

1 Robert R. Ahdoot (SBN 172098)
2 *rahdoot@ahdootwolfson.com*
3 Tina Wolfson (SBN 174806)
4 *twolfson@ahdootwolfson.com*
5 Theodore Maya (SBN 223242)
6 *tmaya@ahdootwolfson.com*
7 **AHDOOT & WOLFSON, PC**
8 2600 W. Olive Ave., Suite 500
9 Burbank, California 91505
10 (310) 474-9111 (*telephone*)
11 (310) 474-8585 (*facsimile*)

12 [Additional Counsel on Signature Page]

13 *Counsel for Plaintiffs*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **EASTERN DIVISION**

17 VALERIA MERCADO and ANDREA
18 KRISTYANNE HOLMES, individually
19 and on behalf of all others similarly
20 situated,

21 Plaintiffs,

22 v.

23 VOLKSWAGEN GROUP OF
24 AMERICA, INC. d/b/a AUDI OF
25 AMERICA, INC.,

26 Defendant.

Case No. 5:18-cv-02388–JWH-SP

**[PROPOSED] FIFTH AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1. Breach of Implied Warranty
2. Violation of Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*
3. Violation of California False Advertising Law, California Business & Professions Code § 17200, *et seq.*
4. Violation of Song-Beverly Consumer Warranty Act, California Civil Code § 1790, *et seq.*

Judge: Hon. John W. Holcomb

1 Plaintiff Valeria Mercado (“Ms. Mercado”) and Plaintiff Andrea Kristyanne
2 Holmes (“Ms. Holmes”) (collectively, “Plaintiffs”), by and through counsel, bring this
3 Fifth Amended Class Action Complaint against Volkswagen Group of America, Inc.
4 (“Defendant”) on behalf of themselves and all others similarly situated. Plaintiffs allege,
5 upon personal knowledge as to their own actions and their counsel’s investigations, and
6 upon information and belief as to all other matters, as follows:

7
8 **NATURE OF THE CASE**

9 1. Plaintiffs bring this case individually and on behalf of all similarly situated
10 persons (“Class Members”) who purchased or leased 2017-2018 Audi Q7 vehicles
11 (“Class Vehicles”) that were designed, manufactured, distributed, marketed, and sold
12 or leased by Defendant or Defendant’s parent, subsidiary, or affiliates thereof.

13 2. Defendant designed, manufactured, distributed, marketed, sold, and
14 leased 2017-2018 Audi Q7 vehicles equipped with defective braking systems as
15 described herein (“Vehicles”) to Plaintiffs and Class Members.

16 3. Defendant knew or should have known that the Vehicles have one or more
17 defects, including but not limited to defects manifesting as a loud, high-pitched
18 squealing noise when the brakes are applied during ordinary and intended use (“Brake
19 Defect”).

20 4. Although the Vehicles’ brakes were specifically and especially designed,
21 manufactured, and approved by Defendant to be installed on the Audi Q7, they
22 frequently, yet intermittently, emit a loud, high-pitched squealing noise when the brakes
23 are applied, distracting or startling Plaintiffs and other Vehicle drivers, nearby motorists,
24 and nearby pedestrians.

25 5. As evidenced by the complaints of Plaintiffs and other Vehicle owners that
26 have been received by the National Highway Safety Administration (“NHTSA”), the
27 Vehicles’ squealing manifests at different mileages and under different driving
28 conditions, including in both reverse and forward and at different speeds.

1
2 6. The loud, high-pitched squealing noise emitted when the brakes are applied
3 creates a safety hazard due to the potential to startle the Vehicle drivers, having an
4 adverse impact on driving decisions and habits of the Vehicle drivers. In addition,
5 recommendations from Defendant and/or their distributors that Vehicle drivers should
6 alter their braking strategies to mitigate the noise being emitted increases the risk of
7 unsafe “underbraking” or “overbraking” when Vehicle drivers follow the Defendant’s
8 and/or distributors’ advice.

9 7. The Brake Defect distracts the Vehicle driver and third parties,
10 endangering their physical safety and well-being due to a loss of concentration and focus
11 on the road. Similarly, nearby pedestrians hear the loud braking noise then pay attention
12 to the noise rather than having their full attention on other hazards in their path.

13 8. The unworn brakes on these high-end, luxury Vehicles—which had a
14 Manufacturer’s Suggested Retail Price *beginning* at over \$50,000 even in 2017—should
15 not squeal, screech, and make other jarring noises when applied as intended and
16 expected. Defendant and its authorized dealerships do not forewarn purchasers despite
17 their knowledge of the Brake Defect.

18
19 **PARTIES**

20 9. Plaintiff Valeria Mercado is a California citizen who lives in Rancho
21 Cucamonga (San Bernardino County), California. Ms. Mercado leased a 2017 Audi Q7.
22 This Vehicle was designed, manufactured, sold, distributed, advertised, marketed, and/or
23 warranted by Defendant.

24 10. Plaintiff Andrea Kristyanne Holmes is a California resident who lives in
25 Temecula (Riverside County), California. Ms. Holmes purchased a 2017 Audi Q7. This
26 Vehicle was designed, manufactured, sold, distributed, advertised, marketed, and/or
27 warranted by Defendant.

1 11. Volkswagen Group of America, Inc., doing business as Audi of America,
2 Inc. (“Audi”) is a corporation organized and in existence under the laws of the State of
3 New Jersey with its headquarters located in Herndon, Virginia. Defendant Audi also
4 maintains corporate offices in Woodcliff Lake and Englewood Cliffs, New Jersey. At all
5 times relevant herein, Audi was engaged in the business of importing, advertising,
6 marketing, distributing, warranting, servicing, repairing and selling automobiles and
7 other motor vehicles and motor vehicle components throughout the United States of
8 America.

9
10 **JURISDICTION AND VENUE**

11 12. The Court has subject matter jurisdiction over this action pursuant to the
12 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2), because the proposed class
13 has more than 100 members, the class contains at least one member of diverse citizenship
14 from Defendant, and the amount in controversy exceeds \$5 million.

15 13. The Court has personal jurisdiction over Defendant because Defendant is
16 authorized to, and conducts substantial business in California, generally, and this District,
17 specifically. Defendant has advertised, marketed, promoted, distributed, and sold the
18 Vehicles in California.

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

22 15. To the extent there is any contractual or other impediment to pursuit of these
23 claims on a class action basis, Plaintiffs specifically allege, and will prove, if necessary,
24 that any bar to class action proceedings is unconscionable, unfair and against public
25 policy.
26
27
28

Plaintiffs' Individual Allegations

Valeria Mercado

16. Ms. Mercado leased her 2017 Audi Q7 on January 2, 2017 from Audi Ontario in Ontario, California for \$76,243.77 (“Ms. Mercado’s Vehicle”).

17. Ms. Mercado made her decision to lease an Audi Q7, in part, in reliance on representations communicated through Defendant’s advertisements and marketing campaigns emphasizing the quality, reliability, and safety of Defendant’s Vehicles.

18. Before purchasing her Vehicle, Ms. Mercado test drove it. At the time of her test drive and purchase, she had no forewarning of the brake problem.

19. Beginning in or about May 2017, the brakes on Ms. Mercado’s Vehicle began emitting an extremely loud squealing noise when applied despite the Vehicle being only about 5 months old. This squealing noise was emitted when the brakes were applied while driving forward and while driving in reverse. This squealing noise was very loud and could be heard even with all windows closed and music playing in Ms. Mercado’s Vehicle.

20. Ms. Mercado had at all times driven the Vehicle in a reasonable, ordinary manner, and not in any way which would cause premature failure of her brakes.

21. The loud squealing noise emitted during braking was extremely alarming to Ms. Mercado while she was driving, which created an unsafe distraction. In addition, the alarming sound was so loud that it had a high potential of distracting other drivers in the vicinity of Ms. Mercado’s Vehicle.

22. The loud squealing noise emitted when braking impacted Ms. Mercado’s driving decisions, including, but not limited to, altering the use of her brakes in anticipation of the extremely loud and distracting noise and in fear that the noise is symptomatic of a safety issue affecting the performance and reliability of the braking system.

23. Ms. Mercado immediately informed Audi Ontario that the brakes on her Vehicle were emitting the loud noise during braking described herein.

1 24. Ms. Mercado’s Vehicle was brought to Audi Ontario for service related to
2 the Brake Defect multiple times between May 2017 and the present.

3 25. Given that the noises began occurring just five (5) months into Ms.
4 Mercado’s reasonable and ordinary use of her brand-new Vehicle, the noises could not
5 be attributed to normal “wear and tear.”

6 26. In furtherance of that, on at least one occasion, Audi Ontario stated to Ms.
7 Mercado that all 2017 Audi Q7 vehicles are too heavy for the brakes installed during
8 manufacturing, resulting in the loud squealing noise when the brakes are applied. On
9 other occasions, Audi Ontario stated that the cause of the Brake Defect is unknown. In
10 addition to her communications with Audi Ontario related to the Brake Defect, Ms.
11 Mercado called Audi USA in an effort to have the Brake Defect resolved. Audi USA
12 referred Ms. Mercado back to Audi Ontario.

13 27. Ms. Mercado embarked on a tireless campaign – contacting multiple
14 executives throughout Audi’s corporate structure – pleading with Audi to address the
15 Brake Defect.

16 28. On November 8, 2018, Audi Ontario informed Ms. Mercado that the parts
17 required to resolve the Brake Defect on Ms. Mercado’s Vehicle are on “back order” as
18 a result of the large number of Defendant’s Vehicles experiencing the Brake Defect.
19 Audi Ontario confirmed that it could not provide Ms. Mercado with a date, timeframe,
20 or even approximated timeframe for any repair or service intended to address the Brake
21 Defect.

22 29. After nearly two years of unsuccessful effort by Ms. Mercado to have the
23 Brake Defect addressed, 12 days after filing her lawsuit, Audi Ontario performed a
24 repair for a condition consistent with the Technical Service Bulletin (“TSB”) issued on
25 October 13, 2015. *See Exhibit A*, attached hereto. At the time of the repair, her Vehicle
26 had only 22,006 miles on the odometer.

27 30. However, despite Audi’s attempted repair, the Brake Defect has since
28 manifested in Ms. Mercado’s Vehicle. Since that time, the brakes on Ms. Mercado’s

1 Vehicle again began emitting the same extremely loud squealing noise when applied
2 while driving forward and while driving in reverse.

3 31. Had she been aware of the Brake Defect, Ms. Mercado would have
4 purchased a different vehicle, or would have paid less for her Vehicle. She did not
5 receive the benefit of her bargain.

6 Andrea Kristyanne Holmes

7 32. Ms. Holmes purchased her 2017 Audi Q7 on November 5, 2017 from Audi
8 San Diego in San Diego, California for \$63,493.98 (“Ms. Holmes’ Vehicle”).

9 33. Ms. Holmes made her decision to purchase an Audi Q7, in part, in reliance
10 on representations communicated through Defendant’s advertisements and marketing
11 campaigns emphasizing the quality, reliability, and safety of Defendant’s Vehicles.

12 34. Before purchasing her Vehicle, Ms. Holmes test drove it. At the time of her
13 test drive and purchase, she had no forewarning of the brake problem.

14 35. Beginning in or about December 2017, the brakes on Ms. Holmes’ Vehicle
15 began emitting an extremely loud squealing noise when applied while Ms. Holmes’
16 Vehicle was driving in reverse. This squealing noise was very loud and could be heard
17 even with all windows closed and music playing in Ms. Holmes’ Vehicle.

18 36. Ms. Holmes had at all times driven the Vehicle in a reasonable, ordinary
19 manner, and not in any way which would cause premature failure of her brakes.

20 37. The loud squealing noise emitted during braking was extremely alarming
21 to Ms. Holmes while she was driving, which created an unsafe distraction. In addition,
22 the alarming sound was so loud that it had a high potential of distracting other drivers
23 in the vicinity of Ms. Holmes’ Vehicle.

24 38. The loud squealing noise emitted when braking impacted Ms. Holmes’
25 driving decisions, including, but not limited to, altering the use of her brakes in
26 anticipation of the extremely loud and distracting noise and in fear that the noise is
27 symptomatic of a safety issue affecting the performance and reliability of the braking
28 system.

1 39. Ms. Holmes immediately informed Audi San Diego that the brakes on her
2 Vehicle were emitting the loud noise during braking described herein.

3 40. In January 2018, Ms. Holmes' Vehicle was brought to Audi San Diego for
4 service related to the Brake Defect. The service team at Audi San Diego first told
5 Ms. Holmes that the noise emitted by her Vehicle's brakes was "normal" and could not
6 be fixed.

7 41. Ms. Holmes' husband ("Mr. Holmes") – an auto industry entrepreneur and
8 executive for more than 20 years – immediately utilized his relationships inside Audi to
9 facilitate a solution to the Brake Defect, including by speaking with an Audi Customer
10 Advocate regarding the Brake Defect in February 2018.

11 42. Upon further inquiry, Audi San Diego admitted that Audi knew of the issue
12 and was working on a fix. Audi informed Ms. Holmes that the likely repair date would
13 be in May 2018.

14 43. In or around May 2018, Audi San Diego replaced the brakes on Ms.
15 Holmes' Vehicle. For approximately the next four months, the Brake Defect was
16 resolved.

17 44. In or around September 2018, the brakes on Ms. Holmes' Vehicle again
18 began emitting an extremely loud squealing noise when applied while Ms. Holmes'
19 Vehicle was driving in reverse. The noise was at least as loud as it had been beginning
20 in December 2017.

21 45. Ms. Holmes immediately contacted Audi San Diego and scheduled a
22 service appointment in October 2018.

23 46. Upon inspecting Ms. Holmes' Vehicle, Audi San Diego denied that the
24 brakes were making any noise. Audi San Diego informed Ms. Holmes that they
25 slammed the brakes three times with maximum force and the problem was fixed.

26 47. Audi San Diego suggested Ms. Holmes attempt to fix the noise in the same
27 manner if the noise returned.

28 48. Ms. Holmes took possession of the Vehicle and, immediately upon

1 applying the brakes while driving in reverse, heard the extremely loud noise emitted
2 from the brakes while driving in reverse. Ms. Holmes was not able to safely attempt to
3 fix the issue in the manner recommended by Audi San Diego.

4 49. Ms. Holmes immediately returned the Vehicle to Audi San Diego and
5 demanded the Brake Defect be fixed as she believed it was a common problem.

6 50. At this time, Audi San Diego said that no one else had complained about
7 noise emitting from the brakes of an Audi Q7.

8 51. Mr. Holmes reminded Audi San Diego that Ms. Holmes had previously had
9 her brakes replaced as a result of this identical issue and believed there were similar
10 complaints by other Audi Q7 drivers.

11 52. As a result, Audi San Diego agreed to address the issue. Audi San Diego
12 arranged for an engineer from Audi to look at the problem. Ultimately, Audi San Diego
13 replaced the rotors on Ms. Holmes' Vehicle.

14 53. Replacing the rotors on Ms. Holmes' Vehicle eliminated the noise for
15 approximately 24 hours.

16 54. Ms. Holmes immediately brought her Vehicle back to Audi San Diego
17 along with a video recording of the extremely loud noise emitted when the brakes are
18 applied while driving in reverse.

19 55. Audi San Diego took possession of the Vehicle and kept it for
20 approximately one week. After approximately one week, Audi informed Ms. Holmes
21 that they could not recreate the noise and instructed her to pick up her Vehicle.
22 Immediately upon applying the brakes while driving her Vehicle in reverse the brakes
23 on Ms. Holmes' Vehicle emitted an extremely loud noise. Audi San Diego informed
24 Ms. Holmes that nothing further could be done to address the Brake Defect.

25 56. Since that time, the noise resulting from the Brake Defect has gotten worse
26 and began manifesting while the brakes on Ms. Holmes' Vehicle are applied while
27 driving forward as well as when applied while driving in reverse.

28 57. Ms. Holmes is a real estate agent who uses her Vehicle for work, which

1 includes driving near her clients and transporting clients in her Vehicle. Ms. Holmes
2 purchased her Audi Q7, in part, for transportation involving her work as a real estate
3 agent.

4 58. Ms. Holmes has experienced embarrassment and damage to her
5 professional reputation as a result of the Brake Defect.

6 59. As a result of the Brake Defect, Ms. Holmes cannot use her Vehicle for
7 these purposes and cannot safely drive her Vehicle for its intended purpose in fear of
8 her safety and the embarrassment created by the Brake Defect.

9 60. Had she been aware of the Brake Defect, Ms. Holmes would have
10 purchased a different vehicle, or would have paid less for her Vehicle. She did not
11 receive the benefit of her bargain.

12
13 **Common Class Allegations**

14 61. As a result of the Brake Defect, Plaintiffs and the Class Members, either
15 consciously or unconsciously, and in whole or in part, make driving decisions based
16 upon the likelihood, duration, and severity of the noise that is emitted when they use
17 their brakes. This powerful and startling environmental distraction while operating an
18 automobile makes the Vehicles unreasonably dangerous and unable to meet a minimal
19 level of quality or safety.

20 62. As a result of the Brake Defect, Plaintiffs and the Class Members have been
21 advised to apply the brakes on their Vehicles in an extreme and unsafe manner in an
22 effort to fix the Brake Defect.

23 63. As alleged in greater detail herein, Defendant designed, manufactured, and
24 approved of the defective brakes, and subsequently of the sale of the Vehicles to
25 Plaintiffs and the Class, without disclosing the Brake Defect. This omission of a material
26 fact constitutes a deceptive business practice in violation of California statutory law and
27 further violates California common law as set forth herein.

28 64. This action seeks redress for Plaintiffs and the Class in the form of

1 compensatory damages, punitive damages, and injunctive relief, which would include,
2 *inter alia*, an order directing Defendant to cease the challenged practices, including the
3 manufacture, sale, and installation of defective, noisy brakes, and initiate a program to
4 provide refunds, repairs, and/or restitution to Plaintiffs and the Class.

5 65. Prior to purchasing or leasing the Vehicles, Plaintiffs and other Class
6 Members did not know that the Vehicles suffered from the Brake Defect and did not
7 contemplate that the Vehicles would cause extreme noise disturbances while braking
8 even when virtually brand new.

9 66. As a result of their reliance on Defendant's omissions, owners and/or
10 lessees of the Vehicles have suffered ascertainable loss of money, property, and/or
11 loss in value of their Vehicles.

12 67. Plaintiffs and the Class have been damaged by Defendant's concealment,
13 and non-disclosure of the Brake Defect in the Vehicles, as they now have Vehicles
14 whose value has greatly diminished because of Defendant's failure to timely disclose
15 the serious Brake Defect.

16 68. Plaintiffs, particularly Ms. Holmes, have experienced damage to their
17 reputation both socially and professionally.

18 69. Plaintiff Holmes brings claims against Defendant individually and on
19 behalf of a Class and sub-Class of all other similarly situated purchasers of the Vehicles
20 for violations of California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750,
21 *et seq.*, violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §
22 17200, *et seq.* § 2301, *et seq.* ("UCL"), and breach of implied warranty. Plaintiff
23 Mercado brings claims against Defendant individually and on behalf of a Class and sub-
24 Class of all other similarly situated purchasers of the Vehicles for violations of the Song-
25 Beverly Consumer Warranty Act, California Civil Code § 1790, *et seq.* ("Song-Beverly
26 Act"), and breach of implied warranty.

27 70. Had Plaintiffs and the Class Members known about the Brake Defect at
28 the time of sale or lease, as well as the associated costs related to the Brake Defect,

1 Plaintiffs and the Class Members would not have purchased the Vehicles or would
2 have paid less for them.

3 71. As a result of Defendant’s practices, Plaintiffs and Class Members
4 purchased Vehicles they otherwise would not have purchased, paid more for those
5 Vehicles than they would have paid, were subjected to an unreasonable risk to their
6 safety, and unnecessarily paid and will continue to pay repair costs as a result of the
7 Brake Defect. They did not receive the benefit of their bargain.

8
9 **THE BRAKE DEFECT IN THE VEHICLES**

10 72. Throughout the relevant period, Defendant has designed, manufactured,
11 distributed, imported, warranted, marketed, advertised, serviced, sold, and leased the
12 Class Vehicles. Upon information and belief, Defendant has sold, directly or indirectly
13 through dealers and other retail outlets, thousands of Class Vehicles in California and
14 nationwide.

15 73. Upon information and belief, Defendant knew or should have known that
16 the Vehicles are defective and are not fit for their intended purpose of providing
17 consumers with safe and reliable transportation. Nevertheless, Defendant failed to
18 disclose the Brake Defect to Plaintiffs and the Class Members at the time of purchase
19 or lease and thereafter.

20 74. Under the Transportation Recall Enhancement, Accountability and
21 Documentation Act (“TREAD Act”), 49 U.S.C. §§ 30101-30170, and its accompanying
22 regulations, when a manufacturer learns that a vehicle contains a safety defect, the
23 manufacturer must promptly disclose the defect. 49 U.S.C. §§ 30118(c)(1) & (2). If it
24 is determined that the vehicle is defective, the manufacturer must notify vehicle owners,
25 purchasers, and dealers of the defect and must remedy the defect.

26 49 U.S.C. §§ 30118(b)(2)(A) & (B). Upon information and belief, Defendant also
27 violated the TREAD Act by failing to timely inform NHTSA of the Brake Defect and
28 allowed the Vehicles to remain on the road with these defects. These same acts and

1 omissions also violated various state consumer protection laws as detailed below.

2 75. Defendant has long known that the Class Vehicles have a defective braking
3 system. Defendant has exclusive access to information about the defects through its
4 dealerships, pre-release testing data, warranty data, customer complaint data, and
5 replacement part sales data, among other sources of aggregate information about the
6 problem. In contrast, the Brake Defect was not known or reasonably discoverable by
7 Plaintiffs and Class Members prior to purchase and without experiencing the Brake
8 Defect firsthand.

9 76. Defendant owes a duty to disclose the Brake Defect to Plaintiffs and Class
10 Members because Defendant has exclusive knowledge or access to material facts about
11 the Vehicles that are not known or reasonably discoverable by Plaintiffs and Class
12 Members until the defect has manifested; and because Defendant has actively concealed
13 the Brake Defect from its customers. Improperly operating brakes on a vehicle are per
14 se a safety defect.

15 77. The braking system in the Vehicles come equipped with an anti-lock braking
16 system with vacuum power assist, which consists of braking components (rotors, calipers,
17 master cylinder, and brake pads), an Electronic Brake-pressure Distribution system,
18 electronic Brake Assist, and an Electronic Stabilization Program (collectively, “Braking
19 System”).

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

23 79. The NVLW “covers any repair or replacement to correct a defect in
24 manufacturer's material and workmanship (i.e., a mechanical defect). Your authorized
25 Audi dealer will repair the defective part or replace it with a new or remanufactured Audi
26 Genuine Part free of charge.”

27 80. The defect in the Class Vehicles’ Braking System causes a loud, sudden, and
28 prolonged squealing when the brakes are applied. Since the Vehicles and their Defective

1 Brakes are very new, the long-term implications of this Brake Defect are uncertain. Upon
2 information and belief, the sounds emitted can be indicative of damage incurring to
3 integral components of the Braking System.

4 81. Defendant knew of the defects in their brakes, including the brakes’
5 likelihood of producing sudden and prolonged squealing, before selling the Vehicles to
6 Plaintiffs and the Class and installing them on their cars, but did not inform Plaintiffs and
7 the Class of this fact prior to their purchase.

8 82. Specifically, Defendant has issued *six* Technical Service Bulletins (“TSBs”)
9 relating to squealing brakes on the Audi Q7. *See Exhibits A through F*. Upon
10 information and belief, most often TSBs are only in the possession and control of
11 Defendant and its authorized service centers. Discovery in this matter should reveal
12 whether more TSBs related to the Brake Defect have been issued and when exactly
13 Defendant first learned of this pervasive problem in the Class Vehicles.

14 83. As Defendant admitted in the first of its TSBs, one potential cause of the
15 Brake Defect is a manufacturing defect related to improper installation of “brake pads
16 and/or discs.”¹ *See Exhibit A*.

17 84. Had Defendant informed Plaintiffs and the Class about the Brake Defect,
18 Plaintiffs and the Class would not have purchased the Vehicles from Defendant, but rather
19

20 ¹ While this Fifth Amended Complaint includes specificity regarding the manufacturing
21 defect allegations pursuant to this Court’s May 15, 2020 Order, recent case law supports
22 holding any determination of the type of defect in abeyance until discovery has
23 concluded. For example, the Northern District of California recently denied a motion to
24 dismiss express warranty claims on the grounds that the alleged defect was one of
25 design, and was therefore not covered by the warranty. The court, however, noted that
26 “[b]ecause Plaintiffs allege that the audio defect arises, at least in part, as a result of
27 deficiencies in the ‘materials’ used to manufacture the devices at issue, the Court
28 *cannot conclude at this stage of the litigation that the [] defect is not covered by the
[express warranty] as a ‘defect in materials and workmanship.’*” *Tabak v. Apple, Inc.*,
No. 19-cv-02455-JST, at 16 (N.D. Cal. Jan. 30, 2020) (ECF No. 62), (*citing Mandani
v. Volkswagen Grp. of Am., Inc.*, No. 17-CV-07287-HSG, 2019 WL 652867, at *4
(N.D. Cal. Feb. 15, 2019)) (emphasis added).

1 would have purchased different vehicles. Defendant knowingly sold a defective product
2 to Plaintiffs and the Class, without disclosing such defect, and now refuse to provide an
3 adequate long-term remedy, repair, or restitution for their actions.

4 85. Defendant’s conduct described herein constitutes an omission of material
5 fact and a deceptive business practice in violation of the California statutory law and
6 California common law.

7 **CONSUMERS HAVE REPORTED THE BRAKE DEFECT TO NHTSA**

8
9 86. Audi, like other automobile manufacturers, reviews complaints made by
10 consumers to the National Highway Transportation Safety Administration (“NHTSA”).

11 87. Consumers have reported the Brake Defect to NHTSA, and in these
12 complaints, report having taken their Vehicles to Audi authorized dealerships in their
13 attempts to have the Brake Defect repaired.

14 88. Examples of complaints made to NHTSA about the Vehicles’ Brake Defect
15 are shown below, unedited:

- 16 • **NHTSA ID Number: 10947878, date complaint filed: 1/26/2017, 2017**
17 **model year.**

18 2017 AUDI Q7 EXCESSIVE BRAKES NOISE (SQUEAKS/SCREECH)
19 FICTION MATERIAL ISSUES BETWEEN ROTOR/PAD - CONTINUED
20 USE CAUSES HEAT SPOTS - ROTORS TO BECOME OUT OF ROUND
21 VIBRATION ISSUES LOSS OF BRAKING. AT APROX. 5K MILES
22 VEHICLE STARTED TO HAVE ABNORMAL BRAKE NOISE WHEN
23 PULLING OUT OF DRIVEWAY. AFTER SHORT TIME GOT
24 PROGRESSIVELY WORSE AND HAS CAUSE FURTHER DAMAGE
25 AND MANUFACTURE DOES NOT HAVE A FIX FOR THIS
26 ISSUE. SUSPENSION ISSUES- GRINDING - STRUT NOISE- MOSTLY
27 NOTICEABLE WHEN GOING INTO DRIVE WAY TURNING INTO
28 GARAGE. ABNORMAL WEAR ON DRIVER-SIDE TIRE EXTERIOR
TRIM COMING UNDONE AROUND WINDOWS- QUATTRO
MOLDING COMING UNDONE CATCHING PASSENGER DOOR CAN
NOT GET PASSENGER OUT OF PASSENGER REAR.

- 1 • **NHTSA ID Number: 11031699, date complaint filed: 10/4/2017, 2017**
2 **model year.**

3 8500 MILES BRAKE SQUEAL. AUDI SAYS THERE WORKING ON A
4 FIX FOR THIS ISSUE AND ITS BEEN 6 MONTHS AND STILL NO
5 REPAIR THEY ARE IGNORING THE ISSUE. SLOW SPEED STOP
6 AND REVERSE BRAKES SQUEAL LOUD. AUDI STATED THEY
7 HAVE HAD THIS ISSUE AND I SHOULD HAVE BEEN TOLD WHEN
8 PURCHASED. I HAVE A CASE NUMBER WITH THEM AND ITS
9 BEING IGNORED. THIS IS AN ISSUE THAT WILL RESULT IN A
PROBLEM IF ITS NOT INVESTIGATED THEY NEED TO STOP
TELLING PEOPLE THIS IS NORMAL. I ASKED AUDI FOR A LETTER
STATING MY CARE WAS SAFE TO DRIVE AND THEY COULD NOT
PROVIDE ONE WHICH IS VERY CONCERNING.

- 10 • **NHTSA ID Number: 11047024, date complaint filed: 11/17/2017, 2017**
11 **model year.**

12 BRAKES MAKE A VERY LOUD SQUEAKING SOUND WHEN USED
13 IN REVERSE. BRAKES HAVE BEEN CHECKED BY THE DEALER;
14 DEALER ADVISED THAT BRAKES WERE FULLY OPERATIONAL,
15 NOR SAFETY CONCERNS AND THAT AUDI WAS “TRYING TO FIX
16 THE PROBLEM” WITH THE ROTORS AND BRAKE PADS. NOISE
17 BEGAN AFTER THE AUDI PRE SENSE FEATURE SLAMMED ON
THE BRAKES WHILE IN REVERSE, BACKING OUT OF MY
DRIVEWAY (BECAUSE A RAIN DROP LANDED ON THE CAMERA
LENS) AND CONTINUES TO WORSEN.

- 18 • **NHTSA ID Number: 11057413, date complaint filed: 12/29/2017, 2017**
19 **model year.**

20 I PURCHASED THIS VEHICLE BRAND NEW WITH ONLY 8 MILES.
21 EVER SINCE I TOOK POSSESSION OF THE VEHICLE, THE BRAKES
22 HAVE BEEN MAKING NOISE WHEN APPLYING THE BRAKES,
23 GOING FORWARD OR REVERSE NO MATTER HOW FAST OR
24 SLOW I GO. HAVE BEEN TAKING THE VEHICLE TO THE DEALER
25 FEW TIMES ALREADY FOR THE SAME ISSUE AND ALL THEY ARE
26 TELLING ME IS THAT AUDI IS AWARE OF THE ISSUE AND THEY
27 WILL CONTACT ME AS SOON AS THEY HAVE A SOLUTION FOR
28 IT. DEALER REFUSES TO REPLACE THE BRAKE PADS OR THE
ROTORS. ITS BEEN A YEAR SINCE THIS ISSUE NOTHING HAS
BEEN DONE.

- 1 • **NHTSA ID Number: 11153088, date complaint filed: 11/21/2018,**
2 **2017 model year.**

3 BOUGHT VEHICLE FROM DEALER WITH 22K MILES, AS A
4 PREVIOUS TWO YEAR LEASE VEHICLE. AFTER OWNING IT FOR
5 FOUR DAYS, NOTICED LOUD SCREECH IN BRAKES WHEN
6 BACKING UP AND APPLYING BRAKES FIRST TIME IN THE DAY.
7 TOOK TO LOCAL SHOP, AND THEY FOUND BRAKES TO BE OK,
8 AND THAT THERE IS A BULLETIN ON THIS WITH NO FIX AT THIS
9 TIME. BUT WHAT THEY DID FIND IS VERY UNEVEN WEAR ON
10 MY FRONT TIRE, WHICH WE WOULD NOT HAVE NOTICED. THEY
11 SAID THERE WAS A BULLETIN ON THIS AT THE 14K MILEAGE
12 MARK FOR TIRE REPLACEMENT ON THE GOODYEAR EAGLES.
13 WE WERE FORTUNATE THAT THE DEALER WE PURCHASED
14 FROM AGREED TO REPLACE ALL FOUR TIRES FOR US WITH
15 CONTINENTALS. NO HASSLES AT ALL. COULD HAVE MISSED
16 THE NOTICE SINCE IT WAS A LEASE VEHICLE. BUT I WONDER
17 HOW LONG WE WOULD HAVE GONE WITHOUT KNOWING
18 THIS??? IF IT WASN'T FOR GETTING THE BRAKES CHECKED, WE
19 WOULDN'T HAVE KNOWN. WAITING NOW FOR A FIX ON THE
20 BRAKE NOISE. KIND OF EMBARRASSING WHEN DRIVING AN
21 EXPENSIVE VEHICLE.

- 16 • **NHTSA ID Number: 11144662, date complaint filed: 11/1/2018, 2018**
17 **model year.**

18 THE BRAKES HAVE SQUEALED SINCE 3K MILES. NO MATTER
19 THE WEATHER CONDITIONS MAY BE. WE HAVE BEEN TOLD
20 THAT IS NORMAL, BUT I AM RESEARCHING OTHERWISE. AT
21 5AM LEAVING THE HOME, THE BRAKES SQUEAL, AT 2PM
22 SQUEALING, 5PM SQUEALING, MIDNIGHT SQUEALING. FOR
23 BEING A LUXURY VEHICLE I LOVE AND TRUST, THIS MAKES ME
24 EXTREMELY NERVOUS AND EMBARRASSED WHEN NEIGHBORS
25 ARE OUT AND HEAR THIS SQUEALING. THE BRAKE FOOT PEDAL
26 DOES NOT GLIDE WHEN BEING USED. THE STEERING WHEEL
27 HAS A LOCKING MOTION WHEN BEING USED ON TURNS.

- 24 • **NHTSA ID Number: 11287969, date complaint filed: 11/1/2018, 2018**
25 **model year.**

26 LOUD SQUEAKING NOISE WHEN BACKING UP COMING FROM
27 BRAKES. NOISE IS ALARMING AND CAUSES ONE TO
28 IMMEDIATELY BRAKE, AND NOISE DRAMATICALLY ALARMS
THOSE AROUND AND IN VEHICLE. 2018 AUDI Q7 WITH 26K

1 MILES. DEALER DID NOT ADVISE OF TSB ADVISING SELF...ONLY
2 AWARE AFTER CALLING AUDI DIRECTLY. DEALER SERVICE
3 ADVISED BRAKE AND ROTOR REPLACEMENT IF PROBLEM
4 CONTINUES. INTERNET RESEARCH REVEALS PROBLEM
5 EXISTED SINCE 2016 Q7 MODEL. AUDI NEVER INFORMED US
6 DIRECTLY AND DEALER SERVICE DID NOT INFORM US...WE
7 NEEDED TO CALL AND OR INFORM BOTH BEFORE BEING
8 ADVISED OF TSB. NHTSA CALLED AND INFORMED SELF OF
9 AUDI'S DECISION TO NOT DO RECALL AND ONLY ISSUE TSB.
10 WHERE IS THE RESPONSIBILITY FOR ADVISING VEHICLE
11 OWNERS OF SUCH PROBLEMS.... DEALER SERVICE REP DID NOT
12 ADVISE OF TSB INITIALLY...OWNER ADVISED TO REPAIR AND
13 ABSORB COST. ONCE TSB DISCUSS BY OWNER, ARRANGEMENT
14 WAS MADE FOR COST SHARING.

11 **THE BRAKE DEFECT HAS HARMED PLAINTIFFS AND THE CLASS**

12 89. The Brake Defect has caused injury to Plaintiffs and the Class.

13 90. A vehicle purchased, leased, or retained with a material defect is worth less
14 than the equivalent vehicle leased, purchased, or retained without the defect.

15 91. Purchasers and lessees paid more for the Vehicles, through a higher purchase
16 price or higher lease payments, than they would have had the Brake Defect been
17 disclosed. Plaintiffs and the Class overpaid for their Vehicles. Because of the concealed
18 Brake Defect, Plaintiffs and Class did not receive the benefit of their bargains.

19 92. Class members who purchased new or used Vehicles overpaid for their
20 Vehicles as a direct result of Defendant's ongoing violations of the TREAD Act and state
21 consumer protection laws by failing to disclose the existence of the Brake Defect.

22 93. Plaintiffs and the Class have been denied the use and enjoyment of the
23 Vehicles, suffering distractions by driving Vehicles that emit loud and disturbing
24 squealing noises when the brakes are applied, and being advised by Defendant and/or its
25 agents to drive the Vehicles in an unsafe manner.

26 94. The sudden, loud, and prolonged squealing is disturbing and intrusive to
27 the driver, passenger(s), as well as to other people and animals in the vicinity, including
28 children and the elderly who are often particularly vulnerable to the sudden loud

1 squealing noises that may distract them from other hazards on or near roadways.

2 95. The Vehicles were worth less than they would have been but for the
3 Defendant's failure to disclose and remedy the Brake Defect.

4
5 **CLASS ACTION ALLEGATIONS**

6 96. Plaintiffs seek relief in their individual capacity and seek to represent a class
7 consisting of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and
8 (b)(2) and/or (b)(3), Plaintiffs seek certification of a class initially defined as follows:

9 **All persons in the United States who formerly or currently**
10 **own or lease one or more of the Class Vehicles.**

11 97. Plaintiffs also seek relief in their individual capacity and seek to represent a
12 sub-class consisting of all others who are similarly situated. Pursuant to Fed. R. Civ. P.
13 23(a) and (b)(2) and/or (b)(3), Plaintiffs seek certification of a sub-class initially defined
14 as follows:

15 **All persons in the State of California who formerly or**
16 **currently own or lease one or more of the Class Vehicles,**
17 **purchased and/or serviced in the State of California.**

18 98. Excluded from the Class are Defendant and its subsidiaries and affiliates,
19 Defendant's executives, board members, legal counsel, the judges and all other court
20 personnel to whom this case is assigned, their immediate families, and those who
21 purchased the Vehicle for the purpose of resale.

22 99. Plaintiffs reserve the right to amend or modify the Class and sub-class
23 definitions with greater specificity or division into other subclasses after they had an
24 opportunity to conduct discovery.

25 100. Numerosity. Fed. R. Civ. P. 23(a)(1). The Class is so numerous that joinder
26 of all members is unfeasible and not practicable. While the precise number of Class
27 members has not been determined at this time, Plaintiffs are informed and believes that
28 at least or near 100,000 consumers in the United States have purchased or leased the Class

1 Vehicles.

2 101. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of
3 law and fact common to the Class, which predominate over any questions affecting only
4 individual Class members. These common questions of law and fact include, without
5 limitation:

- 6 a. Whether the Vehicles suffer from the Brake Defect;
- 7 b. Whether Defendant violated the CLRA, California Civil Code § 1750, *et*
8 *seq.*;
- 9 c. Whether Defendant violated the UCL, California Business and
10 Professions Code § 17200, *et seq.*;
- 11 d. Whether Defendant fraudulently concealed the Brake Defect;
- 12 e. Whether Defendant breached the implied warranty of merchantability;
- 13 f. Whether Defendant violated the Song-Beverly Act, California Civil Code
14 § 1790, *et seq.*; and
- 15 g. The nature of the relief, including equitable relief, to which Plaintiffs and
16 the Class members are entitled.

17 102. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the
18 claims of the Class. Plaintiffs and all Class members were exposed to uniform practices
19 and sustained injury arising out of and caused by Defendant's unlawful conduct.

20 103. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiffs will fairly
21 and adequately represent and protect the interests of the members of the Class. Plaintiff's
22 Counsel are competent and experienced in litigating class actions.

23 104. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is
24 superior to other available methods for the fair and efficient adjudication of this
25 controversy since joinder of all the members of the Class is impracticable. Furthermore,
26 the adjudication of this controversy through a class action will avoid the possibility of
27 inconsistent and potentially conflicting adjudication of the asserted claims. There will be
28 no difficulty in the management of this action as a class action.

1 105. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Defendant's
2 misrepresentations are uniform as to all members of the Class. Defendant has acted or
3 refused to act on grounds that apply generally to the Class, so that final injunctive relief
4 or declaratory relief is appropriate with respect to the Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Breach of Implied Warranties**

7 **(On Behalf of Both Plaintiffs)**

8 106. Plaintiffs incorporate by reference and re-allege the preceding paragraphs.

9 107. Plaintiffs bring this claim individually, on behalf of the Nationwide Class,
10 and on behalf the California Sub-Class.

11 108. Defendant is a manufacturer and seller, as it designed, assembled, fabricated,
12 produced, constructed, and prepared the Class Vehicles before they were sold or leased.
13 Defendant is a seller because it was a manufacturer, wholesaler, and distributor engaged
14 in the business of selling a product for resale, lease, or use, with actual knowledge of the
15 Brake Defect.

16 109. Defendant impliedly warranted that the Class Vehicles, which it designed,
17 manufactured, and sold or leased to Plaintiff and Class Members, were merchantable, fit
18 and safe for their ordinary use, not otherwise injurious to consumers, and equipped with
19 adequate safety warnings.

20 110. Defendant did not effectively disclaim these implied warranties.

21 111. The Class Vehicles sold by Defendant were defective at the time of their sale
22 or lease. Defendant breached its implied warranty of merchantability, in that, among other
23 things, the goods were not safe, merchantable, and reasonably suited for the ordinary
24 purposes for which they were sold or leased.

25 112. As a direct and proximate result of the Brake Defect in the Class Vehicles'
26 design and manufacture and Defendant's failures to warn, Plaintiffs have sustained
27 injuries, damages, and loss.
28

1 113. Defendant is liable to Plaintiffs and Class Members for damages caused by
2 the above defects and inadequacies in the design and manufacture of the Class Vehicles.

3 **SECOND CAUSE OF ACTION**

4 **Violation of Consumer Legal Remedies Act – Civil Code § 1750, *et seq.***

5 **(On Behalf of Plaintiff Holmes)**

6 114. Plaintiffs incorporate by reference and re-allege the preceding paragraphs.

7 115. Plaintiff Holmes brings this claim individually and on behalf of all Class
8 Members who formerly or currently own or lease one or more of the Vehicles.

9 116. This cause of action is brought pursuant to the Consumers Legal Remedies
10 Act, California Civil Code § 1750, *et seq.* (the “CLRA”) because Defendant’s actions and
11 conduct described herein constitute transactions that have resulted in the sale or lease of
12 goods or services to consumers.

13 117. Plaintiff Holmes and each member of the Class are consumers as defined by
14 California Civil Code §1761(d). Defendant intended to sell the Vehicles.

15 118. The Vehicles are goods within the meaning of Civil Code §1761(a).

16 119. Defendant violated the CLRA in at least failing to inform Plaintiff and other
17 consumers of the known Brake Defect.

18 120. Defendant’s omissions constitute unfair, deceptive, and misleading business
19 practices in violation of Civil Code §1770(a).

20 121. Because Defendant failed to rectify or agree to rectify the problems
21 associated with the actions detailed above and give notice to all affected consumers
22 within 30 days of receipt of Plaintiffs’ written notice pursuant to §1782 of the California
23 Act, Plaintiffs are entitled to actual, punitive, and statutory damages under to the CLRA.
24 Plaintiffs and the Class also seek a Court order enjoining the above-described wrongful
25 acts and practices of Defendant and for restitution, disgorgement, statutory damages, and
26 any other relief that the Court deems proper.

THIRD CAUSE OF ACTION

California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*

(On Behalf of Plaintiff Holmes)

122. Plaintiffs incorporate by reference and re-allege the preceding paragraphs.

123. Plaintiff Holmes brings this claim individually and on behalf of all Class Members who formerly or currently own or lease one or more of the Vehicles.

124. Defendant engaged in unlawful, unfair, and/or fraudulent conduct under California Business & Professional Code § 17200, *et seq.*

125. Defendant’s conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (as set forth in the first cause of action), and the Transportation Recall Enhancement, Accountability and Documentation Act (the “TREAD Act”), 49 U.S.C. § 30101, *et seq.* (by failing to timely inform the NHTSA of the Brake Defect and allowing the Vehicles to be sold with the Brake Defect).

126. Defendant’s conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Plaintiff and Class members. The harm to Plaintiff and Class members arising from Defendant’s conduct outweighs any legitimate benefit Defendant derived from the conduct. Defendant’s conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies and TREAD Act as alleged herein.

127. Defendant’s actions and practices constitute “fraudulent” business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff relied on Defendant’s omissions.

128. As a direct and proximate result of Defendant’s violations, Plaintiff and Class suffered injuries in fact and lost money because they purchased the Class Vehicles and paid the price they paid believing the Vehicles to be free from defects when they were not.

129. Plaintiff Holmes, on behalf of herself and Class members, seeks equitable relief in the form of an order requiring Defendant to refund Plaintiff and all Class

1 members all monies they paid for repairing and/or replacing the Vehicles, and injunctive
2 relief in the form of an order prohibiting Defendant from engaging in the alleged
3 misconduct and performing a corrective recall campaign.

4 **FOURTH CAUSE OF ACTION**

5 **Violation of Song-Beverly Consumer Warranty Act,
6 California Civil Code § 1790, et seq.**

7 **(On Behalf of Plaintiff Mercado)**

8 130. Plaintiffs incorporate by reference and re-allege the preceding paragraphs.

9 131. Plaintiff Mercado brings this claim individually and on behalf of all Class
10 Members who formerly or currently own or lease one or more of the Vehicles.

11 132. Plaintiff Mercado and Class members who purchased the Vehicles in
12 California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

13 133. The Vehicles are “consumer goods” within the meaning of Cal. Civ. Code §
14 1791(a).

15 134. Defendant is a “manufacturer” of the Vehicles within the meaning of Cal.
16 Civ. Code § 1791(j).

17 135. Defendant impliedly warranted to Plaintiffs and the Class that its Vehicles
18 were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792;
19 however, the Vehicles do not have the quality that a buyer would reasonably expect, and
20 were therefore not merchantable.

21 136. Cal. Civ. Code § 1791.1(a) states that “implied warranty of merchantability”
22 or “implied warranty that goods are merchantable” means that the consumer goods meet
23 each of the following:

- 24 (1) Pass without objection in the trade under the contract description.
- 25 (2) Are fit for the ordinary purposes for which such goods are used.
- 26 (3) Are adequately contained, packaged, and labeled.
- 27 (4) Conform to the promises or affirmations of fact made on the container or
- 28 label.

1 137. The Vehicles would not pass without objection in the automotive trade
2 because of the Brake Defect that causes the Vehicles to emit loud, sudden and unexpected
3 squealing leading to a serious and unreasonable safety risk to Vehicle drivers, occupants,
4 and nearby third parties.

5 138. The Vehicles are not adequately labeled because the labeling fails to disclose
6 the Brake Defect and its dangerous safety implications.

7 139. Defendant breached the implied warranty of merchantability by
8 manufacturing and selling Vehicles containing the Brake Defect.

9 140. The Brake Defect has deprived Plaintiff and the Class of the benefit of their
10 bargain and have caused the Vehicles to depreciate in value.

11 141. As a direct and proximate result of Defendant's breach of its duties, Plaintiff
12 and Class members received goods whose condition substantially impairs their value to
13 Class members. Defendant's conduct has damaged Plaintiff and the Class through the
14 diminished value, the malfunctioning, and the nonuse of their Vehicles.

15 142. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and Class members are
16 entitled to damages and other legal and equitable relief including, at their election, the
17 purchase price of their Vehicles, or the overpayment or diminution in value of their
18 Vehicles.

19 143. Under Cal. Civ. Code § 1794, Plaintiff and Class members are entitled to
20 costs and attorneys' fees.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the
23 Class proposed in this Complaint, respectfully request that the Court enter judgment in
24 their favor and against Defendant, as follows:

25 A. Declaring that this action is a proper class action, certifying the Class and
26 Subclass as requested herein, designating Plaintiffs Valeria Mercado and Andrea
27 Kristyanne Holmes as Class Representatives and appointing the undersigned counsel as
28 Class Counsel;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Ordering Defendant to pay actual damages (and no less than the statutory minimum damages) and equitable monetary relief to Plaintiffs and the other members of the Class;

C. Ordering Defendant to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiffs and the other members of the Class;

D. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective recall campaign;

E. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiffs and the other members of the Class;

F. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

G. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

Dated: March 22, 2021

Respectfully submitted,

/s/ Robert R. Ahdoot
Robert R. Ahdoot (SBN 172098)
rahdoot@ahdootwolfson.com
Tina Wolfson (SBN 174806)
twolfson@ahdootwolfson.com
Theodore Maya (SBN 223242)
tmaya@ahdootwolfson.com
AHDOOT & WOLFSON, PC
2600 W. Olive Ave., Suite 500
Burbank, CA 91505
(310) 474-9111 (telephone)
(310) 474-8585 (facsimile)

Greg F. Coleman*
greg@gregcolemanlaw.com
Lisa A. White*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

lisa@gregcolemanlaw.com
Will Ladnier
will@gregcolemanlaw.com
GREG COLEMAN LAW PC
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel: (865) 247-0080
Fax: (865) 522-0049

Daniel K. Bryson*
Dan@whitfieldbrysonllp.com
J. Hunter Bryson*
Hunter@whitfieldbrysonllp.com
WHITFIELD BRYSON LLP
900 W. Morgan St. Raleigh, NC 27603
Tel: 919-600-5000
Fax: 919-600-5035

Alex R. Straus (SBN 321366)
GREG COLEMAN LAW PC
16748 McCormick Street
Los Angeles, CA 91436
Tel: (917) 471-1894;
Fax: (865) 522-0049

**pro hac vice*

*Counsel for Plaintiffs Valeria Mercado and
Andrea Kristyanne Holmes*