that allowed vehicles to cheat emissions tests for six years.”¹⁰

71. The People First Warranty was touted as “the best SUV Bumper-to-Bumper Transferable Warranty in America!”¹¹

72. The Executive Vice President of Sales and Marketing for Volkswagen Group of America stated that “VW has always stood for strong value, and this warranty proves our commitment to that goal” and “[n]ow” people “don’t have to buy a luxury car to get a luxury-level warranty.”¹²

73. VW’s CEO of the North American Region claimed “VW is the people’s car, and this warranty puts our people first”¹³—it “addresses the needs of American buyers head-on.”¹⁴

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



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



15

75. Plaintiff and Class Members experienced damage from the sunroof defect within

¹⁰ <https://www.cnbc.com/2017/04/12/volkswagen-offers-6-year-warranty-to-win-back-us-customers.html> (last accessed 12.20.2019).

¹¹ <https://www.vwannarbor.com/warranty-information.html> (last accessed 12.20.2019).

¹² <http://newsroom.vw.com/vehicles/volkswagen-unveils-the-people-first-warranty-the-new-industry-leader/> (last accessed 12.20.2019).

¹³ *Id.*

¹⁴ <https://www.cnbc.com/2017/04/12/volkswagen-offers-6-year-warranty-to-win-back-us-customers.html> (last accessed 12.20.2019).

¹⁵ 2018 Tiguan brochure available at <https://www.leithvwraleigh.com/volkswagen-brochures-pdf.html> (last accessed 12.20.2019).

the respective warranty periods of their vehicles.

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

77. Volkswagen has systematically denied coverage and/or refused to adequately repair the Class Vehicles with respect to the defective sunroofs.

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

E. VW's Deceptive Advertising Practices

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

80. For example, VW advertised that "[t]he Golf Alltrack has the features needed to stay in touch with the tech you love."¹⁶

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

82. VW touted that it got a "high-five" from NHTSA "for high performance" "earn[ing] a 5-star overall safety rating."¹⁷

83. The reality is that the Class Vehicles' safety performance is lacking given the dangers posed to drivers, passengers, and others on the roads due to the defect.

84. VW advertised "the Golf Alltrack [a]s a fun-to-drive, ready-for-adventure, über-

¹⁶ https://www.vw.com/content/dam/vwcom/brochures/2017/VWA_MY17_Alltrack_Digital.pdf (last accessed 12.20.2019).

¹⁷ *Id.*

versatile wagon.”¹⁸

85. When in reality, it is not fun to drive a vehicle that is prone to leak. Plaintiff and Class Members describe the hassle involved with driving a leak-prone vehicle like the Class Vehicles.

86. VW states that with the Golf Alltrack one can expect “[s]moother sailing, even on rough terrain and in inclement weather.” VW claims that the Golf Alltrack is engineered to handle “rough road conditions and inclement weather.” VW represents that it is “a car designed for the outdoors” and “ready for almost anything.”¹⁹

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

88. VW represents that the Golf Alltrack is designed to “help weather the storms,” “[h]elp[] you stay out of trouble,” and “check[] all the boxes.”²⁰

89. This is simply not true as Plaintiff and Class Members cannot weather storms in their Class Vehicles without risking and/or suffering injury to themselves, others, or physical property.

90. Plaintiff and Class Members cannot even weather a carwash.

91. Due to the defective nature of the sunroof, the car brings trouble to the owners upon manifestation of the defect.

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

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

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

94. The brochure for the 2017 Golf Alltrack features photographs of the vehicle parked next to mountains, near a campsite, by a lake, driving through the woods, and making its way through the mud. It also includes a photograph of a couple snowshoeing. The brochure imparts a vision of “[t]aking a detour off the highway to traverse previously uncharted territories.... Scenery. Fresh air. Tranquility.”; “looking for adventure off the beaten path”; “a car designed for the outdoors”; “sporty,” “rugged,” “all-wheel adventurer”; “[t]he great outdoors meets the great indoors.” VW stated that “[w]hether you’re exploring new pavement or taking a detour onto a dirt road, the Golf Alltrack is the key to unlocking destinations that were once out of reach.” It “was designed to take the road less graveled. No matter how you adventure, it’s safe to say you’ll be doing so with a turbocharged smile on your face.”²¹

95. VW also released a series of commercials designed to show off “the rugged build” and “the sporty style and performance [of the Golf Alltrack]...[that could take drivers] on excursions that them off the beaten path.”²² The commercials are titled “Foggy Road,”²³ “Snowy Road,”²⁴ “Mountain Bike,”²⁵ “Snowboard,”²⁶ “Salmon,”²⁷ and “Terrarium”²⁸ meant to convey that the Alltrack is “built for adventure.”²⁹

²¹ *Id.*

²² <https://www.neftinvw.com/blog/2017-volkswagen-golf-alltrack-commercials/> (last accessed 12.20.2019).

²³ <https://abancommercials.com/ad/9189/volkswagen-golf-alltrack-foggy-road-commercial-tv-spot> (last accessed 12.20.2019).

²⁴ <https://www.ispot.tv/ad/Auzk/2017-volkswagen-golf-alltrack-snowy-road> (last accessed 12.20.2019).

²⁵ <https://www.ispot.tv/ad/AFN7/2017-volkswagen-golf-alltrack-mountain-bike-song-by-joywave> (last accessed 12.20.2019).

²⁶ <https://www.ispot.tv/ad/AFNL/2017-volkswagen-golf-alltrack-snowboard-song-by-powersolo> (last accessed 12.20.2019).

²⁷ https://www.ispot.tv/ad/A_Nw/2017-volkswagen-golf-alltrack-salmon (last accessed 12.20.2019).

²⁸ <https://www.ispot.tv/ad/AECb/2017-volkswagen-golf-alltrack-terrariums-song-by-eddie-rabbitt> (last accessed 12.20.2019).

²⁹ <https://www.neftinvw.com/blog/2017-volkswagen-golf-alltrack-commercials/> (last accessed 12.20.2019).

96. The Class Vehicles are not equipped for this type of rugged adventure given their defect and Plaintiff and Class Members whose Class Vehicles have already manifested the defect (e.g., leaks) are not adventuring with or smiling because of their vehicle. Instead, they are dealing with the aftermath of the defect and dreading driving their vehicles in rain, inclement weather, or through a car wash.

97. VW made similar representations about the 2018 Tiguan.

98. For example, VW represented that, with the Tiguan, “[o]n a variety of roads and in challenging conditions, you can be confident and comfortable,”³⁰ a driver will have “greater peace of mind” and a “panoramic sunroof that blends seamlessly into the cabin,”³¹ the car “balances sleek and rugged” and “[t]ransforms drives into journeys” – it is “Superlative. All the way.” As it is “built with 100% galvanised steel and the stringent of manufacturing processes. That, along with the choicest of design elements make the Tiguan truly perfect in every way.”³²

99. At least one VW authorized dealer represented that the VW Tiguan sunroof “gives you that convertible feel without having to worry about the bugs.”³³

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

101. VW’s marketing and advertising campaigns associated with the Class Vehicles are deceptive.

F. The Defect Presents a Safety Risk and Causes Plaintiff & Class Members to Suffer Damages

102. Plaintiff and Class Members relied on VW’s deceptive warranty practices, advertising campaigns, and material omissions of the defect to their detriment.

³⁰ 2018 Tiguan brochure available at <https://www.leithvwraleigh.com/volkswagen-brochures-pdf.html> (last accessed 12.20.2019).

³¹ <https://www.vw.com/models/tiguan/section/technology/> (last accessed 12.20.2019).

³² <https://www.volkswagen.co.in/en/models/tiguan.html#item=3&gallery=150339998013542611> (last accessed 12.20.2019).

³³ <https://www.facebook.com/TEDDYVOLKSWAGEN/videos/696518864055018/> (last accessed 12.20.2019).

103. Omission of the defect prevented Plaintiff and Class Members from making an informed decision about whether or not to purchase their Class Vehicle.

104. Plaintiff and Class Members have suffered and continue to suffer due to their leak-prone sunroofs as a result of the defective design and manufacturing of VW's sunroofs in the Class Vehicles.

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

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

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



<https://www.youtube.com/watch?v=iuraGvF8yP0> (last accessed 12.20.19).

108. As explained herein, the defect presents a safety risk to Plaintiff, Class Members, and other drivers, passengers, and individuals on public streets and highways.

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

110. Class Members suffer lost time and energy to address the defect and get VW to repair it.

111. Class Members lose money for repairs done to the Class Vehicles, even though the defect should be repaired at no cost to them under the VW warranties.

112. Class members are damaged because the current and future re-sale value of their Class Value is significantly reduced due to the existence of the sunroof defect and the damages incurred.

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

PLAINTIFF'S EXPERIENCES

114. Plaintiff Sokol Gjonbalaj purchased his 2018 VW Tiguan complete with a movable, panoramic sunroof in August 2017 from Platinum Volkswagen – a VW dealer located in Hicksville, New York.

115. Plaintiff purchased his Class Vehicle for personal, family, and/or household use.

116. At no time prior to, during, or after his purchase, did VW inform Plaintiff Gjonbalaj that his Class Vehicle contained the sunroof defect.

117. Plaintiff Gjonbalaj expected that his Class Vehicle would be able to withstand extreme weather conditions and inclement weather, including rain.

118. Since the purchase of his Class Vehicle, Plaintiff Gjonbalaj has experienced approximately four (4) separate leak events in his Class Vehicle due to the sunroof defect.

119. Each leak has occurred in the rain and some occurred while Plaintiff was driving on the road.

120. On or about October 11, 2018, while it was raining outside, Plaintiff experienced the first sunroof leak in his Class Vehicle of which he was aware.

121. The leak occurred while Plaintiff was driving on the road.

122. Once it was safe, Plaintiff Gjonbalaj captured video of the leak, screenshots of which include the following:



123. Plaintiff Gjonbalaj then took the vehicle to Volkswagen of Huntington – a VW dealer in South Huntington, New York – for diagnosis and repair of the sunroof leak.

124. The VW dealer kept the car for approximately 2 weeks, at which time, after purported examination, the VW dealer claimed that it could not replicate the leak and returned the vehicle to Plaintiff Gjonbalaj.

125. On or about November 13, 2019, while Plaintiff Gjonbalaj was driving his Class Vehicle in the rain, he again experienced another sunroof leak in his Class Vehicle.

126. Plaintiff Gjonbalaj, again, captured video of the leak, screenshots of which include the following:



127. Following this leak, Plaintiff Gjonbalaj again took the vehicle back to a VW dealer.

128. This VW dealer kept the Class Vehicle for approximately one week and then explained that the VW dealer had conducted an open hose test, but the VW dealer claimed that it could not replicate the leak.

129. The Class Vehicle was again returned to Plaintiff Gjonbalaj without any dealer performing any repair of the sunroof leak.

130. The sunroof leak caused discoloration stains and damage to the vehicle's carpet, roof headliner, and seats.

131. Plaintiff Gjonbalaj captured video of the discoloration to the vehicle's roof headliner, screenshot of which includes the following:



132. Neither VW dealer replaced the stained roof headliner.

133. Now every time it rains, there is a moldy smell in the car and if the air conditioning unit is turned on while it is raining, the car smells even worse – very moldy.

134. As a result of the sunroof defect, Plaintiff Gjonbalaj's Class Vehicle has also suffered electrical/electronic issues some of which pose a safety risk to him, his passengers, and others on the road.

135. At least two times since the sunroof defect manifested in the form of a leak, Plaintiff Gjonbalaj has experienced his Class Vehicle's front or forward moving sensors malfunctioning. The front sensors "go off" as if the car is too close to another car or object, when in reality no cars or objects are in close proximity to the vehicle, and the car on its own slams on the brakes and stops. Both instances have occurred while Plaintiff Gjonbalaj was driving on the road while it was raining outside.

136. At least three or four times since the sunroof defect manifested in the form of a leak, Plaintiff Gjonbalaj has experienced a similar issue with his rear sensors. Each instance has occurred while it was raining outside.

137. The front and rear sensors glitching in this manner pose a safety threat.

138. Since the sunroof defect manifested in the form of a leak, the head or radio sometimes fails to come on when Plaintiff Gjonbalaj's Class Vehicle is started. This requires Plaintiff Gjonbalaj to hold the power button for 15 seconds in order to reset it.

139. Plaintiff Gjonbalaj has also experienced static coming from the passenger side tweeter or treble speaker in his Class Vehicle.

140. In or about summer 2019, Plaintiff Gjonbalaj also experienced a "misfire" issue with his Class Vehicle.

141. Due to the issues he has experienced in his Class Vehicle as a result of the sunroof defect, Plaintiff Gjonbalaj has been scared for his safety while operating his Class Vehicle.

142. Aside from reporting these issues to the VW dealers where he has sought repair – to no avail – Plaintiff Gjonbalaj has also directly contacted VW North America and reported the issues he has experienced with his Class Vehicle.

143. Plaintiff Gjonbalaj has spent his valuable time trying to address the issues resulting from the sunroof defect, including taking his car to various VW dealers and contacting VW North America.

144. Plaintiff Gjonbalaj has lost use of his Class Vehicle due to the sunroof defect.

145. Plaintiff Gjonbalaj does not like to operate his Class Vehicle in the rain anymore due to the sunroof defect.

146. Plaintiff Gjonbalaj does not like to even let his Class Vehicle get exposed to rain, but it is kept outside and subject to the elements as they come.

147. Plaintiff Gjonbalaj's Class Vehicle at all relevant times has been under warranty. His car was and remains covered by the VW People First Warranty.

148. Despite that Plaintiff Gjonbalaj's Class Vehicle is under warranty, VW has refused or has been unable to repair, correct, or otherwise remedy Plaintiff Gjonbalaj's Class Vehicle and the issues he has experienced as a direct and proximate cause of the sunroof defect.

149. Due to the sunroof defect, Plaintiff Gjonbalaj's Class Vehicle was and is worth less than what he paid for it.

150. Due to the sunroof defect, the current and future re-sale value of Plaintiff Gjonbalaj's Class Vehicle has been significantly reduced.

151. Plaintiff Gjonbalaj did not receive the benefit of his bargain with VW for his Class Vehicle.

152. At no time has VW acknowledged the existence of the defect to Plaintiff Gjonbalaj or disclosed, warned, or otherwise informed Plaintiff Gjonbalaj of the defect.

153. Had VW informed Plaintiff Gjonbalaj (or had Plaintiff Gjonbalaj otherwise known) of the sunroof defect, Plaintiff Gjonbalaj would not have purchased his Class Vehicle.

CLASS ACTION ALLEGATIONS

154. Pursuant to Federal Rule of Civil Procedure 23, this action is brought individually by Plaintiff and on behalf of the following Classes of similarly situated individuals.

155. The National Class is defined as and consists of:

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

156. The New York Class is defined as and consists of:

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

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

158. Members of the proposed Classes are readily ascertainable because the class definitions are based upon objective criteria.

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

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

- a. Whether the sunroofs have a propensity to leak;
- b. Whether VW knew or should have known that the sunroof had a propensity to leak, and, if so, when this defect was discovered by VW;

- c. Whether VW failed to disclose, failed to warn, and actively concealed the existence of the defect(s) from potential customers;
- d. Whether VW breached any express or implied warranties;
- e. Whether the Court may enter an injunction requiring VW to notify owners and lessees about the defect(s);
- f. Whether the Court may enter an injunction requiring VW to cease its practice of replacing defective sunroofs with identically defective sunroofs;
- g. Whether VW had a duty to disclose the true character, quality, and nature of the Class Vehicles and the sunroof defect(s);
- h. Whether VW's conduct, as alleged herein, violates the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, *et seq.*;
- i. Whether VW's conduct, as alleged herein, violates the consumer protection laws of New York;
- j. Whether VW's conduct, as alleged herein, entitles Plaintiff and Class Members to restitution under the laws of their respective states.

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

162. Adequacy. Plaintiff is an adequate representative of the proposed class because his interests do not conflict with the interests of the members of the class he seeks to represent. Plaintiff has retained counsel who are competent and experienced in complex class action litigation and will prosecute vigorously on behalf of the Class.

163. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class Member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of the individual actions against VW economically feasible. Even if class members themselves could afford individualized litigation, the court system could not. In addition to the burden and expense of managing many

actions arising from the defective sunroofs, individualized litigation increased delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents fewer management difficulties and provides benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Further, prosecution of separate actions would create a substantial risk of inconsistent and varying adjudications.

164. In the alternative, the proposed Classes may be certified because:

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

TOLLING OF THE STATUTES OF LIMITATIONS

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

166. Active Concealment. Any statutes of limitations are tolled by VW's knowing and active concealment of the fact that the sunroofs suffered from the defect. In August 2017, VW notified dealers that the defects were substantial enough that "dealer stock vehicles" could not "be delivered to consumers" until the dealer had attempted a repair, but actively hid the defect from consumers, stating, "Volkswagen is not notifying consumers" of the problem. VW had a duty to disclose this defect and its consequent performance and safety problems to Plaintiff and Class Members because VW had knowledge of this defect and the defect was not known or easily

discoverable by Plaintiff and Class Members. Despite its affirmative duty to disclose the nature and existence of this defect, VW kept Plaintiff and Class Members ignorant of vital information. VW's efforts to conceal the defect are in the possession, custody, and control of VW to the exclusion of Plaintiff and Class Members.

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

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

CLAIMS FOR RELIEF

COUNT I – BREACH OF EXPRESS WARRANTIES (On Behalf of the Nationwide Class, or in the alternative, New York Class)

169. Plaintiff incorporates by reference all previous allegations as if set forth herein.

170. VW provides all purchasers and lessees of the Class Vehicles with the express warranties described herein, which became part of the basis of the bargain. This includes its written warranty provided at the time of sale as well as promises made in advertising.

171. VW manufactured and distributed the defective sunroofs included in the Class Vehicles, and any repair or replacement of the defective sunroofs are or should have been covered by the warranties VW provided to Plaintiff and Class Members for the Class Vehicles.

172. VW breached these warranties by manufacturing, selling, leasing, and distributing the Class Vehicles with the sunroof defect, requiring repair or replacement within the applicable warranty periods, refusing to honor the warranties with free repairs or replacements during the applicable warranty periods, and/or refusing to repair, replace, or otherwise remedy the defective sunroofs during the applicable warranty periods.

173. VW further breached these warranties by not correcting the defect. Although VW warranted that it would correct defects in materials and workmanship in the Class Vehicles, VW instead replaced the defective sunroofs in the Class Vehicles with identical defective sunroofs or failed to make any repairs at all. In either instance, VW did not correct the defect. VW has failed and refused to conform the sunroofs in the Class Vehicles to the express warranties. VW's conduct has voided any attempt to disclaim liability for its actions.

174. Plaintiff and Class Members notified VW of the breach within a reasonable time or were not required to do so, because affording VW a reasonable opportunity to cure its breach of written warranty would have been futile. VW knew of the defect and chose to conceal it and to fail to comply with its warranty obligations.

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

176. The time limits and other terms contained in VW's warranty are also unconscionable and inadequate to protect Plaintiff and Class Members. Among other things, Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored VW. A gross disparity in bargaining power exists between VW and the Class

Members, and VW knew or should have known that the panoramic sunroofs in the Class Vehicles were defective at the time of sale and would fail well before the end of their useful lives.

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

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

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

**COUNT II – BREACH OF IMPLIED WARRANTIES
(On Behalf of the Nationwide Class, or in the alternative, New York Class)**

180. Plaintiff incorporates by reference all previous allegations as if set forth herein.

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

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

183. VW breached these implied warranties:

- a. The Class Vehicles were not merchantable because the sunroofs leaked;
- b. The Class Vehicles were not properly designed or manufactured because the sunroofs leaked water into the interior of the vehicle while the sunroofs were closed;
- c. The Class Vehicles were not fit for their ordinary purpose, including driving in rain, inclement weather, and through car washes.

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

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

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

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

COUNT III – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
15 U.S.C. § 2301, *et. seq.*
(On Behalf of the Nationwide Class or, in the alternative, the New York Class)

188. Plaintiff incorporates by reference all previous allegations as if set forth herein.

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

190. Plaintiff and Class members are “consumers” as defined in 15 U.S.C. § 2301(3).

191. VW is a “supplier” and “warrantor” as defined in 15 U.S.C. § 2301(4), (5).

192. The Class Vehicles are “consumer products” as defined in 15 U.S.C. § 2301(1).

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

194. VW's implied warranties are covered by 15 U.S.C. § 2301(7).

195. VW breached these warranties as described in more detail above.

196. The Class Vehicles share a common defect in that the sunroof is defectively designed and/or manufactured such that it is prone to leak.

197. Under the Act, VW was obligated to disclose known defects within the Class Vehicles to Plaintiff and Class Members.

198. Under the Act, VW was obligated to repair or otherwise remedy the defect.

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

200. VW's violation of the Act caused damage to Plaintiff and Class Members and entitles them to statutory relief.

**COUNT IV – N.Y. GBL § 349
(On Behalf of the New York Class)**

201. Plaintiff incorporates by reference all previous allegations as if set forth herein.

202. The sale and distribution of the Class Vehicles in New York was a consumer-oriented act and thereby falls under the New York deceptive acts and practices statute, General Business Law § 349.

203. VW violated GBL § 349 by representing that:

- a. The Class Vehicles, their sunroofs and related components had characteristics, uses, or benefits which they did not have; and
- b. The Class Vehicles, their sunroofs, and related components were of a particular standard, quality, or grade which they were not.

204. VW's scheme and concealment of the true characteristics of the vehicles and sunroofs were material to Plaintiff and New York Class Members, as VW intended.

205. Had Plaintiff and New York Class Members known the truth, they would not have purchased or leased the Class Vehicles, or – if the Class Vehicle's true nature had been disclosed and mitigated, would have paid significantly less for them.

206. Plaintiff and New York Class Members had no way of discerning or otherwise learning that VW's representations were false and misleading and that VW had concealed or failed to disclose facts relevant to the defect in their Class Vehicles, until Plaintiff and New York Class

Members' Class Vehicles began manifesting the defect. Plaintiff and New York Class Members did not, and could not, unravel VW's deception on their own.

207. VW had an ongoing duty to the New York Class to refrain from unfair and deceptive practices under GBL § 349 in the course of their business. Specifically, VW owed Plaintiff and New York Class Members a duty to disclose all material facts concerning the defect because VW possessed exclusive knowledge, intentionally concealed such knowledge from Plaintiff and the New York Class, and/or made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

208. VW's violations present a continuing risk to the New York Class and the general public.

209. VW's actions complained of herein affect the public interest.

210. As a result of VW's statutory violations, Plaintiff and New York Class Members sustained injuries and are entitled to relief under the Act.

**COUNT V – N.Y. GBL § 350
(On Behalf of the New York Class)**

211. Plaintiff incorporates by reference all previous allegations as if set forth herein.

212. VW engages in the "conduct of business, trade, or commerce" under GBL § 350.

213. False advertising under GBL § 350-a includes "advertising, including labeling, of a commodity ... if such advertising fails to reveal facts material in light of ... representations [made] with respect to the commodity. ..."

214. VW caused to be made or disseminated through New York – via documents provided with purchase, advertising, marketing, and other publications – statements that were untrue or misleading to Plaintiffs and New York Class Members.

215. VW made numerous material misrepresentations or omissions of fact with intent to mislead and deceive the New York Class Members concerning the Class Vehicles, particularly with regard to the defect. Specifically, VW intentionally concealed and suppressed material facts

concerning the quality of the Class Vehicles in order to intentionally and grossly defraud and mislead Plaintiff and New York Class Members concerning the Defect.

216. The misrepresentations and omissions set forth herein were material and likely to deceive a reasonable consumer.

217. The inherent defects were undetectable to the ordinary consumer, until the defect began to manifest in ways visible to Class Members.

218. VW intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiff and New York Class Members.

219. VW's false advertising was likely to and did, in fact, deceive reasonable consumers including New York Class Members about the true characteristics of the Class Vehicles, sunroofs, and the defect.

220. VW's violations of GBL § 350 present a continuing risk to Plaintiff, New York Class Members, and to the general public.

221. VW's deceptive acts and practices affect the public interest.

222. The Class Vehicles did not perform as advertised and, thus, they are far less valuable than advertised.

223. New York Class Members who purchased Class Vehicles either would not have purchased those vehicles at all or else they would have paid less for the Class Vehicles but for VW's false advertising in violation of GBL § 350. New York Class Members who leased Class Vehicles either would not have leased them at all or would have leased them at a lower cost but for VW's false advertising in violation of GBL § 350.

224. New York Class Members have suffered injury-in-fact and/or actual damages and ascertainable loss as a direct and proximate result of VW's false advertising in violation of GBL § 350, including but not limited to purchasing or leasing a diminished value or complete lost value for the Class Vehicles purchased or leased.

225. New York Class Members have suffered lost or diminished use, enjoyment, and utility of their Class vehicles along with suffering annoyance, aggravation, and inconvenience resulting from VW's violation of GBL § 350.

226. New York Class Members seek monetary relief against VW measured as the greater of (a) actual damages in an amount to be determined at trial, or (b) statutory damages. Because VW's conduct was committed willingly and knowingly, Plaintiff and New York Class Members are entitled to recover three times actual damages, up to \$10,000.

227. New York Class Members also seek an order enjoining VW's false advertising and further seeks attorney's fees and any other just and proper relief under GBL § 350.

COUNT VI – Unjust Enrichment
(On Behalf of the Nationwide Class, or in the alternative, New York Class)

228. Plaintiff incorporates by reference all previous allegations as if set forth herein.

229. As described above, VW sold Class Vehicles to Plaintiff and Class Members even though the sunroofs installed in those Class Vehicles were defective and posed a safety hazard. VW failed to disclose its knowledge of the sunroof defect and the defect's attendant risks-- at the point of sale or otherwise.

230. VW unjustly charged and charges Class Members for repairs and/or replacement of the defective sunroofs without disclosing that the defect is widespread and that the repairs do not address the root cause of the defect.

231. As a result of its acts and omissions related to the defective sunroofs, VW obtained monies that rightfully belong to Plaintiff and Class Members.

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

233. It would be inequitable and unjust for VW to retain these wrongfully obtained profits.

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

PRAYER FOR RELIEF

Therefore, Plaintiff seeks judgment against VW and relief as follows:

- A. An Order certifying this case as a Class Action;
- B. An Order appointing Plaintiff as Class Representative of the National Class and the New York Class;
- C. An Order appointing Plaintiff's counsel as Class Counsel;
- D. Damages and other relief under statutory or common law;
- E. Attorneys' fees and costs;
- F. Pre- and post- judgment interest;
- G. Declaratory, injunctive, and equitable relief; and
- H. Such other relief as is just and proper.

JURY DEMAND

Plaintiff, individually and on behalf of the proposed National Class and New York Class, hereby demand a trial by jury as to all matters so triable.

DATE: December 23, 2019

Respectfully submitted,

/s/ Mitchell M. Breit
Mitchell M. Breit
Jason 'Jay' Barnes
(*pro hac vice* to be sought)
Brittany A. Boswell
(*pro hac vice* to be sought)
SIMMONS HANLY CONROY
12 Madison Avenue
New York, NY 10016-7416

Tel. (212) 784-6400
Fax (212) 213-5949
mbreit@simmonsfirm.com
jaybarnes@simmonsfirm.com
bboswell@simmonsfirm.com

Gregory F. Coleman
(*pro hac vice* to be sought)
Lisa A. White
(*pro hac vice* to be sought)
GREG COLEMAN LAW PC
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel. (865) 247-0080
Fax (865) 522-0049
greg@gregcolemanlaw.com
lisa@gregcolemanlaw.com

Mark P. Bryant
(*pro hac vice* to be sought)
Emily Ward Roark
(*pro hac vice* to be sought)
BRYANT LAW CENTER PSC
601 Washington Street
P.O. Box 1876
Paducah, KY 42002-1876
Tel. (270) 442-1422
Fax (270) 443-8788
mark@bryant.law
emily@bryant.law

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2019, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Mitchell M. Breit