UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

MICHAEL MCBRIDE, et al., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

AUDI OF AMERICA, LLC, AUDI AKTIENGESELLSCHAFT, and VOLKSWAGEN AKTIENGESELLSCHAFT,

Defendants.

Case No. 1:18-cv-00284

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs, based on personal knowledge as to themselves, and upon information and belief as to all other matters, allege as follows:

NATURE OF CLAIMS

1. The things meant to protect us should not be made in a way that harms or even kills us. This is particularly true of cars because they are a tool millions of people use every day. People trust that their cars were designed and built to keep them safe. And they expect that automakers (also known as "original equipment manufacturers" or "OEMs") take every reasonable step to make sure that nothing in their cars endangers the lives of those who ride in them.

2. This action concerns defective airbags manufactured by Takata Corporation and its related entities ("Takata"), which contain inflators using the notoriously volatile and unstable compound, ammonium nitrate, but which were nevertheless equipped in vehicles that Defendants and their related entities manufactured, sold or leased, or knowingly misrepresented as safe, when in fact they could explode and maim or kill drivers and passengers.

3. An airbag is a critical safety feature of any motor vehicle. Airbags are meant to prevent occupants from striking hard objects in the vehicle, such as the steering wheel, dashboard, or windshield. An airbag's inflator, as its name suggests, is supposed to rapidly inflate the airbag upon vehicle impact. In the milliseconds following a crash, the inflator ignites a propellant to produce gas that is released into the airbag cushion, causing the airbag cushion to expand and deploy. The term "airbag" shall be used herein to refer to the entire airbag module, including the inflator.

4. All Takata airbags at issue in this litigation share a common, uniform defect: the use of ammonium nitrate, a notoriously volatile and unstable compound, as the propellant in Defendants' defectively designed inflators (the "Inflator Defect"). Under ordinary conditions, including daily temperature swings and contact with moisture in the air, Takata's ammonium nitrate propellant transforms and destabilizes, causing irregular and dangerous behavior ranging from inertness to violent combustion. Ammonium nitrate is well-known for its explosive power.

Indeed, it is the explosive that Timothy McVeigh and Terry Nichols used in April 1995 to bomb the Alfred P. Murrah Federal Building in downtown Oklahoma City. In 2006, a Takata factory suffered a severe explosion because of ammonium nitrate, a fact known to its OEM clients, including Defendants. In August 2016, a truck carrying Takata airbag parts crashed on a Texas road, detonating the ammonium nitrate in the truck in an immense blast, destroying a home, killing its elderly owner, and injuring four of her visitors.

5. Because of the common, uniform Inflator Defect, Takata airbags often fail to perform as they should. Instead of protecting vehicle occupants from bodily injury during accidents, the defective Takata airbags too often violently explode, sometimes expelling metal debris and shrapnel at drivers and passengers. As of July 2017, Takata airbags have been responsible for at least 12 deaths and 180 serious injuries in the United States alone.

6. In the late 1990s, when Takata shelved a safer propellant in favor of the far cheaper ammonium nitrate, it was aware of these risks and did so over the objections and concerns of its engineers in Michigan. Tellingly, Takata is the only major airbag manufacturer that uses ammonium nitrate as the primary propellant in its airbag inflators.

7. On information and belief, Defendants were intimately involved in the design and testing of the airbags that contained the Inflator Defect. When the Defendants approved Takata's airbags, and purchased them for installation in their vehicles, they were or should have been aware that the airbags used the volatile and unstable ammonium nitrate as the primary propellant in the inflators.

8. Defendants also knew or should have known that the Takata airbags were experiencing the same problems in other OEMs' vehicles. Takata and its OEM customers first received word of startling airbag failures in the field no later than 2003, when a Takata inflator ruptured in a BMW vehicle. Other ruptures and injuries took place in Honda vehicles in 2004 and 2007. After years of downplaying the danger, Honda issued a public recall in the United States in 2008, putting all OEMs, including Defendants, on even greater notice of the danger. The alarm bells should have only grown louder in the coming years, as Honda and Takata issued

further United States recalls of airbags with the Inflator Defect in 2009, 2010, 2011, and 2013, leading up to the record-breaking recalls that followed from 2014 onward. Yet, despite the repeated Takata/Honda recalls, Defendants utterly failed to take reasonable, let alone sufficient, measures to investigate or protect their purchasers and lessees, or the public. Indeed, even as other OEMs began taking proactive remedial measures (however belated and ineffective), Defendants remained silent and on the sidelines.

9. By May 2015, Takata had filed Defect Information Reports admitting the defect, and it would continue to add inflator models through additional DIRs in the coming years. Despite the overwhelming evidence of the defect, Defendants were not issuing recalls, warning consumers, or otherwise protecting them from the risk, for example through systematic loaner vehicle programs. The Defendants' delay is consequential—it exposes purchasers, lessees, drivers, passengers and, indeed, the general public, to ongoing and unnecessary risk of harm. Indeed, in correspondence to the National Highway Traffic Safety Administration ("NHTSA") in early 2016, Volkswagen went so far as to try to *avoid* a recall, even as other OEMs were moving ahead.

10. Plaintiffs and consumers are in the frightening position of having to drive dangerous vehicles for many months or years while they wait for Defendants to replace the defective airbags in their cars. They are effectively left without a safe vehicle to take them to and from work, to pick up their children from school or childcare, or, in the most urgent situations, to transport themselves or someone else to a hospital.

11. Even more troubling, many of the replacement airbags that Takata and the OEMs are using to "repair" recalled vehicles suffer from the same common, uniform defect that plagues the airbags being removed—they use unstable and dangerous ammonium nitrate as the propellant, a fact that Takata's representative admitted at a Congressional hearing in June 2015. Takata's representative also repeatedly refused to provide assurances that Takata's replacement air bags are safe and defect-free.

12. Defendants knew, and certainly should have known, that the Takata airbags installed in millions of vehicles were defective. By concealing their knowledge of the nature and extent of the defect from the public, while continuing to advertise their products as safe and reliable, Defendants have shown a blatant disregard for public welfare and safety. Moreover, Defendants have violated their affirmative duty, imposed under the Transportation Recall Enhancement, Accountability, and Documentation Act (the "TREAD Act"), to promptly advise customers about known defects.

13. As a result of this misconduct, Plaintiffs and members of the proposed Class were harmed and suffered actual damages. Plaintiffs and the Class did not receive the benefit of their bargain; rather, they purchased or leased vehicles that are of a lesser standard, grade, and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers or lessees of the Class Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the Inflator Defect been disclosed. Plaintiffs and the Class were deprived of having a safe, defect-free airbag installed in their vehicles, and Defendants unjustly benefited from their unconscionable delay in recalling its defective products, as it avoided incurring the costs associated with recalls and installing replacement parts for many years.

14. Plaintiffs and the Class also suffered damages in the form of out-of-pocket and loss-of-use expenses and costs, including but not limited to expenses and costs associated with taking time off from work, paying for rental cars or other transportation arrangements, and child care. Also, as a direct result of misconduct by Defendants, Plaintiffs and each Class member has or will have out-of-pocket economic damage by virtue of the time and expense of taking the time to bring their car in for repair.

15. Plaintiffs and the Class also suffered damages as a result of Defendants' concealment and suppression of the facts concerning the safety, quality, and reliability of Defendants' vehicles with the defective Takata airbags. Defendants' false representations and omissions concerning the safety and reliability of those vehicles, and their concealment of the

known safety defects plaguing those vehicles and its brand, caused Plaintiffs and certain Class members to purchase or retain Defendants' vehicles of diminished value.

JURISDICTION AND VENUE

16. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiffs Class are citizens of states different from Defendants' home states, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

17. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submits to the Court's jurisdiction. This Court has personal jurisdiction over Defendants because at least one is a resident of Virginia, and pursuant to Va. Code Ann. § 8.01-328.1, because Defendants transact substantial business in this District; some of the tortious acts or omissions giving rise to the Complaint took place in this District; and some of Plaintiffs' claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state, committing a tortious act in this state, and causing injury to property in this state arising out of Defendants' acts and omissions outside this state; and at or about the time of such injuries Defendants were engaged in solicitation or service activities within this state, or products, materials, or things processed, serviced, or manufactured by Defendants anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, Defendants have caused harm to Class members residing in this District, and Defendants are residents of this District under 28 U.S.C. § 1391(c)(2) because they are subject to personal jurisdiction in this District.

THE PARTIES

19. Volkswagen Aktiengesellschaft ("VW AG") is a German corporation with its principal place of business in Wolfsburg, Germany. VW AG is one of the largest automobile

manufacturers in the world, and is in the business of designing, developing, manufacturing, marketing, and selling automobiles. VW AG is the parent corporation of Audi AG.

20. Audi Aktiengesellschaft ("Audi AG") is a German corporation with its principal place of business in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a subsidiary of the Audi Group, which is a wholly-owned subsidiary of VW AG. Audi AG designs, develops, manufacturers, and sells luxury automobiles.

21. Audi of America, LLC ("Audi America") is a Delaware limited liability company with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Audi America is a wholly-owned U.S. subsidiary of Audi AG, and it engages in business, including the advertising, marketing and sale of Audi automobiles, in all 50 states.

22. As used in this Complaint, "Audi" and "Audi Defendants" refers to Audi AG, and "Volkswagen" and "Volkswagen Defendants" refers to VW AG, Audi AG, and Audi America.

23. Defendants engineered, designed, developed, manufactured, and installed the Defective Airbags in the Class Vehicles (defined below), and approved the Defective Airbags for use in those vehicles. They also developed, reviewed, and approved the marketing and advertising campaigns designed to sell these Class Vehicles.

24. Plaintiff Sandra Herrell resides in Saint George, Utah. Plaintiff Herrell owned a 2012 Audi A3, which was purchased new on April 30, 2012, for approximately $32,300 from Hiley Volkswagen of Huntsville in Huntsville, Alabama. Plaintiff Herrell's 2012 Audi A3 was covered by the original manufacturer's warranty. Plaintiff Herrell also paid $750 to purchase an extended warranty. Prior to purchasing the vehicle, Plaintiff viewed or heard commercials through television, brochures, and pamphlets that touted the safety and dependability of her vehicle and Audi vehicles generally. The sales representative at Hiley Volkswagen told Plaintiff Herrell that she was purchasing a "great vehicle," and that they had a hard time keeping such vehicles in stock. Plaintiff Herrell and her husband Jack Herrell received a recall notice from Audi in April 2016, notifying them that the Takata PSDI-5 driver frontal airbag in Plaintiff Herrell's 2012 Audi A3 was subject to recall because of the Inflator Defect. When Plaintiff

Herrell and her husband contacted an Audi dealership in Las Vegas, Nevada, the dealership told them that there were no replacement airbags available for their 2012 Audi A3, and that there would not be any available for one to one-and-a-half years. To Plaintiff Herrell's knowledge, the airbags in her 2012 Audi A3 were never repaired or replaced. Plaintiff Herrell leased a new vehicle on September 5, 2016, with a payment of roughly $500 per month, because she did not feel safe driving her 2012 Audi A3. Plaintiff Herrell sold her 2012 Audi A3 back to Audi on December 1, 2016, for $19,800. The value of Plaintiff's vehicle was diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, she either would have not purchased the vehicle, or would not have paid as much as she did for it.

25. Plaintiff Holly Stotler resides in Tinley Park, Illinois. Plaintiff owned a 2006 Audi A3, which was purchased used in April 2015 for $17,994.64 from Auto Gallery Chicago in Addison, Illinois. The vehicle was owned until June 14, 2017 when it was involved in a significant auto accident which totaled the vehicle. The airbags did not deploy in the accident. To Plaintiff's knowledge, the airbags in her 2006 Audi A3 were never repaired or replaced, as the dealership informed her that none was available. The value of her 2006 Audi A3 was diminished as a result of the Inflator Defect. If Plaintiff Stotler had known of the Inflator Defect, she would not have purchased the 2006 Audi A3 or would not have paid as much as she did for it.

26. Plaintiff Trevor MacLeod resides in Cheboygan, Michigan. Plaintiff owned a 2006 Audi A3, which was purchased used on June 12, 2013 for approximately $14,000 from Wheeler Motors, in Cheboygan, Michigan. Prior to purchasing the vehicle, Plaintiff viewed and heard commercials that touted Audi's long record of durability and safety. To Plaintiff's knowledge, the airbag in his 2006 Audi A3 was replaced on or about November 14, 2017. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. Plaintiff would not have purchased the vehicle if Plaintiff had known of the Inflator Defect. The value of his 2006 Audi A3 has been diminished as a result of the Inflator Defect. If Plaintiff MacLeod had

known of the Inflator Defect, he would not have purchased the 2006 Audi A3 or would not have paid as much as he did for it.

27. Plaintiff Michael McBride resides in Marshall, Michigan. Plaintiff McBride owns a 2006 Audi A4, which he purchased used in or about 2012 for approximately $13,000 from Young Chevrolet in Owosso, Michigan. Prior to purchasing the vehicle, Plaintiff viewed and heard advertisements that touted the safety and dependability of Audi vehicles. To Plaintiff McBride's knowledge, the driver's airbag in his vehicle have not been replaced or repaired. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, he either would have not purchased the vehicle, or would not have paid as much as he did for it.

28. Plaintiff Maureen Dowds resides in Lansdale, Pennsylvania. Plaintiff Dowds owns a 2010 Audi A5 Cabriolet, which was purchased used in October 2010, for $42,000 from Prestige Lexus of New Jersey in New Jersey. Plaintiff Dowds's 2010 Audi A5 was covered by a written warranty. Prior to purchasing the vehicle, Plaintiff viewed or heard commercials through television and radio that touted the safety and dependability of her vehicle and Audi vehicles generally. Plaintiff Dowds learned about the Takata airbag recalls from news reports. During a scheduled maintenance at Audi Conshohocken in or about 2016, Plaintiff asked the service manager about replacing the Takata airbags. She was told that no parts were available. Expressing her concern about driving her car indefinitely while at risk, Plaintiff Dowds then asked to have a "loaner" vehicle until airbag replacements became available. The Audi service manager told Plaintiff Dowds that "no loaner cars were available for the airbag situation," but not to worry, because "there haven't been any deaths in an Audi." To Plaintiff's knowledge, the airbags in her 2010 Audi A5 have not been repaired or replaced. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, she either would have not purchased the vehicle, or would not have paid as much as she did for it.

29. Plaintiff Edward J. Burki resides in Sun City Center, Florida. Plaintiff owned a 2007 Audi A4 Cabriolet, which was purchased used in or about September 2011 for approximately $30,816 from Biener Audi in Great Neck, New York. Plaintiff's 2007 Audi A4 was covered by a written warranty. Prior to purchasing the vehicle, Plaintiff viewed and heard commercials that touted the safety and dependability of his vehicle and Audi vehicles generally. Plaintiff learned of the recall by letter from Audi in July 2016. Plaintiff contacted Crown Audi in Clearwater Florida in September 2016 but was told that replacement airbags were not available. Plaintiff's airbag replacement was completed on May 26, 2017 at Crown Audi. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, he either would have not purchased the vehicle, or would not have paid as much as he did for it.

30. Plaintiff Annette Montanaro resides in Buffalo, New York. Plaintiff Montanaro owns a 2008 Audi A4, which she purchased used on March 28, 2009, for $27,495 from Schmitt's Audi Volkswagen in Buffalo, New York. Plaintiff Montanaro's 2008 Audi A4 was covered by a written warranty. Prior to purchasing the vehicle, Plaintiff viewed or heard commercials through television, radio, and the internet that touted the safety and dependability of her vehicle and Audi vehicles generally. Among other safety features, these advertisements touted the number of airbags in Audi vehicles. The sales representative at Schmitt's emphasized the superior safety features of the Audi A4. Plaintiff Montanaro received a letter from Defendant Audi in April 2017, notifying her that the Takata passenger frontal airbag in her 2008 Audi A4 was subject to recall due to the Inflator defect. To Plaintiff's knowledge, the passenger side airbag in her 2008 Audi A4 was replaced on June 6, 2017, through the recall. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, she either would have not purchased the vehicle, or would not have paid as much as she did for it.

31. Plaintiff Desiree Jones-Lassiter resides in Durham, North Carolina. Plaintiff Jones-Lassiter owns a 2008 Audi A4, which she purchased used in January 2011, for $25,705

from South States Volkswagen in Durham, North Carolina. Plaintiff Jones-Lassiter's 2008 Audi A4 was covered by a written warranty. Prior to purchasing the vehicle, Plaintiff viewed or heard commercials through television and radio that touted the safety and dependability of her vehicle and Audi vehicles generally. In addition, the salesman at South States emphasized the features of the Audi A4, including its superior safety features. Plaintiff Jones-Lassiter learned about the Takata airbag recalls from news reports. To Plaintiff's knowledge, the airbags in her 2008 Audi A4 have not been repaired or replaced. The value of Plaintiff's vehicle has been diminished as a result of the Inflator Defect. If Plaintiff had known about the Inflator Defect, she either would have not purchased the vehicle, or would not have paid as much as she did for it.

32. Plaintiff Nikki Norvell resides in Mercer Island, Washington. Plaintiff owns a 2011 Audi Q5 that she purchased new in October 2010 for $45,125.00 from Brazelton Auto/Audi Central in Houston, Texas. Plaintiff learned of the Inflator Defect in her Audi Q5 in April 2016, not by defect notice from Audi but as a result of contacting a local Volvo dealership to inquire about selling the Audi Q5 in order to downsize to a smaller vehicle. At that time, Volvo refused to offer Plaintiff an estimated resale value for the Audi Q5, informing her that the vehicle was subject to the Inflator Defect and, as a result, severely depreciated in resale value. The Volvo dealership would not buy the vehicle or accept it as a trade-in. When Plaintiff contacted Audi Central dealership, they too refused to buy or trade-in the vehicle. The Audi Central Service Manager offered Plaintiff a loaner vehicle until the defect was corrected given the severity of the defect, but then Audi rescinded that offer. For the next eleven months, Plaintiff pleaded extensively to Audi Central for a safe replacement or repair of the Inflator Defect since the Audi Q5 was the vehicle in which she drove her young child. Audi Central offered no such repair or replacement, nor a timeline for the repair or replacement; and would not provide Plaintiff with a substitute loaner vehicle. In March 2017, a Washington-based Audi dealer agreed to exchange the airbag for a temporary replacement. The dealer acknowledged that the replacement itself was subject to the same manufacturer's defect. In May 2017, Audi performed an interim repair on the Driver's Side Airbag. Plaintiff remains unable to sell the

Audi Q5 due to the Inflator Defect's stigma. The value of her 2011 Audi Q5 has been diminished as a result of the Inflator Defect. If Plaintiff Norvell had known of the Inflator Defect, she would not have purchased the 2011 Audi Q5 or paid as much as she did for it.

33. Plaintiff Michael Farriss resides in Henrico, Virginia. Plaintiff owns a 2005 Audi A4, which was purchased used on April 24, 2007 for approximately $26,000 in a private sale from Brandon Farriss, in Henrico, Virginia. Prior to purchasing the vehicle, Plaintiff viewed and heard commercials that touted Audi's long record of durability and safety. Plaintiff learned about the Takata airbag recalls from a notice he received from Audi in or around July 2016. Upon learning of the problem, Plaintiff Farriss stopped allowing anyone to ride in the passenger seat of his 2005 Audi A4. Hearing nothing further, on June 1, 2017, Plaintiff Farriss communicated with Audi by email to request an update on the status of the recall. Plaintiff Farriss also filed a complaint with NTSB on the same date. Audi responded to Plaintiff's email stating that they had no specific date for the new airbags to be available. In August 2017, Plaintiff Farriss received a notice from Audi about the availability of an interim repair and that Plaintiff would be notified when a final remedy was available. On September 18, 2017, the airbag in Plaintiff's vehicle was replaced at West Broad Audi consistent with the interim remedy offered by Audi. Plaintiff has not received any notice about a final remedy. The value of his 2005 Audi A4 has been diminished as a result of the Inflator Defect. If Plaintiff Farriss had known of the Inflator Defect, he would not have purchased the 2005 Audi A4 or would not have paid as much as he did for it.

34. Plaintiffs and the proposed Class were harmed and suffered actual damages. The defective Takata airbags significantly diminish the value of the vehicles in which they are installed. Such vehicles have been stigmatized as a result of being recalled and equipped with Takata airbags, and the widespread publicity of the Inflator Defect.

35. Further, Plaintiffs and the proposed Class did not receive the benefit of their bargain; rather, they purchased and leased vehicles that are of a lesser standard, grade, and quality than represented, and they did not receive vehicles that met ordinary and reasonable

consumer expectations regarding safe and reliable operation. Plaintiffs and the Class, either through a higher purchase price or higher lease payments, paid more than they would have had the Inflator Defect been disclosed. Plaintiffs and the Class were deprived of having a safe, defect-free airbag installed in their vehicles, and Defendants unjustly benefited from their unconscionable delay in recalling their defective products, as they avoided incurring the costs associated with recalls and installing replacement parts for many years.

36. Plaintiffs and the proposed Class also suffered damages in the form of out-of-pocket and loss-of-use expenses and costs, including but not limited to expenses and costs associated with taking time off from work, paying for rental cars or other transportation arrangements, and child care.

37. The defective Takata airbags create a dangerous condition that gives rise to a clear, substantial, and unreasonable danger of death or personal injury to Plaintiffs and the proposed Class.

GENERAL FACTUAL ALLEGATIONS

38. Plaintiffs bring this action on behalf of themselves and all persons similarly situated who purchased or leased Class Vehicles (defined below). Plaintiffs seek redress individually and on behalf of those similarly situated for economic losses stemming from Defendants' manufacture, sale or lease, and false representations concerning the defective airbags in the Class Vehicles, including but not limited to diminished value. Plaintiffs, on behalf of themselves and those similarly situated, seeks to recover damages and statutory penalties, and injunctive relief/equitable relief.

39. "Class Vehicles" refers to all vehicles in the United States that have Defective Airbags (defined below) that were manufactured, sold, or leased by Defendants.

40. "Defective Airbags" refers to all airbag modules (including inflators) manufactured by Takata ("Takata airbags") that use ammonium nitrate as the propellant in their inflators (the "Inflator Defect"), including (a) all airbags subject to the recalls identified below; (b) all Takata airbags in Defendants' vehicles subject to recalls relating to Takata's May 18,

2015 DIRs, the Coordinated Remedy Order issued by NHTSA in *In re Docket No. NHTSA-2015-0055 Coordinated Remedy Program Proceeding*, and amendments thereto, concerning Takata's ammonium-nitrate inflators, and the Consent Order issued by NHTSA in *In re EA 15-001 Air Bag Inflator Rupture*, and any amendments thereto; and all Takata airbags in Defendants' vehicles subject to any subsequent expansion of pre-existing recalls, new recalls, amendments to pre-existing DIRs, or new DIRs, announced prior to the date of an order granting class certification, relating to the tendency of such airbags to over-aggressively deploy or rupture.

41. All Defective Airbags contain the Inflator Defect. As a result of the Inflator Defect, Defective Airbags have an unreasonably dangerous tendency to: (a) rupture and expel metal shrapnel that tears through the airbag and poses a threat of serious injury or death to occupants; and/or (b) hyper-aggressively deploy and seriously injure occupants through contact with the airbag.

42. The following table identifies, to the best of Plaintiffs' understanding and without the benefit of discovery, the vehicles either recalled or scheduled to be recalled by Defendants, and which of the front airbags were included in the recall for each vehicle (driver, passenger, or both), and, upon information and belief.

Manufacturer	***Recall***	***Make***	***Model***	***Model Years***	***Side(s)***
Volkswagen	16V-078	Audi	A5 Cabriolet	2010-2011	Driver
Volkswagen	16V-078	Audi	Q5	2009-2012	Driver
Volkswagen	16V-079	Audi	A3	2005-2013	Driver
Volkswagen	16V-079	Audi	A4 Cabriolet	2006-2009	Driver
Volkswagen	16V-079	Audi	RS4 Cabriolet	2008	Driver
Volkswagen	16V-079	Audi	S4 Cabriolet	2007-2009	Driver
Volkswagen	16V-382	Audi	A4	2004-2008	Passenger
Volkswagen	16V-382	Audi	A6	2005-2011	Passenger

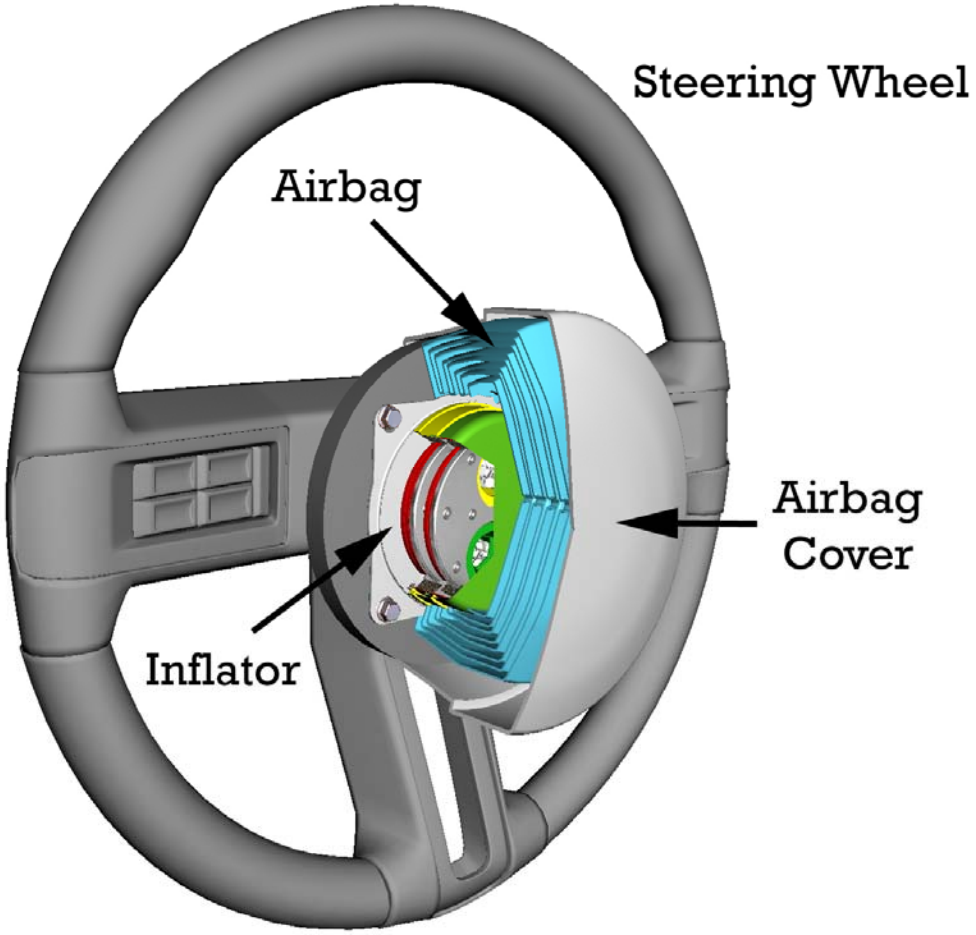
Manufacturer	***Recall***	***Make***	***Model***	***Model Years***	***Side(s)***
Volkswagen	17V-032	Audi	A4 Avant	2005-2008	Passenger
Volkswagen	17V-032	Audi	A4 Cabriolet	2007-2009	Passenger
Volkswagen	17V-032	Audi	A4 Sedan	2005-2008	Passenger
Volkswagen	17V-032	Audi	A6 Avant	2006-2009	Passenger
Volkswagen	17V-032	Audi	A6 Sedan	2005-2009	Passenger
Volkswagen	17V-032	Audi	RS4 Cabriolet	2008	Passenger
Volkswagen	17V-032	Audi	RS4 Sedan	2007-2008	Passenger
Volkswagen	17V-032	Audi	S4 Avant	2005-2008	Passenger
Volkswagen	17V-032	Audi	S4 Cabriolet	2007-2009	Passenger
Volkswagen	17V-032	Audi	S4 Sedan	2005-2008	Passenger
Volkswagen	17V-032	Audi	S6 Sedan	2007-2009	Passenger

Manufacturer	***Recall***	***Make***	***Model***	***Model Years***	***Side(s)***
Volkswagen	Amended Annex A	Audi	A6 Avant	2010-2011	Passenger
Volkswagen	Amended Annex A	Audi	A6 Sedan	2010-2011	Passenger
Volkswagen	Amended Annex A	Audi	R8	2017	Driver
Volkswagen	Amended Annex A	Audi	S5 Cabriolet	2010-2012	Driver
Volkswagen	Amended Annex A	Audi	S6 Sedan	2010-2011	Passenger
Volkswagen	Amended Annex A	Audi	TT	2016-2017	Driver

43. As recently as January 2018, Defendants and Takata announced additional large recalls, identified as 18E-001, -002, and -003.

44. The part of the airbag at issue in this matter is the inflator. The inflator consists of a metal canister loaded with propellant wafers or pellets, and is placed in the airbag module. Upon impact, the propellant wafers or pellets ignite, triggering a chemical reaction that produces gas, which in turn inflates the fabric airbag. This process occurs within milliseconds.

45. The following basic illustration, included earlier in this Complaint as well, depicts Takata's airbag module:



46. When it began manufacturing airbags in the 1980s, Takata used sodium azide as the propellant within its inflators. In the mid-1990s, Takata began using a different propellant called 5-aminotetrazole, in part due to toxicity issues associated with sodium azide.

47. In the late-1990s, Takata's managers pressured its engineers in Michigan to devise a lower cost propellant based upon ammonium nitrate, a compound used in fertilizer and explosives.

48. In 1999, as the ammonium nitrate design was being considered, Takata's engineering team in Moses Lake, Washington, raised objections and pointed to explosives manuals that warned of the risk of disintegration and irregular, overly-energetic combustion. As

one former Takata engineer noted, "ammonium nitrate stuck out like a sore thumb," and yet his team had only "a couple days" to do its review.

49. In fact, ammonium nitrate is an inherently volatile and unstable chemical. Daily temperature swings are large enough for the ammonium nitrate to cycle through three of its five crystalline states, adding to its volatility. It also readily absorbs moisture from the atmosphere. The chemical's sensitivity to temperature and moisture cause it to break down over time, which can lead to unpredictable and dangerous results, such as violent detonation or the chemical becoming effectively inert. As one explosives expert bluntly stated in *The New York Times*, ammonium nitrate "shouldn't be used in airbags," and is better suited to large demolitions in mining and construction.

50. From the time it began investigating ammonium nitrate in the late 1990s, Takata understood these risks and often expressed them publicly. It stated in a 1996 patent document that ammonium nitrate propellant would be vulnerable to temperature changes and that its casing "might even blow up." Takata further recognized that "[o]ne of the major problems with the use of ammonium nitrate is that it undergoes several crystalline phase changes," one of which occurs at approximately 90 degrees Fahrenheit. If ammonium nitrate undergoes this type of temperature change, the compound may "expand and contract and change shape resulting in growth and cracking" of the propellant, which might cause an airbag inflator to "not operate properly or might even blow up because of the excess pressure generated."

51. Takata further admitted in a 1999 patent document that pure ammonium nitrate is "problematic" because many gas generating compositions made with it are "thermally unstable."

52. Similarly, in a 2006 patent application, Takata discussed the need to test the performance of ammonium nitrate at various extreme temperatures because it is an unstable chemical, and these tests could reveal many problems, including "over-pressurization of the inflator leading to rupture." The 2006 patent document purportedly contained a fix for that sort of rupturing. Notably, the alleged fix in 2006 came *after* a rupture incident in 2004 that caused a serious injury, and incidents continued to mount after that time as well. Takata submitted a

patent application with other purported "fixes" as recently as 2013. These ongoing, albeit unsuccessful, efforts show that Takata knew throughout the relevant period that its airbags were defective.

53. In a 2007 patent for allegedly phase stabilized ammonium nitrate that incorporates a scavenging additive designed to retain moisture in an effort to prevent these catastrophic ruptures, Takata representatives noted the following:

> Without the addition of the [additive], and as shown in [the patent], the ballistic curves indicate that changes occurred in the gas generant after 50 cycles. After 100 cycles the ballistic performance was very aggressive and did not meet USCAR specification. After 200 cycles the ballistic performance was so aggressive the ballistic performance was so aggressive that the inflator ruptured due to extremely high internal pressures.

54. Thus, Takata's inflators were "grenades" in the glove box or steering wheel waiting to detonate after going through 100 or 200 cycles of thermal cycling, which, of course, is something cars in the real world will eventually do.

55. The use of this additive (or any other) designed to address ammonium nitrate's hygroscopic nature (affinity for moisture) is, at best, a temporary fix because at some point the additive will no longer be able to absorb the excess moisture and the ballistic curves will again exceed specification leading to ruptures.

56. The only conceivable "advantage" to the compound for an airbag manufacturer and its OEM clients, according to the expert quoted in *The New York Times*, is that it is "cheap, unbelievably cheap." Takata had originally planned to use tetrazole as its propellant, which is not only more stable than ammonium nitrate, but also yields other desired benefits, such as being more environmentally friendly. But tetrazole was too expensive for Takata, and executives ultimately pressured engineers in Michigan to develop a cheaper alternative.

57. Not surprisingly, other major airbag manufacturers, including Autoliv and Key Safety Systems have reportedly avoided using ammonium nitrate as a propellant. Takata's representative confirmed at a Congressional hearing in June 2015 that Takata is the only major airbag manufacturer that uses ammonium nitrate as a primary propellant in its inflators.

58. Takata and Defendants became further aware of the instability of its ammonium nitrate propellant from the persistent and glaring quality control problems Takata encountered in its manufacturing operations. The Takata plants that manufactured the airbags and inflators at issue in this Complaint include plants located in Moses Lake, Washington, LaGrange, Georgia, and Monclova, Mexico. Defendants routinely visited and audited Takata operations, including in response to quality and safety concerns.

59. Starting in 2001, engineers at Takata's Monclova, Mexico plant identified a range of problems, including rust, which they said could have caused inflators to fail. Between 2001 and 2003, Takata struggled with at least 45 different inflator problems, according to dozens of internal reports titled "potential failures" and reviewed by *Reuters*. On at least three occasions between 2005 and 2006, Takata engineers struggled to eliminate leaks found in inflators, according to engineering presentations. In 2005, Shainin, a U.S. consulting firm, found a pattern of additional problems.

60. Underscoring Takata's reckless use of the volatile and unstable ammonium nitrate, on March 31, 2006, the Monclova, Mexico plant was rocked by violent explosions in containers loaded with propellant. Defendants were well aware of this explosion, as detailed in § III, *infra*.

61. Apparently, not even that terrible accident could prompt serious and lasting improvements: in a February 2007 email to multiple colleagues, one manager stated that "[t]he whole situation makes me sick," referring to Takata's failure to implement checks it had introduced to try to keep the airbags containing the unstable and volatile ammonium nitrate propellant from failing.

62. Takata engineers also scrambled as late as 2009 to address its propellant issues after "inflators tested from multiple propellant lots showed aggressive ballistics," according to an internal presentation in June 2009.

63. Based on internal Takata documents, Takata was struggling to meet a surge in demand for its airbags. Putting profits ahead of safety, Takata exhibited shoddy and reckless

behavior in the handling of its ammonium nitrate propellant. In March 2011, a Takata supervisor at the Monclova, Mexico plant sent an e-mail to other employees stating "A part that is not welded = one life less, which shows we are not fulfilling the mission." The title of the e-mail was "Defectos y defectos y defectos!!!!" This shoddy and reckless attitude permeated all of Takata's operations and facilities.

64. Yet handling problems at Takata facilities persisted: another manager urged employees to examine the propellant visible in a cross section of an airbag inflator, noting that "[t]he propellant arrangement inside is what can be damaged when the airbags are dropped. . . . Here you can see why it is important to handle our product properly." A 2009 presentation of guidelines on handling inflators and airbag units also stressed the dangers of mishandling them. The presentation included a link to a video that appeared to show side-curtain airbags deploying violently, sending the inflator hurtling into the car's cabin.

65. Despite knowing it was shipping potentially deadly products, including inflators containing unstable and volatile ammonium nitrate propellant, Takata resisted taking back damaged or wet airbag modules, in part because Takata struggled to keep up with a surge in demand for its airbags through the early- and mid-2000s as it won big new clients.

66. On information and belief, at all relevant times, Volkswagen exercised close control over suppliers, including airbag and airbag inflator suppliers. On information and belief, Volkswagen prepared and maintained design specifications for both the airbag and inflator, which suppliers like Takata were and are required to meet. On information and belief, given its general control over its suppliers, Volkswagen knew or should have known, prior to approving the Defective Airbags that Takata used an ammonium nitrate propellant in its inflators.

67. Further, any cursory attention paid to Takata's track record should have further fueled their concern over ammonium nitrate inflators. Takata airbags made it to market in model year 2001. By 2003, there were two ruptures, including one that lead to a fatality in Arizona, and another that took place in a vehicle manufactured by BMW. The BMW incident took place in Switzerland and was jointly investigated by BMW and Takata.

68. Additional, alarming incidents continued to mount regularly, including a rupture in 2004 in Alabama, and a trio of incidents in the summer of 2007. These four incidents took place in Honda vehicles, and notably, Honda filed a standard report with U.S. safety regulators for each of them.

69. Had they acted as reasonable OEMs, Defendants would have kept abreast of information submitted by a major OEM about a key supplier to a key regulator. Moreover, by November 2008—well after Defendants had accumulated significant knowledge regarding the troubling risks of Takata airbags—Honda issued its first public recall in the United States. The recall notice expressly noted the risk that Takata airbags "could produce excessive internal pressure," causing "the inflator to rupture," spraying metal fragments through the airbag cushion ("2008 Recall"). Defendants had every obligation to act swiftly to protect their past and prospective consumers, and yet they did not.

70. Tragically, this failure would then be repeated serially over the next five years. Following the 2008 Honda recall, yet additional ruptures took place, many causing accidents, injuries, and/or fatalities. By 2009, Honda had issued its second recall in the United States, putting all OEMs, including Defendants, on still further notice of the airbag defect. This pattern of incidents and recalls continued unabated—with increasingly large recalls of Takata airbags issued in 2010, 2011, and 2013—and yet prompted no response from Defendants.

71. On April 11, 2013, Takata filed a DIR titled "Certain Airbag Inflators Used as Original Equipment." While it sought to cabin the scope of the problem, it again openly admitted concerns over propellant moisture absorption and deterioration, and "over-aggressive combustion" and inflator "rupture." Shortly thereafter, six major automakers, including Nissan, Mazda, BMW, Pontiac, and Honda, issued recalls of 3.6 million vehicles containing Takata airbags. Defendants, by contrast, remained silent.

72. Defendants' silence persisted as other OEMs drastically increased their recalls in 2014. By the end of June 2014, the number of vehicles recalled due to the Inflator Defect had increased to over 6 million, which would ultimately only be a small fraction of the total recall.

And, with public knowledge of the defect growing, the number of rupture-related injuries and fatalities continued to grow as well. In the summer and fall of 2014 alone, seven incidents were widely reported, including unsuspecting individuals who died, were rendered quadriplegic, and suffered severe head injuries. That pace continued in the years to come.

73. By November 18, 2014, it was clear to NHTSA that even the extensive recalls to date were insufficient. NHTSA therefore demanded a national recall of many OEMs, and began speaking out more forcefully against OEMs' endless delay and intransigence in the face of a deadly risk.

74. Defendants' disinterest in resolving the issue continued to stand out. When 10 major OEMs met in December 2014 to "sort out a way to understand the technical issues involved," Volkswagen was shockingly absent. When many of those same OEMs proceeded to jointly and publicly retain an outside consultant to finally investigate the defect, Defendants again remained on the sidelines. And, whereas Honda announced an advertising campaign in March 2015 to promote the recall—a step it could and should have taken a decade ago—Defendants could not be bothered with even that belated step.

75. In light of ongoing testing, on May 18, 2015, Takata filed four DIRs with NHTSA and agreed to a Consent Order regarding its (1) PSDI, PSDI-4, and PSDI-4K driver air bag inflators; (2) SPI passenger air bag inflators; (3) PSPI-L passenger air bag inflators; and (4) PSPI passenger air bag inflators, respectively. Takata admitted that "a defect related to motor vehicle safety may arise in some of the subject inflators." In testimony presented to Congress following the submission of its DIRs, Takata's representative admitted that the use of ammonium nitrate is a factor that contributes to the tendency of Takata's airbags to rupture, and that as a result, Takata will phase out the use of ammonium nitrate.

76. At this juncture, Defendants could have easily taken the obvious step of discontinuing use of ammonium nitrate, in addition to immediate, complete recalls, even if the DIRs did not yet implicate all ammonium nitrate inflators. They did not. Takata would go on to issue additional DIRs, including in January 2016, January 2017, and January 2018.

77. Prior to that, in September 2015, NHTSA was forced to take the initiative and write Volkswagen seeking information on their use of Takata airbags. Eventually, in its Third Amended Coordinated Remedy Order issued December 9, 2016, NHTSA expanded the recall to Volkswagen.

78. As a result of Takata's admission that its inflators are defective, the total number of recalled vehicles nationwide will exceed 40 million.

79. Over the past 15 years that Defendants, OEMs, and their supplier have known there was a problem with the safety of their airbags, there have been at least 12 deaths and 180 injuries linked to the Defective Airbags nationwide. Globally, the numbers are even larger. As detailed above, the incidents date back to at least 2003, and involve vehicles made by numerous OEMs. Defendants knew or should have known of the Inflator Defect by virtue of these incidents—among many other sources of knowledge—but failed to disclose the nature and scope of the Inflator Defect.

80. The Defendants were on further notice due to additional, unusual Takata airbag deployments that should have prompted further inquiry into the airbags' fitness for use. A review of publicly-available NHTSA complaints shows dozens of incidents of Takata airbags inadvertently deploying in the Class Vehicles, events that may be tied to the unstable and volatile ammonium nitrate propellant. These complaints started as early as September 2005, and involve vehicles manufactured by Acura, BMW, Dodge, Ford, Mitsubishi, Pontiac, Subaru, and Toyota. Some of these incidents showed still further signs of the Inflator Defect, including airbags that deployed with such force that they caused the windshield to crack, break, or shatter, and others that caused unusual smoke and fire (or both).

81. At all relevant times, in advertisements and promotional materials, Defendants continuously maintained that their vehicles were safe and reliable, while uniformly omitting any reference to the Inflator Defect. Plaintiffs, directly or indirectly, viewed or heard such advertisements or promotional materials prior to purchasing or leasing Class Vehicles. The misleading statements about Class Vehicles' safety in Defendants' advertisements and

promotional materials were material to decisions to purchase or lease Class Vehicles.

82. Examples of Defendants' safety and reliability representations include the following:

a. Brochures that regularly touted its vehicles' standard and optional airbags.

b. A 2008 Audi A4 brochure that touted its "IIHS top safety pick" designation and asserts it is "not just safe for its size, [but] safe for any size."

c. A 2011 Audi A6 brochure that promises "all-encompassing safety" and highlights the vehicle's standard airbags.

d. A 2012 Audi A3 brochure that states "we kind of have a thing for safety," and promises airbags as a standard feature.

83. Contrary to these representations and countless others like them, Volkswagen failed to equip the Class Vehicles with airbags that would meet these standards, and they failed to disclose to consumers that their vehicles actually contained dangerous and defective airbags.

84. Though the first Takata Airbag related recall was launched years earlier, Defendants failed to initiate a field action or recall until 2016. Shockingly, Defendants are recalling later model years, including 2017 models, because of the risk of the Takata airbags rupturing.

85. Even those vehicles that have been recalled have little chance of being repaired in the near term. Under the recalls required under NHTSA's Coordinated Remedy Order, approximately 44 million vehicles will be recalled in the United States due to the Inflator Defect.

86. At a Congressional hearing in June 2015, Takata's representative testified that Takata was shipping approximately 700,000 replacement inflators per month, and expected to increase production to 1 million replacement inflators per month by September 2015 – well short of the number required to supply the ten automakers that have issued recalls.

87. At the current rate, it will take several years to produce enough Takata inflators to fix all recalled vehicles in the U.S., even setting aside the question of whether service departments would be able to provide the necessary services in a timely manner. Volkswagen's

recalls will take years.

88. Not surprisingly, authorized dealers are experiencing a severe shortage of parts to replace the faulty airbags. Dealers have been telling frustrated car owners they can expect to wait many months before their airbags can be replaced.

89. In response to the airbag replacement shortage, certain automakers have taken the extreme step of disabling passenger airbags entirely and putting a "Do Not Sit Here" decal in the vehicle until a proper repair can be made. In the alternative, some automakers are advising customers to refrain from driving their vehicles until the airbags can be replaced.

90. Other automakers have also chosen to "repair" their customers' vehicles not by providing temporary replacement vehicles or replacement parts, but by disengaging the Takata airbags entirely.

91. Congress has voiced concerns about this serious problem. Senators Richard Blumenthal and Edward J. Markey, in a letter to the Department of Transportation (DOT), said they were:

> [A]larmed and astonished that NHTSA has endorsed a policy recently announced by Toyota and GM that dealers should disable passenger-side airbags and instruct against permitting passengers in the front seat if replacement parts for these airbags are unavailable. As a matter of policy, this step is extraordinarily troubling and potentially dangerous. As a matter of law . . . §30122(b) of the Motor Vehicle Safety Act (49 U.S.C.) prohibits a manufacturer from knowingly making a safety device inoperative unless the [DOT] issues a specific exemption. We are unaware of an exemption from your office in the case of Takata airbags.

92. The Class Vehicles are not safe to drive. They have been recalled, and yet replacement of the Defective Airbags could take years. Due to Defendants' failures, Plaintiffs and Class members are left with poor options: be without use of a vehicle; purchase, lease, or rent a new vehicle until Defendants complete the recall; or use a vehicle with a dangerous or disabled airbag over an extended period of time.

93. As Senators Blumenthal and Markey further asserted, "all drivers deserve access to loaners or rental cars at no cost to them while they await repairs to their cars that make them

safe enough to drive again."

94. Yet, Defendants are not providing loaner or replacement vehicles on a comprehensive basis.

95. Perhaps most alarming, the replacement components manufactured by Takata that many OEMs, potentially including Defendants, are using to "repair" recalled Class Vehicles suffer from the same Inflator Defect that plagues the parts being removed: they use ammonium nitrate as the inflator's primary propellant. Indeed, Takata admitted in its submitted DIRs and at the June 2015 Congressional hearing that inflators installed in recalled vehicles as replacement parts are, in fact, defective and must be replaced yet again. And even recall notices issued in 2015 acknowledge that certain "replacement inflators are of the same design and materials as the inflators being replaced."

96. Moreover, inspection of inflators manufactured by Takata as recently as 2014 and installed by manufacturers through the recall process reveals that the ammonium nitrate pellets within the inflators already show signs of moisture-induced instability, such as rust stains, the tendency to clump together, and size variations. As a result, Takata cannot reasonably assure Plaintiffs or Class members that Class Vehicles equipped with such post-recall replacement parts will be any safer than they were with the initial Defective Airbags.

97. By way of example, Paragraph 30 of the November 2015 Consent Order provides that the NHTSA Administrator may issue final orders for the recall of Takata's desiccated phase stabilized ammonium nitrate ("PSAN") inflators, used as both original and replacement equipment, if no root cause has been determined by Takata or any other credible source, or if Takata has not otherwise shown the safety and/or service life of the parts by December 31, 2019. But as of July 10, 2017, Takata began recalling certain desiccated PSAN inflators installed in Ford, Mazda and Nissan vehicles.

98. Moreover, while Takata and OEMs had previously assured the public that the Defective Airbags had been remedied and that the new airbags being placed in recalled vehicles were safe, in fact, several automakers have been or will be required to recall some vehicles from

model year 2013 and later because of the risk of the Takata airbags rupturing. And Takata has now admitted that replacement airbags installed in some recalled vehicles are defective as well, and cannot assure the public that replacement inflators containing ammonium nitrate are safe and not prone to rupture.

TOLLING OF THE STATUTE OF LIMITATIONS

I. Fraudulent Concealment

99. Upon information and belief, Defendants have known about the Inflator Defect in their Defective Airbags since at least the early 2000s. Prior to installing the Defective Airbags in their vehicles, Defendants knew or should have known of the Inflator Defect, and Defendants were or should have been made aware through the design process, testing, public reports of ruptures and adverse events, and regular recalls starting no later than 2008. Defendants have concealed from or failed to notify Plaintiffs, Class members, and the public of the full and complete nature of the Inflator Defect.

100. Although Defendants may have now acknowledged to safety regulators that Takata's airbags are defective, for years, Defendants did not fully investigate or disclose the seriousness of the issue and in fact downplayed the widespread prevalence of the problem.

101. Any applicable statute of limitations has therefore been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

II. Estoppel

102. Defendants were and are under a continuous duty to disclose to Plaintiffs and Class members the true character, quality, and nature of the Class Vehicles. They actively concealed the true character, quality, and nature of the vehicles and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiffs and Class members reasonably relied upon Defendants' knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, Defendants are estopped from relying on any statute of limitations in defense of this action.

III. Discovery Rule

103. The causes of action alleged herein did not accrue until Plaintiffs and Class members discovered that their vehicles had the Defective Airbags.

104. Plaintiffs and Class members, however, had no realistic ability to discern that the vehicles were defective until—at the earliest—after either the Defective Airbag exploded or their vehicles were recalled. And even then, Plaintiffs and Class members had no reason to discover their causes of action because of Defendants' active concealment of the true nature of the defect.

CLASS ACTION ALLEGATIONS

105. The Class's claims all derive directly from a single course of conduct by Defendants. This case is about the responsibility of Defendants, at law and in equity, for their knowledge, their conduct, and their products. Defendants have engaged in uniform and standardized conduct toward the Class. They did not differentiate, in degree of care or candor, in their actions or inactions, or in the content of their statements or omissions, among individual Class members. The objective facts on these subjects are the same for all Class members. Within each Claim for Relief asserted by the respective Class, the same legal standards govern. Additionally, many states, and for some claims all states, share the same legal standards and elements of proof, facilitating the certification of multistate or nationwide Class for some or all claims. Accordingly, Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

106. Plaintiffs bring this action and seek to certify and maintain it as a class action under Rules 23(a); (b)(2); and/or (b)(3); and/or c(4) of the Federal Rules of Civil Procedure on behalf of themselves and a national Class defined as follows:

> All persons in the United States who, prior to the date on which the Class Vehicle was recalled, (a) entered into a lease for a Class Vehicle, or (b) bought a Class Vehicle (i) still own or lease the Class Vehicle, or (ii) sold the Class Vehicle after

the date on which the Class Vehicle was recalled, or (iii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled.

I. Numerosity

107. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). There are millions of Class Vehicles nationwide, and thousands of Class Vehicles in each of the States. Individual joinder of all Class members is impracticable.

108. The Class is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept by Defendants or third parties in the usual course of business and within their control. Plaintiffs anticipate providing appropriate notice to each certified Class, in compliance with Fed. R. Civ. P. 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

II. Predominance of Common Issues

109. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because questions of law and fact that have common answers that are the same for each of the respective Class predominate over questions affecting only individual Class members. These include, without limitation, the following:

a. Whether the Class Vehicles suffer from the Inflator Defect;

b. Whether Defendants knew or should have known about the Inflator Defect, and, if so, how long Defendants have known of the defect;

c. Whether Defendants had a duty to disclose the defective nature of the Class Vehicles to Plaintiffs and Class members;

d. Whether Defendants omitted and failed to disclose material facts about the Class Vehicles;

e. Whether Defendants' concealment of the true defective nature of the Class Vehicles induced Plaintiffs and Class members to act to their detriment by purchasing the Class Vehicles;

f. Whether Defendants' conduct tolls any or all applicable limitations periods by acts of fraudulent concealment, application of the discovery rule, or equitable estoppels;

g. Whether Defendants misrepresented that the Class Vehicles were safe;

h. Whether Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the Class Vehicles were designed, manufactured, and sold with defective airbag inflators;

i. Whether Defendants' conduct, as alleged herein, was likely to mislead a reasonable consumer;

j. Whether Defendants' statements, concealments and omissions regarding the Class Vehicles were material, in that a reasonable consumer could consider them important in purchasing, selling, maintaining, or operating such vehicles;

k. Whether Defendants violated each of the States' consumer protection statutes, and if so, what remedies are available under those statutes;

l. Whether the Class Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

m. Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiffs and the Class;

n. Whether the Class Vehicles have suffered a diminution of value because of the Defective Airbags;

o. Whether Defendants have been unjustly enriched by their conduct;

p. Whether Plaintiffs and the Class are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;

q. Whether Plaintiffs and the Class are entitled to a declaratory judgment stating that the airbag inflators in the Class Vehicles are defective and/or not merchantable;

r. Whether Defendants should be declared responsible for notifying all Class members of the Inflator Defect and ensuring that all vehicles with the airbag inflator defect are promptly recalled and repaired;

s. What aggregate amounts of statutory penalties are sufficient to punish and deter Defendants and to vindicate statutory and public policy;

t. How such penalties should be most equitably distributed among Class members;

u. Whether certain Defendants associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

III. Typicality

110. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiffs' claims are typical of the claims of the Class members, and arise from the same course of conduct by Defendants. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.

IV. Adequate Representation

111. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products.

112. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class.

V. Superiority

113. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Defendants have acted and refused to act on grounds generally applicable to each Class, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to each Class as a whole.

114. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and of fact regarding Defendants' conduct and responsibility predominate over any questions affecting only individual Class members.

115. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all Class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

116. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

117. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, the Class or subclasses for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subClass.

118. Plaintiffs and the Class expressly disclaim any recovery in this action for physical injury resulting from the Inflator Defect without waiving or dismissing such claims. Plaintiffs are informed and believe that injuries suffered in crashes as a result of Defective Airbags implicate the Class Vehicles, constitute evidence supporting various claims, including diminution of value, and are continuing to occur because of Defendants' delays and inaction regarding the commencement and completion of recalls, and because of the` installation of Defective Airbags as replacement airbags. The increased risk of injury from the Inflator Defect serves as an independent justification for the relief sought by Plaintiffs and the Class.

REALLEGATION AND INCORPORATION BY REFERENCE

119. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs and allegations of this Complaint, including the Nature of Claims, Factual Allegations, Tolling Allegations, and Class Action Allegations, as though fully set forth in each of the following Claims for Relief asserted on behalf of the Class.

CLAIMS FOR RELIEF

COUNT 1

Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.

120. Plaintiffs bring this Count against Defendants on behalf of members of the Class.

121. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

122. The Class Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

123. Each Plaintiff is a "consumer" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). Each Plaintiff is a consumer because he or she is a person entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

124. Defendants are each a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

125. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

126. Defendants provided Plaintiffs and the other Class members with an implied warranty of merchantability in connection with the purchase or lease of their vehicles that is an "implied warranty" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants warranted that the Class Vehicles were fit for their ordinary purpose as safe passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and were adequately contained, packaged, and labeled.

127. Defendants breached these implied warranties, as described in more detail above, and are therefore liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Class Vehicles share a common design defect in that they are equipped with Defective Airbags containing the Inflator Defect. Defendants have admitted that the Class Vehicles are defective in issuing its recalls, but the recalls are woefully insufficient to address the Inflator Defect.

128. Any efforts to limit the implied warranties in a manner that would exclude coverage of the Class Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Class Vehicles is null and void.

129. Any limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between Defendants, on the one hand, and Plaintiffs and the other Class members, on the other.

130. Any limitations on the warranties are substantively unconscionable. Defendants knew that the Class Vehicles were defective and would continue to pose safety risks after the warranties purportedly expired. Defendants failed to disclose the Inflator Defect to Plaintiffs and

the other Class members. Thus, Defendants' enforcement of the durational limitations on those warranties is harsh and shocks the conscience.

131. Plaintiffs and each of the other Class members have had sufficient direct dealings with either Defendants or its agents (dealerships) to establish privity of contract.

132. Nonetheless, privity is not required here because Plaintiffs and each of the other Class members are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of the implied warranties. The 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. Finally, privity is also not required because the Class Vehicles are dangerous instrumentalities due to the aforementioned defect.

133. Plaintiffs provided written notice of breach to Defendants and a request to cure. Nonetheless, pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give Defendants notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

134. Furthermore, affording Defendants an opportunity to cure its breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Class Vehicle, Defendants knew, should have known, or was reckless in not knowing of its misrepresentations concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

135. Plaintiffs provided written notice of breach of implied warranties and related consumer protection laws, and opportunity to cure, by letters to Defendants.

136. Plaintiffs and the other Class members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them. Because Defendants are refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Class members have not re-accepted their Defective Vehicles by retaining them.

137. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class members, seeks all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class members in connection with the commencement and prosecution of this action.

138. Plaintiffs also request, as a form of equitable monetary relief, re-payment of the out-of-pocket expenses and costs they have incurred in attempting to rectify the Inflator Defect in their vehicles. Such expenses and losses will continue as Plaintiffs and Class members must take time off from work, pay for rental cars or other transportation arrangements, child care, and the myriad expenses involved in going through the recall process.

139. The right of Class members to recover these expenses as an equitable matter to put them in the place they would have been but for Defendants' conduct presents common questions of law. Equity and fairness requires the establishment by Court decree and administration under Court supervision of a program funded by Defendants, using transparent, consistent, and reasonable protocols, under which such claims can be made and paid.

COUNT 2

Fraudulent Concealment

140. Plaintiffs bring this claim against Defendants on behalf of themselves sand the members of the Class under the common law of fraudulent concealment, as there are no true conflicts (case-dispositive differences) among various states' laws of fraudulent concealment. In the alternative, Plaintiffs bring this claim against Defendants under the laws of the states where Plaintiffs and Class Members purchased their Class Vehicles.

141. As described above, Defendants made material omissions and affirmative misrepresentations regarding the Class Vehicles and the Defective Airbags contained therein.

142. Defendants concealed and suppressed material facts regarding the Defective Airbags—most importantly, the Inflator Defect, which causes, among other things, the Defective Airbags to: (a) rupture and expel metal shrapnel that tears through the airbag and poses a threat of serious injury or death to occupants; and/or (b) hyper-aggressively deploy and seriously injure occupants through contact with the airbag.

143. Defendants took steps to ensure that its employees did not reveal the known Inflator Defect to regulators or consumers.

144. On information and belief, Defendants still have not made full and adequate disclosure, continue to defraud Plaintiffs and the Class, and continue to conceal material information regarding the Inflator Defect.

145. Defendants had a duty to disclose the Inflator Defect because they:

a. Had exclusive and/or far superior knowledge and access to the facts, and Defendants knew the facts were not known to or reasonably discoverable by Plaintiffs and the Class;

b. Intentionally concealed the foregoing from Plaintiffs and Class Members; and

c. Made incomplete representations about the safety and reliability of the Defective Airbags and Class Vehicles, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

146. These omitted and concealed facts were material because they would be relied on by a reasonable person purchasing, leasing or retaining a new or used motor vehicle, and because they directly impact the value of the Class Vehicles purchased or leased by Plaintiffs and the Class. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a consumer. Plaintiffs and Class Members trusted Defendants not to sell or lease them vehicles that were defective or that violated federal law governing motor vehicle safety, and to uphold its recall obligations under the Sale Agreement and governing laws.

147. Defendants concealed and suppressed these material facts to falsely assure purchasers and consumers that the Defective Airbags and Class Vehicles were capable of performing safely, as represented by Defendants and reasonably expected by consumers.

148. Defendants also misrepresented the safety and reliability of the Defective Airbags and Class Vehicles, because they either (a) knew but did not disclose the Inflator Defect; (b) knew that it did not know whether its safety and reliability representations were true or false; or (c) should have known that its misrepresentations were false.

149. Defendants actively concealed or suppressed these material facts, in whole or in part, to maintain a market for their vehicles, to protect their profits, and to avoid recalls that would hurt the brand's image and cost Defendants money. It did so at the expense of Plaintiffs and the Class.

150. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed or suppressed facts.

151. Had they been aware of the Defective Airbags installed in the Class Vehicles, and Defendants' callous disregard for safety, Plaintiffs and the Class either would have paid less for their Class Vehicles, or they would not have purchased or leased them at all. Plaintiffs and Class

members did not receive the benefit of their bargain as a result of Defendants' fraudulent concealment.

152. Because of the concealment or suppression and/or misrepresentation of the facts, Plaintiffs and the Class sustained damage because they own vehicles that diminished in value as a result of Defendants' concealment of, and failure to timely disclose, the serious Inflator Defect in millions of Class Vehicles and the serious safety and quality issues caused by Defendants' conduct.

153. The value of all Class members' vehicles has diminished as a result of Defendants' fraudulent concealment of the Inflator Defect, and made any reasonable consumer reluctant to purchase any of the Class Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

154. Accordingly, Defendants are liable to Plaintiffs and the Class for their damages in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain or overpayment for the Class Vehicles at the time of purchase, the diminished value of the Defective Airbags and the Class Vehicles, and/or the costs incurred in storing, maintaining or otherwise disposing of the defective airbags.

155. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being, and with the aim of enriching Defendants. Defendants' conduct, which exhibits the highest degree of reprehensibility, being intentional, continuous, placing others at risk of death and injury, and affecting public safety, warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT 3

Negligence

156. Plaintiffs bring this claim on behalf of themselves and members of the Class under the common law of negligence, as there are no true conflicts (case-dispositive differences)

among various states' laws of negligence. In the alternative, Plaintiffs bring this claim against Defendants under the laws of the states where Plaintiffs and Class Members purchased their Class Vehicles.

157. Defendants owed a duty of care to Plaintiffs and Class members, who were foreseeable end users, to design and manufacture its vehicles so that they would not be defective or unreasonably dangerous to foreseeable end users, including Plaintiffs and Class members.

158. Defendants breached its duty of care by, among other things:

a. Negligently and recklessly equipping the Class Vehicles with Defective Airbags;

b. Negligently and recklessly failing to take all necessary steps to ensure that its products—which literally can make the difference between life and death in an accident—function as designed, specified, promised, and intended;

c. Negligently and recklessly failing to take all necessary steps to ensure that profits took a back seat to safety;

d. Negligently and recklessly failing to take all necessary steps to ensure that the Defective Airbags did not suffer from a common, uniform defect: the use of ammonium nitrate, a notoriously volatile and unstable compound, as the propellant in their inflators; and

e. Negligently and recklessly concealing the nature and scope of the Inflator Defect.

159. Defendants' negligence was the direct, actual, and proximate cause of foreseeable damages suffered by Plaintiffs and Class members, as well as ongoing foreseeable damages that Plaintiffs and Class members continue to suffer to this day.

160. As a direct, actual, and proximate result of Defendants' misconduct, Plaintiffs and members of the proposed Class were harmed and suffered actual damages, which are continuing in nature, including:

a. the significantly diminished value of the vehicles in which the defective and unreasonably dangerous airbags are installed; and

b. the continued exposure of Plaintiffs and Class members to an unreasonably dangerous condition that gives rise to a clear and present danger of death or personal injury.

161. Defendants' negligence is ongoing and continuing, because Defendants continue to obfuscate, not fully cooperate with regulatory authorities, and manufacture replacement airbags that are defective and unreasonably dangerous, suffering from the same serious Inflator Defect inherent in the original airbags that are at issue in this litigation, which poses an unreasonable risk of serious foreseeable harm or death, from which the original airbags suffer.

COUNT 4

Unjust Enrichment

162. Plaintiffs bring this claim on behalf of themselves and the members of the Class under the common law of unjust enrichment, as there are no true conflicts (case-dispositive differences) among various states' laws of unjust enrichment. In the alternative, Plaintiffs bring their claim under the laws of the states where Plaintiffs and Class Members purchased their Class Vehicles.

163. Defendants have received and retained a benefit from the Plaintiffs and inequity has resulted.

164. Defendants benefitted through its unjust conduct, by selling Class Vehicles with a concealed safety-and-reliability related defect, at a profit, for more than these Vehicles were worth, to Plaintiffs, who overpaid for their Vehicle, and/or would not have purchased their Vehicle at all; and who has been forced to pay other costs.

165. It is inequitable for Defendants to retain these benefits.

166. Plaintiffs does not have an adequate remedy at law.

167. As a result of Defendants' conduct, the amount of its unjust enrichment should be disgorged, in an amount to be proven at trial.

COUNT 5

Violation of the Virginia Consumer Protection Act, VA. CODE ANN. §§ 59.1-196, *ET SEQ.*

168. This claim is brought by the Plaintiffs individually and on behalf of the Class against Defendants under Virginia law. In the alternative, Plaintiffs bring this claim against Defendants under the laws of the states where Plaintiffs and Class Members purchased their Class Vehicles.

169. Each Defendant is a "supplier" under Va. Code Ann. § 59.1-198.

170. The sale of the Class Vehicles with the Defective Airbags installed in them to the Class members was a "consumer transaction" within the meaning of Va. Code Ann. § 59.1-198.

171. The Virginia Consumer Protection Act ("Virginia CPA") lists prohibited "practices" which include: "5. Misrepresenting that good or services have certain characteristics;" "6. Misrepresenting that goods or services are of a particular standard, quality, grade style, or model;" "8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised;" "9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" and "14. Using any other deception, fraud, or misrepresentation in connection with a consumer transaction." Va. Code Ann. § 59.1-200. Defendants violated the Virginia CPA by misrepresenting that the Class Vehicles and/or the Defective Airbags installed in them had certain quantities, characteristics, ingredients, uses, or benefits; misrepresenting that they were of a particular standard, quality, grade, style, or model when they were another; advertising them with intent not to sell or lease them as advertised; and otherwise "using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

172. In the course of their business, Defendants failed to disclose and actively concealed the dangers and risks posed by the Class Vehicles and/or the Defective Airbags installed in them as described herein and otherwise engaged in activities with a tendency or

capacity to deceive. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Class Vehicles and/or the Defective Airbags installed in them.

173. As detailed above, Defendants have known of the Inflator Defect in the Defective Airbags since at least 2008, and likely well before. Defendants failed to disclose and actively concealed the dangers and risks posed by the Class Vehicles and/or the Defective Airbags installed in them.

174. By failing to disclose and by actively concealing the Inflator Defect in the Class Vehicles and/or the Defective Airbags installed in them, by marketing them as safe, reliable, and of high quality, and by presenting themselves as reputable manufacturers that value safety, Defendants engaged in unfair or deceptive business practices in violation of the Virginia CPA. Defendants deliberately withheld the information about the propensity of the Defective Airbags to aggressively deploy, and/or violently explode and spray vehicle occupants with lethal amounts of metal debris and shrapnel, instead of protecting vehicle occupants from bodily injury during accidents, in order to ensure that consumers would purchase the Class Vehicles.

175. In the course of their business, Defendants willfully failed to disclose and actively concealed the dangerous risks posed by the many safety issues and serious defect discussed above. Defendants compounded the deception by repeatedly asserting that the Class Vehicles and/or the Defective Airbags installed in them were safe, reliable, and of high quality, and by claiming to be reputable manufacturers that value safety.

176. Defendants' unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Class, about the true safety and reliability of Class Vehicles and/or

the Defective Airbags installed in them, the quality of Defendants' brands, and the true value of the Class Vehicles.

177. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles and/or the Defective Airbags installed in them with an intent to mislead Plaintiffs and the Class.

178. Defendants knew or should have known that their conduct violated the Virginia CPA.

179. As alleged above, Defendants made material statements about the safety and reliability of the Class Vehicles and/or the Defective Airbags installed in them that were either false or misleading. Defendants' representations, omissions, statements, and commentary have included selling and marketing the Class Vehicles as "safe" and "reliable", despite their knowledge of the Inflator Defect or their failure to reasonably investigate it.

180. To protect their profits and to avoid remediation costs and a public relations nightmare, Defendants concealed the dangers and risks posed by the Class Vehicles and/or the Defective Airbags installed in them and their tragic consequences, and allowed unsuspecting new and used car purchasers to continue to buy/lease the Class Vehicles, and allowed them to continue driving highly dangerous vehicles.

181. Defendants owed Plaintiffs and the Class a duty to disclose the true safety and reliability of the Class Vehicles and/or the Defective Airbags installed in them because Defendants:

a. Possessed exclusive knowledge of the dangers and risks posed by the foregoing;

b. Intentionally concealed the foregoing from Plaintiffs and the Class; and/or

c. Made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiffs and the Class that contradicted these representations.

182. Because Defendants fraudulently concealed the Inflator Defect in Class Vehicles and/or the Defective Airbags installed in them, resulting in a raft of negative publicity once the Inflator Defect finally began to be disclosed, the value of the Class Vehicles has greatly diminished. In light of the stigma attached to Class Vehicles by Defendants' conduct, they are now worth significantly less than they otherwise would be.

183. Defendants' failure to disclose and active concealment of the dangers and risks posed by the Defective Airbags in Class Vehicles were material to Plaintiffs and the Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

184. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' misrepresentations and their failure to disclose material information. Had they been aware of the Inflator Defect that existed in the Class Vehicles and/or the Defective Airbags installed in them, and Defendants' complete disregard for safety, Plaintiffs and the Class either would not have paid as much as they did for their vehicles or would not have purchased or leased them at all. Plaintiffs and the Class did not receive the benefit of their bargain as a result of Defendants' misconduct.

185. Defendants' violations present a continuing risk to Plaintiffs and the Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest. The recalls and repairs instituted by Defendants have not been adequate.

186. As a direct and proximate result of Defendants' violations of the Virginia CPA, Plaintiffs and the Class have suffered injury-in-fact and/or actual damage.

187. Pursuant to Va. Code Ann. § 59.1-204, Plaintiffs and the Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for Plaintiffs and each Class member. Because Defendants' conduct was committed willfully and knowingly, Plaintiffs and

the Class members are each entitled to recover the greater of (a) three times actual damages or (b) $1,000.

188. Plaintiffs and the Class also seek an order enjoining Defendants' unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204, *et seq.*

COUNT 6

BREACH OF THE VIRGINIA IMPLIED WARRANTY OF MERCHANTABILITY, VA. CODE ANN. § 8.2-314

189. In the event the Court declines to certify a Nationwide Class under the Magnuson-Moss Warranty Act, Plaintiffs bring this claim on behalf of themselves and the members of the Class under the laws of Virginia against Defendants. where Plaintiffs and Class Members purchased their Class Vehicles.

190. Each Defendant is and was at all relevant times merchants with respect to motor vehicles and/or airbags within the meaning of Va. Code Ann. § 8.2-314.

191. A warranty that the Class Vehicles and/or the Defective Airbags installed in them were in merchantable condition was implied by law in Class Vehicle transactions, pursuant to Va. Code Ann. § 8.2-314.

192. The Class Vehicles and/or the Defective Airbags installed in them, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars and airbags are used. Specifically, they are inherently defective and dangerous in that the Defective Airbags: (a) rupture and expel metal shrapnel that tears through the airbag and poses a threat of serious injury or death to occupants; and/or (b) hyper-aggressively deploy and seriously injure occupants through contact with the airbag, instead of protecting vehicle occupants from bodily injury during accidents.

193. Defendants were provided notice of these issues by letter(s) from Plaintiffs and other aggrieved persons, their knowledge of the issues, by customer complaints, by numerous complaints filed against them and/or others, by internal investigations, and by numerous

individual letters and communications sent by consumers before or within a reasonable amount of time after Honda issued the first recalls and the allegations of the Inflator Defect became public.

194. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and all others similarly situated, requests the Court to enter judgment against Defendants, as follows:

A. An order certifying the proposed Class, designating Plaintiffs as the named representatives of the Class, designating the undersigned as Class Counsel, and making such further orders for the protection of Class members as the Court deems appropriate, under Fed. R. Civ. P. 23;

B. A declaration that the airbags in Class Vehicles are defective;

C. An order enjoining Defendants to desist from further deceptive distribution, sales, and lease practices with respect to the Class Vehicles, and such other injunctive relief that the Court deems just and proper;

D. An award to Plaintiffs and Class Members of compensatory, exemplary, and punitive remedies and damages and statutory penalties, including interest, in an amount to be proven at trial;

E. An award to Plaintiffs and Class Members for the return of the purchase prices of the Class Vehicles, with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale, for damages and for reasonable attorney fees;

F. A Defendant-funded program, using transparent, consistent, and reasonable protocols, under which out-of-pocket and loss-of-use expenses and damages claims associated

with the Defective Airbags in Plaintiffs' and Class Members' Class Vehicles, can be made and paid, such that Defendants, not the Class Members, absorb the losses and expenses fairly traceable to the recall of the vehicles and correction of the Defective Airbags;

G. A declaration that Defendants must disgorge, for the benefit of Plaintiffs and Class Members, all or part of the ill-gotten profits they received from the sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class Members;

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

I. An award of prejudgment and post judgment interest, as provided by law;

J. Leave to amend this Complaint to conform to the evidence produced at trial; and

K. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

Dated: March 14, 2018

/s/ Mikhael D. Charnoff

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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Michael McBride, Sandra Herrell, Holly Stotler, Trevor MacLeod, Maureen Dowds, Edward J. Burki, Annette Montanaro, et al.

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Mikhael D. Charnoff, Perry Charnoff PLLC, 1010 N. Glebe Rd., Suite 310, 703-291-6650

DEFENDANTS

Audi of America LLC, Audi AG, Volkswagen Group of America, Volkswagen AG

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

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

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

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
State law claims subject to 15 U.S.C. § 2301; jurisdiction pursuant to 28 U.S.C. § 1332(d)

Brief description of cause:
Breach of warranty, fraudulent concealment, negligence, violation of Va Consumer Protection Act, etc.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ TBD at trial

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD
Mikhael D. Charnoff

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.