



NO. *Court File No.* **VLC-S-S-252543**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

VOLKSWAGEN GROUP OF CANADA INC.

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Nature of Claim

1. The within proposed auto defect multi-jurisdictional class proceeding involves certain model year Volkswagen (“**VW**”) and Audi vehicles installed with Generation 1, 2 or 3 EA888 engines (“**Class Engine**” or “**Class Engines**”), defined below as “Affected Class Vehicles”, marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc. (“**VWGoC**”), in Canada, including the Province of British Columbia, equipped with a defective turbocharger prone to premature failure due to exhaust gas pulsations and vibrations within the turbocharger housing, excessive wastegate linkage wear, absence of adequate bushings and use of inadequate wastegate linkage fabrication materials and treatment so as to cause the wastegate, a door that allows excess exhaust to escape, to get stuck in the partially open or closed position, resulting in an underpowered or overpowered vehicle, all of which poses a real, substantial and imminent risk of harm or injury to vehicle occupants from a collision and catastrophic engine damage (“**Turbocharger Defect**”).
2. Affected Class Vehicles refers to the following model year VW and Audi vehicles installed with the Class Engines marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, VWGoC, in Canada, including the Province of British Columbia, with the Turbocharger Defect:

GENERATION 1	
VW	
MODEL	MODEL YEARS
Beetle	2012-2013
CC	2009-2017
Eos	2009-2016
Golf R	2008-2014
GTI	2008-2014
Jetta Sedan and GLI	2008-2013
Jetta Sportwagen	2009
Passat	2008-2010
Tiguan	2009-2018
AUDI	
A3	2008-2009
Q3	2015-2018
GENERATION 2	
AUDI	
MODEL	MODEL YEARS
A4	2009-2014
A5	2010-2014
A6	2013-2015
Q5	2011-2014
TT	2011-2012
GENERATION 3	
VW	
MODEL	MODEL YEARS
Arteon	2019-2021
Atlas	2018-2023
Atlas Cross Sport	2020-2023
Golf	2015-2018
Golf R	2015-2019
Golf Sportwagen and Alltrack	2015-2019
GTI	2015-2021
Jetta GLI	2019-2024
AUDI	
A3	2015-2020
Q3	2019-2024
TT	2016-2023

The Plaintiff reserves the right to amend or add to the vehicle models included in the definition of Affected Class Vehicles.

3. There exists a defect in the design, material, manufacturing, and/or workmanship in the Class Engine turbocharger, which is substantially certain to prematurely fail forcing putative class members to incur, *inter alia*, out-of-pocket costs to repair and/or replace the defective turbocharger, costing thousands of dollars. As explained in detail, below, the turbocharger fails before the end of the useful life of the Class Engine as a result of defects alleged herein.
4. The Turbocharger Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants, and though consumers have complained about it, the Defendant, VWGoC, has failed and/or refused to issue a recall and adequately address or remedy the Turbocharger Defect.
5. The Defendant, VWGoC, had prior knowledge of the Turbocharger Defect in the Affected Class Vehicles before they were marketed, advertised, distributed, supplied, leased and/or sold to putative class members. The Defendant, VWGoC, had actual knowledge that design, materials, manufacturing, and/or workmanship defects were causing the Turbocharger Defect shortly after production of the Affected Class Vehicles commenced. Further, the Defendant, VWGoC, acknowledged the Turbocharger Defect in a series of Technical Service Bulletins ("TSBs"), and other such service publications, which described the issue to its exclusive network of authorized dealerships beginning in or around July 2010.
6. Prior to selling and/or leasing the Affected Class Vehicles the Defendant, VWGoC, knew that the Affected Class Vehicles were defective, yet omitted and kept this material fact from the Plaintiff and putative class members. Rigorous pre-release production testing and post-production monitoring made the Defendant, VWGoC, aware of the Turbocharger Defect, which was wrongfully and intentionally concealed from the Plaintiff and putative class members.
7. In marketing, advertising, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendant, VWGoC, engaged in unfair, deceptive, and/or misleading consumer practices, and further breached its express and/or implied warranties.

8. As a result of the alleged misconduct of the Defendant, VWGoC, the Plaintiff and putative class members were harmed and suffered actual damages. The Plaintiff and putative class members did not receive the benefit of their bargain; rather, they purchased and/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 and/or lessees of the Affected Class Vehicles paid more, either through a higher purchase price or lease payments, than they would have had the Turbocharger Defect been disclosed. The Plaintiff and putative class members were deprived of having a safe, defect-free turbocharger installed in their Affected Class Vehicles, and the Defendant, VWGoC, has unjustly benefitted from the higher price paid by consumers for such vehicles.
9. The Plaintiff and putative class members also suffered damages in the form of, *inter alia*, out-of-pocket costs of repair and/or replacement, rental car costs, towing costs, overpayment, and/or diminished value of the Affected Class Vehicles.
10. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendant, VWGoC, made full and complete disclosure of the Turbocharger Defect, or would have paid a lesser price.
11. The Plaintiff and putative class members expected that the Defendant, VWGoC, would disclose material facts about the safety of its Affected Class Vehicles and the existence of any defect that will result in expensive and non-ordinary repairs. The Defendant, VWGoC, failed to do so.
12. The Plaintiff seeks relief for all other current and/or former owners and/or lessees of the Affected Class Vehicles equipped with the defective turbocharger, including, *inter alia*, recovery of damages and/or repair under provincial consumer protection legislation, breach of express warranty, breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair and/or replacement of the Turbocharger Defect in the Affected Class Vehicles.

B. The Parties

i. Representative Plaintiff

13. The Plaintiff, [REDACTED], has an address for service c/o 210 – 4603 Kingsway,

Burnaby, British Columbia, V5H 4M4.

14. On December 27, 2024, the Plaintiff purchased a 2018 Volkswagen Golf R (the “**Golf R**”) from LP Auto, a third party dealership, located in Richmond, British Columbia, Canada.
15. The Golf R had an odometer reading of approximately 38,000 kilometers (“**km**”) at the time of purchase. The Golf R currently has an odometer reading of approximately 40,000 km.
16. The Plaintiff purchased the Golf R primarily for personal, family, or household use.
17. Safety, reliability and performance were important factors in the Plaintiff’s consideration for purchasing the Golf R. The Plaintiff has owned VW and Audi vehicles in the past and expected a reasonable level of safety, reliability and performance from his newly purchased Golf R.
18. Prior to purchasing the Golf R, the Plaintiff relied on the Defendant, VWGoC’s, website, archived articles and/or webpages, brochures of the vehicle, Google and YouTube searches and/or reviews, and other promotional materials, to determine the safety, reliability and level of performance of the Golf R.
19. In all of those promotional materials, the Plaintiff came across no representation by the Defendant, VWGoC, that the Golf R suffers from the Turbocharger Defect.
20. As a result of the Turbocharger Defect, the Plaintiff has lost confidence in the reliability and safety of the Golf R, and its ability to perform as marketed and advertised.
21. At all times, the Plaintiff, like all putative class members, has driven his Golf R in a manner both foreseeable and in which it was intended to be used.

ii. The Defendant

22. The Defendant, VWGoC, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0005636, and has a registered agent, LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.
23. The Defendant, VWGoC, is a wholly-owned Canadian subsidiary, affiliate, agent and/or

operating unit of Volkswagen Aktiengesellschaft ("**VWAG**"), a German corporation. The Defendant, VWGoC, engages in business activities in furtherance of the interests of VWAG and Audi Aktiengesellschaft ("**Audi AG**"), including the advertising, marketing, distribution, supplying, leasing and/or sale of VW and Audi vehicles, including the Affected Class Vehicles in Canada. The Defendant, VWGoC, also acts as the warrantor of both VW and Audi vehicles in Canada, distributes VW and Audi replacement parts and disseminates service publications, including TSBs, and other similar service publications, together with other service documents, including workshop and parts manuals.

24. VWAG is one of the largest vehicle manufacturers in the world with its principal place of business in Wolfsburg, Germany and is in the business of engineering, designing, developing, testing, manufacturing, assembling and/or selling automobiles, including the Affected Class Vehicles. VWAG is the parent corporation of the Defendant, VWGoC, and Audi AG.
25. Audi AG is a German corporation with its principal place of business in Ingolstadt, Germany and is a wholly-owned subsidiary, affiliate and/or operating unit of VWAG. Audi AG designs, develops, manufactures, and sells luxury automobiles under the Audi brand name, including certain Affected Class Vehicles.
26. Audi Canada Inc. ("**Audi Canada**") is an operating unit of the Defendant, VWGoC. Audi Canada engages in the business of advertising, marketing, distribution, supplying, leasing and/or sale of Audi vehicles in Canada on behalf of the Defendant, VWGoC.
27. At all material times to the cause of action herein, the Defendant, VWGoC, and Audi Canada acted as authorized agents, representatives, servants, employees and/or alter egos of VWAG and Audi AG while performing various activities including, but not limited to, marketing, advertising, administering warranties and warranty repairs at authorized VW and Audi dealerships, dissemination of technical information and monitoring the performance of VW and Audi vehicles in Canada. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada have overlapping corporate management boards and cooperate to engineer, design, manufacture, test, assemble and/or sell VW and Audi vehicles in Canada. They share employees, Affected Class Vehicle parts (which are often stamped with both the VW and Audi logos) and technical knowledge, including design patents.

28. At all material times to the cause of action herein, VWAG and Audi AG cooperated in the engineering, design, manufacture, testing and/or assembly of the Affected Class Vehicles, including the engine turbocharger and its exhaust manifold mounting. VWAG and Audi AG also cooperated in the engineering, design, manufacture and testing of replacement parts, including upgraded turbochargers for the Class Engines. The Defendant, VWGoC, and its operating unit Audi Canada, market, advertised, distributed, sold, and warranted the Affected Class Vehicles throughout Canada through its authorized dealers. The Defendant, VWGoC, and Audi Canada in cooperation with VWAG and Audi AG published and disseminated the Owner's Manuals, warranty booklets, warranty and maintenance schedules, advertisements, and other promotional materials relating to the Affected Class Vehicles.
29. At all material times to the cause of action herein, the Defendant, VWGoC, VWAG, Audi AG and Audi Canada shared the common purpose of, *inter alia*, designing, developing, manufacturing, testing, assembling, marketing, distributing, supplying, leasing and/or selling VW and Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph two herein, containing the Turbocharger Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendant, VWGoC, VWAG, Audi AG and Audi Canada are inextricably interwoven with that of the other as to the Turbocharger Defect in the Affected Class Vehicles, as averred to in paragraph two herein, such that each is the agent or alter ego of the other.

C. The Class

30. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, who own, owned, lease and/or leased an Affected Class Vehicle ("**Class**" or "**Class Members**"), excluding employees, officers, directors, agents of the Defendant, VWGoC, and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendant, VWGoC, concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

i. The Turbocharger Defect in the Affected Class Vehicles

31. VWAG and Audi AG manufacture vehicles sold under the VW and Audi brands throughout Canada. VWAG and Audi AG engineered, designed, tested, manufactured and/or assembled the Affected Class Vehicles. The Defendant, VWGoC, and Audi Canada imported, distributed, advertised, marketed, leased and/or sold the Affected Class Vehicles in Canada. The Defendant, VWGoC, and Audi Canada provided service, repair and maintenance for the Affected Class Vehicles through their extensive network of authorized dealers and service providers in Canada.
32. The Defendant, VWGoC, wrongfully and intentionally concealed a defect in design, material, manufacturing, and/or workmanship in the Class Engine turbocharger, which is substantially certain to prematurely fail, forcing Class Members to incur out-of-pocket costs to repair and/or replace the defective turbocharger. The turbocharger fails before the end of the useful life of the Class Engine as the result of defects alleged herein. Class Engine turbochargers were substantially certain to prematurely fail because of exhaust gas pulsations and vibrations within the turbocharger housing, wastegate linkage geometry and absence of adequate bushings, utilization of inadequate wastegate linkage fabrication materials, including but not limited to, dimensional construction and heat treatment. Subsequent modifications to the turbocharger design corrected the off-set loading, dimensional fabrication deficiencies and added and/or incorporated improved bushings and other features to reduce excessive premature wear at contact surfaces.
33. Class Engines employ an exhaust-gas turbocharger with a vacuum operated internal wastegate to increase horsepower by harnessing engine exhaust gases to spin an axial turbine and compressor which in turn pre-compresses air “on demand” and supplies it to the engine cylinders for combustion after fuel is injected. When functioning properly, the Class Engine turbocharger increases torque and horsepower of Class Engines on demand. Figure 1 below depicts a turbocharged engine layout diagram.
34. The function of a turbocharger wastegate is to bleed off excessive air pressure (a/k/a “**boost pressure**”) by the compressor to prevent excessive overboost pressure from accumulating and resulting in likely engine damage. Figure 2 below depicts a

turbocharger wastegate layout diagram. Class Engines use a metal linkage rod to connect the wastegate actuating arm (a/k/a “**lever arm**” or “**link plate**”) to the wastegate control pod that operates on engine vacuum. This linkage assembly controls the opening and closing of the turbocharger wastegate.

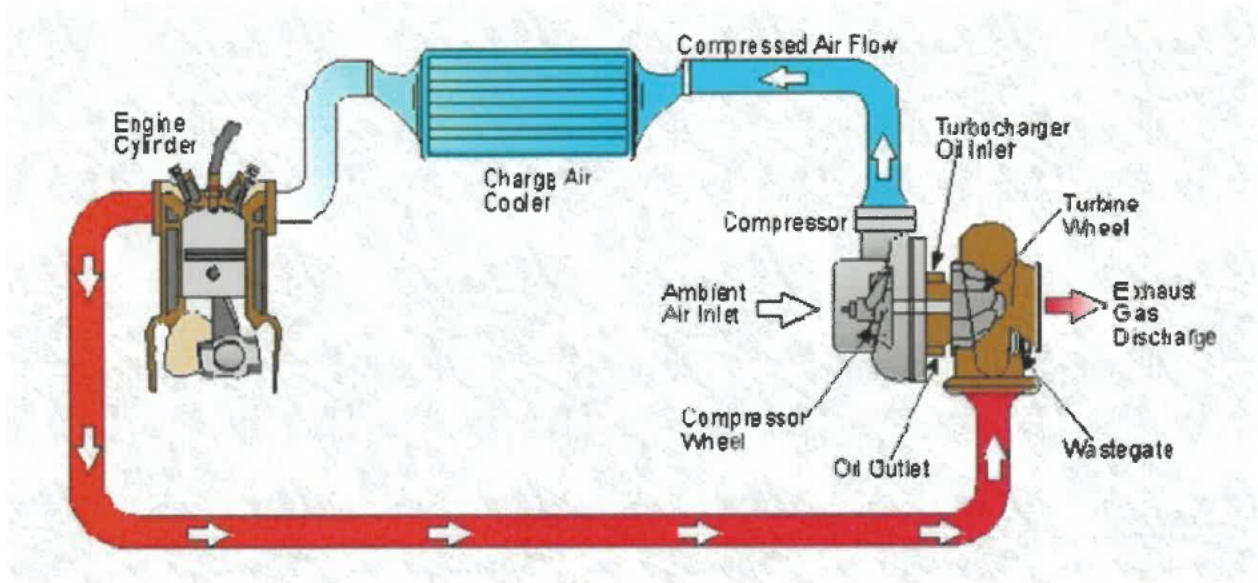


FIGURE 1

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

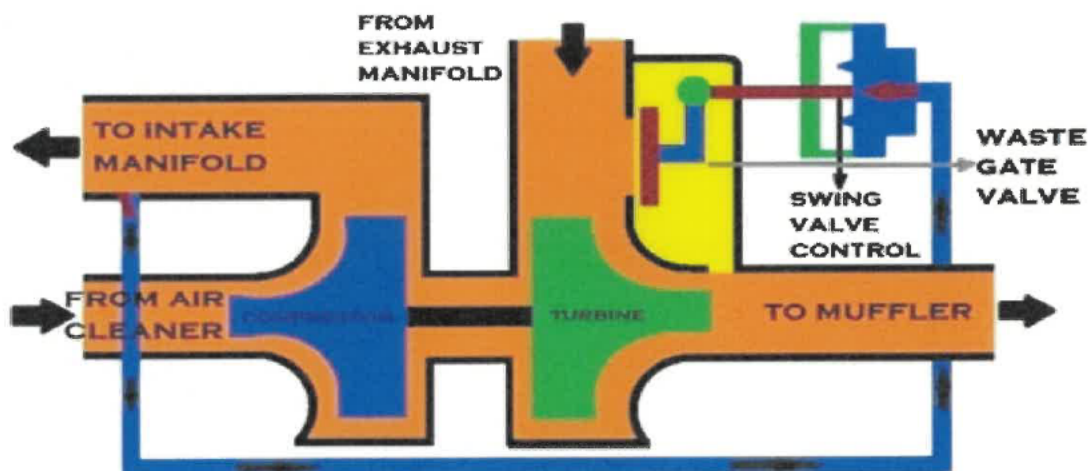


FIGURE 2

DEPICTION OF AN EXEMPLAR INTERNAL WASTEGATE TURBOCHARGER

35. The exhaust manifold and turbine side of the Class Engine turbochargers produce pulsations and vibrations that travel through the wastegate valve shaft and wastegate lever arm. These pulsations and vibrations cause excessive premature wear on the wastegate shaft/bushing contact surfaces and on the wastegate lever arm/wastegate actuator rod linkage connections causing the turbocharger wastegate to malfunction. This linkage wear causes the wastegate to become stuck in the partially open or closed position causing either an underboost or overboost condition, respectively. Another malfunction is where the pulsations and vibrations cause the roll pin on the turbocharger housing to back out "allowing the wastegate valve and lever to drop into the housing. There are no other documented modes of Class Engine premature turbocharger failure resulting in turbocharger underboost or overboost conditions aside from these two conditions which require turbocharger replacement.
36. Where either condition occurs, the turbocharger is not serviceable and requires replacement since the wastegate becomes non-functional as either overboost or underboost occur depending on the position of the wastegate and failure mode. These failures occur shortly after the limited powertrain warranties expire. A properly functioning turbocharger is crucial to the safe and reliable operation of the Affected Class Vehicles.

ii. Defendant, VWGoC's, prior knowledge of the Turbocharger Defect

37. Knowledge and technical information concerning the Turbocharger Defect was in the exclusive and superior possession of the Defendant, VWGoC, VWAG, Audi AG and Audi Canada, including authorized VW and Audi dealers before the Plaintiff purchased his Golf R, and that information was not provided to the Plaintiff and Class Members. The Defendant, VWGoC's, knowledge is evident for several reasons.
38. First, VWAG's and Audi AG's routine pre-production testing and post-production monitoring are designed to reveal, or more accurately here, expose defects like the Turbocharger Defect that will increasingly manifest over time. VWAG operates a massive multi-departmental Quality Assurance ("QA") division headquartered in Germany that has approximately 16,000 employees at more than 100 sites around the world that support the development of its vehicles and components. VWAG's QA division is integrated throughout its brands, including the Defendant, VWGoC, and Audi Canada, and works closely with VWAG's Development, Procurement, Finance, Production and

Sales divisions, and its management team strategically controls the QA activities of the VW Group and its brands. The Quality Assurance division includes the following departments:

- (a) Group Quality Assurance Purchased Parts: ensures that all parts required for vehicle production meet VW's required standard of quality;
- (b) Group Material Technology and Material Technology VW Brand: a close partner of the Development Division that combines the VWAG's Group Laboratory Management and Technology divisions to provide support for laboratories worldwide in terms of processes, tests and standards. The Group Laboratory Technology division controls processes that ensure the quality of materials worldwide;
- (c) Central Group Quality Assurance: key to VWAG's integration across its brands worldwide (e.g. the Defendant, VWGoC, and Audi Canada), this department is responsible for the quality management system including the required certifications as a manufacturer. It also promotes the networking of the QA functions across VWAG's brands and regions and ensures that the quality of the products is maintained across the logistical process;
- (d) Quality Assurance Complete Vehicle: assesses vehicles from the first pre-production model through to the end of production under the most varied customer-specific operating conditions. This department also runs tests and assesses new vehicles during acceptance road tests and approves them for mass production, with the goal of achieving a fault-free vehicle, system and powertrain start-up in order to avoid complaints and recall situations;
- (e) Quality Assurance Product Safety: assesses damage that has been deemed to be "relevant for safety" by importers or VW partners and ensures that highlighted problems are resolved quickly, and informs authorities or consumer protection organizations of this;
- (f) Technical Product Controlling: performs audits of the powertrains and vehicles of VW's brands, and its tasks include series production monitoring of new vehicles in relation to exhaust gas, consumption, exterior noise and on-board diagnosis,

with its results reported to the responsible authorities;

- (g) Quality Assurance Product Emergence: responsible for ensuring the quality of new vehicles along the Product Emergence Process with the goal of bringing concepts to the field that are without any complaints or defects in order to reduce damage cases and breakdowns; and
 - (h) Quality Assurance Components: controls the global component sites and manages quality projects for components including engines.
39. As such, VWAG's extensive quality control testing of its vehicles, including the Affected Class Vehicles, combined with its pre-and post-production monitoring of Affected Class Vehicle performance and complaints, across its brands and divisions worldwide, including the Defendant, VWGoC, and Audi Canada, alerted, or ought to have alerted, the Defendant, VWGoC, VWAG, Audi AG and Audi Canada early on that their turbochargers wear out prematurely.
40. Second, as manufacturers of vehicles marketed and sold in Canada, VWAG and Audi AG completed testing that exposed the existence of the Turbocharger Defect, including a Failure Modes and Effects Analysis ("**FMEA**") and Design Validation Plan and Report ("**DVP&R**").
41. The purpose of FMEA is to define, based on known and established facts, potential risks of failures and rank them by severity, likelihood and ability to detect failure. Any conditions resulting in failure, including those associated with the Turbocharger Defect and causing failure of VWAG's turbocharger assembly, and consequently, Class Engines, would result in a "high risk" priority and draw additional analysis and validation testing during the FMEA and DVP&R phases. Given the later reports of failures after sales, including those suffered by Class Members, these processes were designed to show the various modes of failure caused by the Turbocharger Defect and confirm what the Defendant, VWGoC, already knew about its Class Engines and the Turbocharger Defect.
42. The DVP&R phase includes comprehensive testing and other processes required to validate the durability of any design, and includes three basic types of testing: (i) bench scale; (ii) engine dynamometer; and (iii) vehicle/field testing.

43. Bench scale testing is component-specific, and is completed by the supplier in coordination with the Original Equipment Manufacturer to establish the strict set of specifications and guidelines to ensure that the component will operate reliably and durably in foreseeable operating conditions. During this phase of testing VWAG's turbocharger was "bench tested"—i.e. set up on various machines to simulate certain operating extremities and conditions to confirm whether it meets the necessary specifications and guidelines set by the supplier in coordination with VWAG and Audi AG. Turbochargers are tested for their durability and tolerance of vibrations at varying frequencies, as well as exposure to changes in temperature, all with the purpose of exposing vulnerabilities and defects within the turbocharger and turbocharger assembly. At minimum, VWAG and Audi AG, most likely received the detailed results of the bench testing and resulting Technical Control Documents from the supplier which outline the operating limitations of the turbocharger along with the potential risks associated with installation in the Affected Class Vehicles, including the Turbocharger Defect. Bench testing of the turbochargers most likely confirmed what VWAG, Audi AG, the Defendant, VWGoC, and Audi Canada already knew about the Class Engine turbocharger—that use of the turbocharger wastegate linkage was inappropriate because it was certain to prematurely fail.
44. Engine dynamometer testing is one of the most important types of testing to ensure durability and performance of engines and their components, including VWAG's turbocharger assembly. In the engine dynamometer test, the turbocharger is installed on a complete engine and operated under extreme conditions such as maximum temperatures or excessive vibration. Engine dynamometer testing is intended to demonstrate engine robustness and reveal necessary improvement or flaws such as the Turbocharger Defect. Turbocharger durability and tolerance of extreme temperature changes are tested by, among other things, cycling the engine between full throttle and idling repeatedly, which would reveal the Turbocharger Defect. Engine dynamometer testing of the turbochargers most likely revealed material stress, linkage arm rattle, compromised wastegate valve performance resulting in underboost or overboost, and/or the outright failure of the turbocharger.
45. Lastly, VWAG and Audi AG tested their turbocharger assembly in actual vehicles, both prototype vehicles and pre-production line vehicles, including specific engine and powertrain calibration and development. In these tests, vehicles with the turbochargers

are driven through a full range of conditions and extremities that are encountered once a vehicle is sold to the public. These vehicle-specific development tests include mapping extreme engine operating conditions with high exhaust gas temperatures and high turbocharger loads, which are the kinds of modes that manifest the turbocharger defect. Testing is intended to simulate the equivalence of 10 years and 250,000 km and would have revealed the Turbocharger Defect. Vehicle testing also exposes the turbocharger to hot and cold weather conditions to reveal any thermal fatigue that may exist. Vehicle testing will most likely show that the turbochargers either failed or clearly show the Turbocharger Defect by virtue of linkage arm rattle and compromised wastegate valve performance resulting in underboost and/or overboost.

46. During DVP&R testing, Affected Class Vehicle turbochargers were exposed to conditions that would have caused the Turbocharger Defect to manifest.
47. The quality management system in the VW group is based on ISO (International Organization for Standardization) 9001 standards. These standards must be complied with to attain type approval for the manufacture and sale of the Defendant, VWGoC's, vehicles, and requires thorough documentation of the testing, testing procedures and outcomes, as well as the obligation to improve upon testing and quality standards based on prior testing and experience, which would include in-warranty failures, sales of service parts for out-of-warranty failures, and consumer complaints—each of which were implicated by the Turbocharger Defect.
48. An additional source of the Defendant, VWGoC's, knowledge of the Turbocharger Defect comes from the testing of turbochargers replaced under warranty and returned to the Defendant, VWGoC, for analysis and testing. As turbochargers are anticipated to last at least 10 years or 250,000 km, any part failing under any of the warranties is subject to additional scrutiny.
49. Still another source of the Defendant, VWGoC's, knowledge of the Turbocharger Defect and that it causes premature engine failure comes from consumer complaints made to Defendant, VWGoC, and Audi Canada authorized dealers.
50. Also, the existence of Tech Tips, Technical Bulletins and TSBs of the Defendant, VWGoC, and Audi Canada evidences this prior knowledge. This information was not provided to Class Members. As such, the above referenced Tech Tips, Technical

Bulletins and TSBs, pre-production testing, pre-production design failure mode analysis, production design failure mode analysis performed by VWAG and Audi AG, early consumer complaints made to the Defendant, VWGoC's, and Audi Canada's network of exclusive dealers, aggregate warranty and replacement part data compiled from those dealers, repair order and parts data received from the dealers, consumer complaints to dealers and testing performed in response to consumer complaints, inter alia, are all evidence that the Defendant, VWGoC, VWAG, Audi AG and Audi Canada were aware, or ought to have been aware, of the Turbocharger Defect in the Class Engines.

51. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada intentionally and/or fraudulently concealed the Turbocharger Defect and safety risk from the Plaintiff and Class Members. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada knew, or ought to have known, that the Turbocharger Defect was material to owners and/or lessees of the Affected Class Vehicles and was not known or reasonably discoverable by the Plaintiff and Class Members before they purchased their vehicles or before the warranties on their vehicles expired.
52. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada had actual knowledge that design, manufacturing, materials and/or workmanship defects were causing the Turbocharger Defect shortly after production of the Affected Class Vehicles commenced. VWAG and Audi AG engaged in extensive field research, quality investigation and analysis before designing and issuing specifications for the turbocharger linkage anti-rattle/anti-wear retaining clip, bidding/sourcing the clip and manufacturing and distributing the new part, which was intended to augment the linkage previously determined to be defective. These activities took approximately one year before the retaining clip was released for sale.

iii. Defendant, VWGoC's, prior knowledge of the Turbocharger Defect is revealed through technical bulletins disseminated by it

53. Prior to the sale of the Affected Class Vehicles the Defendant, VWGoC, and Audi Canada, together with VWAG and Audi AG, had pre-sale knowledge of the Turbocharger Defect. The Defendant, VWGoC, VWAG, Audi AG and/or Audi Canada acknowledged the Turbocharger Defect in several Tech Tips, Technical Bulletins and TSBs, which described the issue to their exclusive network of authorized dealerships beginning in or around July 1, 2010.

54. For example, VW Tech Tips TT 21-10-02 discussed the roll pin issue affecting the turbocharger wastegate which was released on July 1, 2010 and updated on June 19, 2015. Technical Bulletin 21 10 01 released on August 25, 2010 discussed the wastegate lever arm/wastegate actuator rod connection rattle. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada, also fashioned an attempted remedy to correct the Turbocharger Defect through installation of a retaining clip designated Part No. 06J145220A on August 27, 2011, as described in Technical Bulletin 21 13 02, dated December 3, 2013. This Technical Bulletin superseded an earlier bulletin addressing the identical issue released on August 27, 2011. Part No. 06J145220A and its installation location are depicted in Figure 3 below. Although this clip may have partially alleviated the rattle noise at the wastegate lever arm and actuator rod connection causing customer complaints, the clip did not stop the continuing premature wear of these components at their attachment points that result in wastegate malfunction, as described herein. As such, the retaining clip service protocol was an insufficient fix and failed to mitigate the Turbocharger Defect. Moreover, even if the Defendant, VWGoC, or Audi Canada replaced the turbochargers outright, they simply reinstalled identical turbochargers containing the same defect and which were also substantially certain to fail.
55. The Defendant, VWGoC's, pre-sale turbocharger defect knowledge is further demonstrated in TSB 21 12 10 2031245/1 released on October 25, 2012 discussing Class Engine turbocharger malfunction light code "P0299 Negative pressure deviation" (a/k/a "**turbocharger underboost**") and "turbocharger waste gate has play." This TSB describes the condition as arising "[u]nder certain driving conditions the linkage for the waste gate actuation can encounter excessive wear which leads to play at the waste gate flap. This leads to boost escaping through a loose flap which sets the DTC P0299 Negative Pressure Deviation." Further, this TSB is specifically cited in Audi Canada's later implemented Class Engine turbocharger warranty extension AWA-14-03 announced in June 2014. This extension increases the turbocharger warranty from the initial powertrain warranty of 5 years/100,000 km to 7 years/120,000 km. However, the warranty extension for a known pre-sale engine turbocharger defect was an inadequate remedy or fix as the turbocharger was substantially certain to fail during the lifetime of the Class Engine.

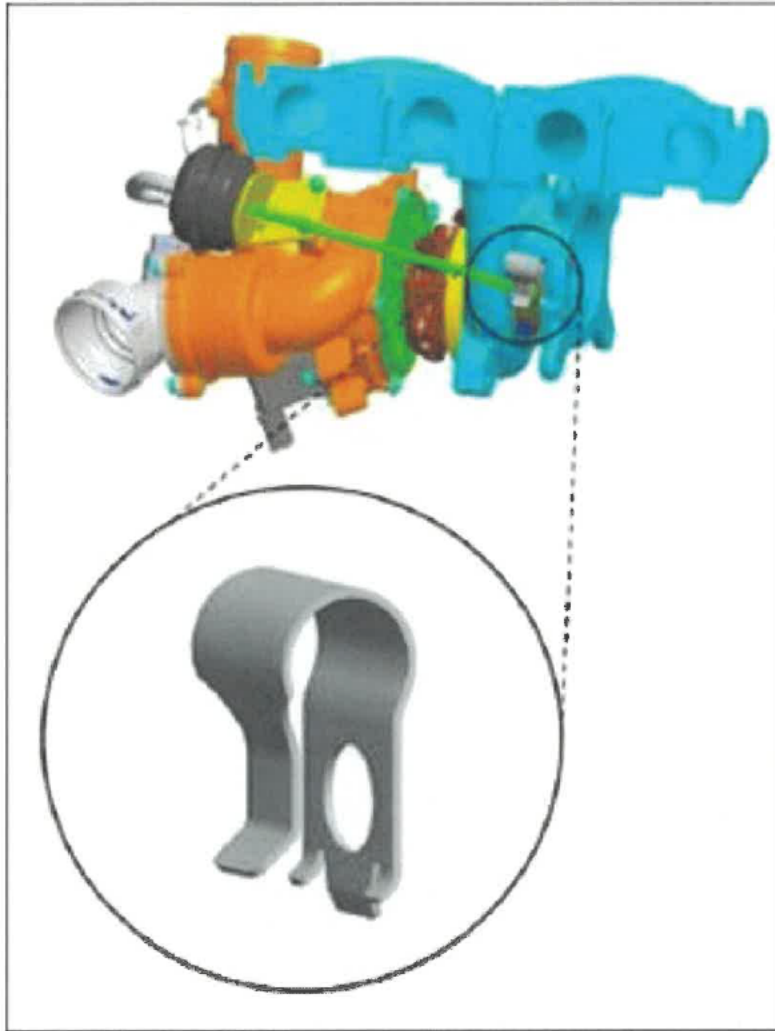


FIGURE 3

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

56. Yet another TSB 21 14 18 2031245/7 was released on June 6, 2014 superseding an earlier bulletin dated July 9, 2013. This TSB discusses that the “linkage for the waste gate actuation can encounter excessive wear which leads to play at the waste gate flap” resulting in “Negative Pressure Deviation” (turbocharger underboost). Figure 4 below is an excerpt from TSB 21 14 18 2031245/7 depicting the worn wastegate link plate (a/k/a “**lever arm**”).

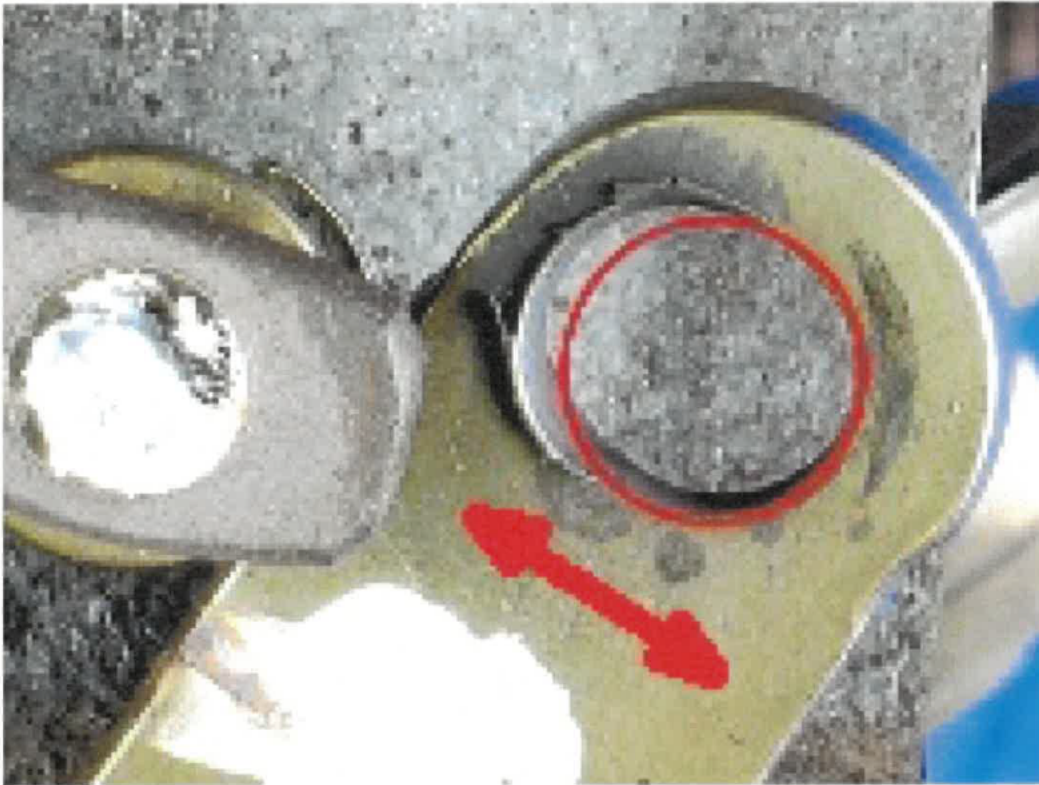


Figure 1. Worn eye on wastegate link plate allowing excessive play.

FIGURE 4

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

57. The Tech Tips, Technical Bulletins and TSBs discussing the Class Engine turbocharger demonstrate long-standing knowledge of the wastegate problem. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada, were aware that the 2010 model year Class Engine turbochargers were defective, as described herein, and would fail shortly after the power train warranty expired. This is demonstrated by engineering lead times required for component testing, redesign and manufacturing. The defective Class Engine turbocharger wastegate linkage was subsequently redesigned in the 2015 and later model year vehicles by adding an adjustable and more durable rod end fork with a large diameter bushing together with other modifications as depicted in Figure 5 below.

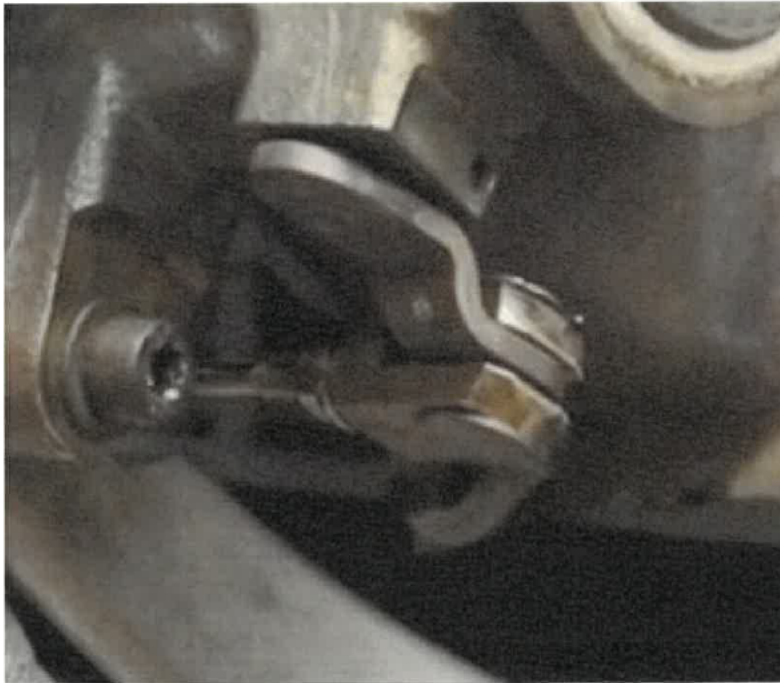


FIGURE 5

2015 VW IS38 TURBOCHARGER LINKAGE ROD END FORK

58. Despite this pre-sale knowledge, the Defendant, VWGoC, and Audi Canada and their respective authorized dealers never informed the Plaintiff, Class Members and prospective purchasers and/or lessees of the Affected Class Vehicles that the turbocharger was subject to premature failure shortly after the warranty expired and would require expensive replacement (or a new engine if the turbocharger failed in overboost and destroyed the engine). In some cases, Class Engine turbocharger failures occurred with Affected Class Vehicles having as little as 65,000 km. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada concealed this expensive turbocharger maintenance cost from the Plaintiff, Class Members and prospective purchasers and/or lessees of the Affected Class Vehicles while informing their authorized dealerships and factory-trained mechanics of the Turbocharger Defect.
59. Despite the Defendant, VWGoC's, VWAG's, Audi AG's and Audi Canada's long-standing knowledge of the Turbocharger Defect, this defect was never disclosed to the Plaintiff and Class Members. The safety implications of the Turbocharger Defect were also not disclosed. Notwithstanding the fact that a properly designed and manufactured turbocharger should operate normally in vehicles for a minimum of 225,000 km, the Defendant, VWGoC, and Audi Canada, refused to repair and/or replace the turbocharger

outside of the time periods covered by the respective manufacturers' warranties. The Defendant, VWGoC, and Audi Canada wrongfully and intentionally transferred the cost of repair and/or replacement of the defective turbocharger to the Plaintiff and Class Members by fraudulently concealing the existence of the Turbocharger Defect, which the Defendant, VWGoC, and Audi Canada know will typically occur shortly after the expiration of the Affected Class Vehicle's warranties. Turbocharger repairs cost upwards of approximately \$3,000.00 depending on the model and year of the Affected Class Vehicle.

60. Affected Class Vehicles are equipped with Class Engines that incorporate the Turbocharger Defect. As a result of the defect, these engines prematurely fail due to the defective turbochargers and before the end of the useful life of the Class Engine which is in excess of 225,000 km. The Class Engine turbocharger is expected to last for the useful life of the engine or at least 225,000 km without the need for maintenance, repair or replacement. Affected Class Vehicle Owner's Manuals and Warranty and Maintenance schedules do not require any turbocharger inspection or maintenance within the first 180,000-225,000 km of vehicle operation or thereafter. Indeed, the Class Engine turbocharger is omitted from the VW and Audi maintenance schedules for Affected Class Vehicles entirely. The reasonable inference is that this expensive major engine component would not have to be replaced during the reasonably expected life of the Affected Class Vehicle.

iv. The Turbocharger Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants and renders the Affected Class Vehicles per se defective

61. Government regulations in Canada (*Motor Vehicle Safety Act*, R.S.C. 1993, c.16) require vehicle manufacturers to disclose to Transport Canada respectively of "early warning reporting" data, including claims relating to property damage received by the automotive manufacturer, warranty claims paid by the automotive manufacturer, consumer complaints, incidents involving injury or death, and field reports prepared by the automotive manufacturer's employees or representatives concerning failure, malfunction, lack of durability, or other performance issues.
62. Further, these government regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect

is defined by regulation to include any defect that creates an “unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle” or “unreasonable risk of death or injury in an accident.” Within a period of time of learning about a safety defect, a manufacturer must notify NHTSA and Transport Canada and provide a description of the vehicles potentially containing the defect, including “make, line, model year, [and] the inclusive dates (month and year) of manufacture,” a description of how these vehicles differ from similar vehicles not included in the recall, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. Then, “within a reasonable time” after deciding that a safety issue exists, the vehicle manufacturer must notify the owners of the defective vehicles. Violating these notification requirements can result in a substantial civil penalty.

63. The Defendant, VWGoC, and Audi Canada knew or ought to have known about the Turbocharger Defect as evidenced by: (1) warranty claims, part sales, and consumer complaints lodged with the Defendant, VWGoC, and Audi Canada directly; (2) technical bulletins and TSB’s released by the Defendant, VWGoC, and Audi Canada in an attempt to address or remedy the Turbocharger Defect; and (3) the Defendant, VWGoC’s, VWAG’s, Audi AG’s and Audi Canada’s own pre-sale durability testing and post-production monitoring of the Affected Class Vehicles.
64. When the Turbocharger Defect occurs in the Affected Class Vehicles, the vehicle has the propensity to, without warning or notice, lose engine power unexpectedly and experience an immediate loss of speed or ability to accelerate and/or maintain speed, placing the vehicle at a significant risk for a collision or loss of control.
65. Further, the Turbocharger Defect in the Affected Class Vehicles may cause catastrophic engine failure with little or no warning and pose a safety risk to vehicle occupants and other drivers on the road who are at risk of harm or injury arising from an accident with an Affected Class Vehicle that suddenly stops or is unable to maintain an appropriate speed.
66. No reasonable consumer expects a vehicle to contain a defect in design, manufacture, materials, or workmanship, such as the Turbocharger Defect, that will cause catastrophic engine failure with little to no warning or time to take preventive measures or safely remove the vehicle from the road.

v. Agency relationship between the Defendant, VWGoC, and its authorized dealerships as to the Affected Class Vehicles

67. VW and Audi-authorized dealerships are sales agents of the Defendant, VWGoC, and Audi Canada as the vehicle distributor, supplier and/or manufacturer. The dealerships have accepted that undertaking. The Defendant, VWGoC, and Audi Canada, have the ability to control authorized VW and Audi dealers, and acts as the principal in that relationship, as is shown by the following:

- (a) the Defendant, VWGoC, and Audi Canada can terminate the relationship with their dealers at will;
- (b) the relationships are indefinite;
- (c) the Defendant, VWGoC, and Audi Canada is in the business of selling vehicles as are their dealers;
- (d) the Defendant, VWGoC, and Audi Canada provides tools and resources for VW and Audi dealers to sell vehicles;
- (e) the Defendant, VWGoC, and Audi Canada supervise their dealers regularly;
- (f) without the Defendant, VWGoC, and Audi Canada, the relevant VW and Audi dealers would not exist;
- (g) the Defendant, VWGoC, and Audi Canada require the following of their dealers:
 - (i) reporting of sales;
 - (ii) computer network connection with the Defendant, VWGoC, and Audi Canada;
 - (iii) training of dealers' sales and technical personnel;
 - (iv) use of the Defendant, VWGoC's, and Audi Canada's computer software system;
 - (v) participation in the Defendant, VWGoC's, and Audi Canada's training programs;

- (vi) establishment and maintenance of service departments in VW and Audi dealerships;
 - (vii) certify VW and Audi pre-owned vehicles;
 - (viii) reporting to the Defendant, VWGoC, and Audi Canada with respect to the vehicle delivery, including reporting customer names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and
 - (ix) displaying the Defendant, VWGoC's, and Audi Canada's logos on signs, literature, products, and brochures within VW and Audi dealerships.
- (h) dealerships bind the Defendant, VWGoC, and Audi Canada with respect to:
- (i) warranty repairs on the vehicles the dealers sell; and
 - (ii) issuing service contracts administered by the Defendant, VWGoC, and Audi Canada.
- (i) the Defendant, VWGoC, and Audi Canada further exercise control over their dealers with respect to:
- (i) financial incentives given to VW and Audi dealer employees;
 - (ii) locations of dealers;
 - (iii) testing and certification of dealership personnel to ensure compliance with the Defendant, VWGoC's, and Audi Canada's policies and procedures; and
 - (iv) customer satisfaction surveys, pursuant to which the Defendant, VWGoC, and Audi Canada allocates the number of VW and Audi

cars to each dealer, thereby directly controlling dealership profits;

- (j) VW and Audi dealers sell VW and Audi vehicles on behalf of the Defendant, VWGoC, and Audi Canada pursuant to a "floor plan," and the Defendant, VWGoC, and Audi Canada does not receive payment for their vehicles until the dealerships sell them;
- (k) dealerships bear the Defendant, VWGoC's, and Audi Canada's brand names, use its logos in advertising and on warranty repair orders, post VW and Audi-brand signs for the public to see, and enjoy a franchise to sell the Defendant, VWGoC's, and Audi Canada's products, including the Affected Class Vehicles;
- (l) the Defendant, VWGoC, and Audi Canada require VW and Audi dealers to follow its rules and policies in conducting all aspects of dealer business, including the delivery of its warranties described above, and the servicing of defective vehicles such as the Affected Class Vehicles;
- (m) the Defendant, VWGoC, and Audi Canada require their dealers to post their brand names, logos, and signs at dealer locations, including dealer service departments, and to identify itself and to the public as authorized VW and Audi dealers and servicing outlets for the Defendant, VWGoC's, and Audi Canada's vehicles;
- (n) the Defendant, VWGoC, and Audi Canada require their dealers to use service and repair forms containing their brand names and logos;
- (o) the Defendant, VWGoC, and Audi Canada require VW and Audi dealers to perform their warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by them;
- (p) the Defendant, VWGoC, and Audi Canada require VW and Audi dealers to use parts and tools either provided by them, or approved by them, and to inform the Defendant, VWGoC, and Audi Canada when dealers discover that unauthorized parts have been installed on one of their vehicles;
- (q) the Defendant, VWGoC, and Audi Canada require dealers' service and repair employees to be trained by it in the methods of repair of VW- and Audi-brand

vehicles;

- (r) the Defendant, VWGoC, and Audi Canada audit VW and Audi dealerships' sales and service departments and directly contacts the customers of said dealers to determine their level of satisfaction with the sale and repair services provided by the dealers, who are then granted financial incentives or reprimanded depending on the level of satisfaction;
- (s) the Defendant, VWGoC, and Audi Canada require their dealers to provide them with monthly statements and records pertaining, in part, to dealers' sales and servicing of their vehicles;
- (t) the Defendant, VWGoC, and Audi Canada provide technical service bulletins and messages to their dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects;
- (u) the Defendant, VWGoC, and Audi Canada provide their dealers with specially trained service and repair consultants with whom dealers are required by the Defendant, VWGoC, and Audi Canada to consult when dealers are unable to correct a vehicle defect on their own;
- (v) the Defendant, VWGoC, and Audi Canada require VW and Audi-brand vehicle owners and/or lessees to go to authorized VW and Audi dealers to obtain servicing under VW and Audi warranties; and
- (w) VW and Audi dealers are required to notify the Defendant, VWGoC, and Audi Canada whenever a VW and/or Audi vehicle is sold or put into warranty service.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on its own behalf and on behalf of Class Members, claims against the Defendant, VWGoC, as follows:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
 - (b) a declaration that the Defendant, VWGoC, was negligent in the design, material, manufacturing and/or workmanship of the Affected Class Vehicles equipped with

a defective turbocharger causing the Plaintiff and Class Members to suffer damages;

(c) a declaration that the Defendant, VWGoC:

- (i) breached its duty of care to the Plaintiff and Class Members;
- (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;
- (iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 ("**SGA**"), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1; and
- (iv) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 ("**BPCPA**"); Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, C.C.S.M. c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A, and Section 10 of the *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and

are consequently liable to Class Members for damages;

- (d) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; and *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1 and waiving any such applicable notice provisions;
- (e) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;
- (f) an order directing the Defendants, VWGoC, to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; Section 93(1)(f) of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; Section 18(11) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (g) a declaration that the Defendant, VWGoC, breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and Class Members for damages;
- (h) an order enjoining the Defendant, VWGoC, from continuing its unlawful and unfair business practices as alleged herein;

- (i) a declaration that the Defendant, VWGoC, fraudulently concealed the Turbocharger Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (j) injunctive and/or declaratory relief requiring the Defendant, VWGoC, to recall, repair and/or replace the defective turbocharger equipped in the Affected Class Vehicles and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (k) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("**CPA**") directing an aggregate assessment of damages;
- (l) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (m) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (n) special damages;
- (o) punitive damages;
- (p) costs of investigation pursuant to section 36 of the *Competition Act*;
- (q) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (r) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and proposed Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the "**CJPTA**") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this

proceeding exists pursuant to sections 10 (e)(i), (e)(iii)(A)(B), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:

- (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Causes of Action

Negligence

2. The Defendant, VWGoC, at all material times owed a duty of care to the Plaintiff and Class to provide a product that did not have a design, material, manufacturing, and/or workmanship defect. The Affected Class Vehicles equipped with the defective turbocharger pose a real, substantial and imminent risk of harm or injury to Class Members, and catastrophic damage to the vehicle's engine, on account of the Turbocharger Defect.
3. The Defendant, VWGoC, as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles and their counterparts, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and Class Members to ensure that the Affected Class Vehicles and their component parts, including the turbocharger, were reasonably safe for use.

4. At all material times, the Defendant, VWGoC, owed a duty of care to the Plaintiff and Class Members and breached that standard of care expected in the circumstances. It knew that its turbocharger equipped in the Affected Class Vehicles was defective resulting in an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine. Despite such knowledge, the Defendant, VWGoC, continued to distribute, sell and/or lease VW and Audi vehicles equipped with the defective turbocharger.
5. The Defendant, VWGoC, owed the Plaintiff and Class Members a duty to carefully monitor the safety and post-market performance of the turbocharger equipped in the Affected Class Vehicles. The Defendant, VWGoC, had a duty to warn, or promptly warn, the Plaintiff and Class Members that its turbocharger equipped in the Affected Class Vehicles was defective
6. resulting in an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine, and which it failed to do.
7. The circumstances of the Defendant, VWGoC, being in the business of designing, manufacturing, distributing, selling, leasing and/or placing the Affected Class Vehicles and their component parts, including the vehicle's turbocharger, into the Canadian stream of commerce are such that the Defendant, VWGoC, is in a position of legal proximity to the Plaintiff and Class Members, and therefore is under an obligation to be fully aware of safety when designing, manufacturing, assembling, distributing and/or selling a product such as the Affected Class Vehicles equipped with the defective turbocharger.
8. It was reasonably foreseeable that a failure by the Defendant, VWGoC, to design, manufacturer and/or install a turbocharger in the Affected Class Vehicles that did not cause an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, and thereafter to monitor the performance of the turbocharger following market introduction, and take corrective measures when required, would lead to the Affected Class Vehicles being

unable to accelerate and/or maintain speed and cause harm to the Plaintiff and Class Members and damage to the Affected Class Vehicles.

9. The Defendant, VWGoC, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle supplier, distributor and/or manufacturer in the circumstances in that:
 - (a) it knew, or ought to have known, about the Turbocharger Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
 - (b) it designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied, leased and/or sold vehicles equipped with a defective turbocharger causing an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine;
 - (c) it failed to timely warn the Plaintiff, Class Members and/or consumers about the Turbocharger Defect in the Affected Class Vehicles causing an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine;
 - (d) it failed to change the design, manufacture, material and/or assembly of the defective turbocharger equipped in the Affected Class Vehicles in a reasonable and timely manner;
 - (e) it failed to provide a safer alternative design for the turbocharger equipped in the Affected Class Vehicles that did not cause an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine;
 - (f) it failed to properly inspect and test the turbocharger equipped in the Affected Class Vehicles;

- (g) it knew, or ought to have known, about the Turbocharger Defect in the Affected Class Vehicles but failed to disclose it;
 - (h) it failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles with a defective turbocharger;
 - (i) the turbocharger presented a serious safety hazard to vehicle occupants as the Affected Class Vehicles could lose engine power, ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine;
 - (j) notwithstanding that it foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class Vehicles, it failed or failed to promptly eliminate or correct the Turbocharger Defect; and
 - (k) it failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship, and/or quality of product which would reasonably be expected of them as an automobile supplier, distributor and/or manufacturer.
10. As a result of the Turbocharger Defect in the Affected Class Vehicles by reason of the Defendant, VWGoC's, negligence and its failure to disclose and/or adequately warn of the Turbocharger Defect, the Plaintiff and Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced or diminished. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, VWGoC, should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, *inter alia*, repair, towing, alternative transportation and vehicle payments as a result of the Turbocharger Defect.

Breach of Express Warranty

11. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
12. As an express warrantor, manufacturer, distributor, supplier and/or merchant, the

Defendant, VWGoC, had certain obligations to conform the Affected Class Vehicles with the defective turbocharger to its express warranties.

13. The Defendant, VWGoC, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
14. The Defendant, VWGoC, provided the Plaintiff and Class Members with one or more express warranties. For illustrative purposes, the Defendant, VWGoC, provided: (i) a New Vehicle Limited Warranty that includes coverage for 4 years or 80,000 km, whichever occurs first; and/or (ii) a Powertrain Limited Warranty for 5 years or 100,000 km, whichever occurs first, which covers "all internal [engine] parts", including the turbocharger. Under express warranties provided to Class Members, the Defendant, VWGoC, promised to repair or replace covered defective engine components arising out of defects in materials and/or workmanship, including the turbocharger, at no cost to owners and/or lessees of the Affected Class Vehicles. However, given the latent nature of the Turbocharger Defect, the Defendant, VWGoC, knew or ought to have known that the majority of turbocharger failures occur outside the warranty periods.
15. The Defendant, VWGoC, represented in the maintenance schedules and warranty guides for Affected Class Vehicles that there would be no need to inspect, repair, replace, or service the turbocharger prior to 225,000 km. Such representations formed the basis of the bargain in Class Members' decisions to purchase the Affected Class Vehicles.
16. The Defendant, VWGoC, also marketed the Affected Class Vehicles as high quality, reliable, and safe vehicles and that the Defendant, VWGoC, would stand behind the quality of its products and promptly repair any defects. These statements helped conceal the existence of the Turbocharger Defect and its corresponding safety risk from the Plaintiff and Class Members in order to shift the expense of Affected Class Vehicle engine turbocharger repairs to the Plaintiff and Class Members.
17. In connection with the purchase of the Affected Class Vehicles, the Defendant, VWGoC, provided maintenance schedules and warranty guides which omit any mention of the

turbochargers as requiring routine inspection, service, or replacement within the first 225,000 km, or later scheduled maintenance intervals.

18. Neither the maintenance section nor any other section of the warranty pamphlet provides any recommended service intervals or information relating to the care of the vehicle engine turbocharger. Even if Plaintiff and Class Members proper maintenance of their Affected Class Vehicles that conformed with the schedules set forth in the Defendant, VWGoC's, warranty, the substantially certain failure caused by the latent turbocharger defect prevents the Defendant, VWGoC, from fulfilling its warranty promise of providing a dependable and safe driving experience.
19. Under the express warranties provided to the Plaintiff and Class Members, the Defendant, VWGoC, promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the Turbocharger Defect, at no cost to owners and/or lessees of Affected Class Vehicles and within a reasonable time. As alleged herein, the Defendant, VWGoC, breached its express warranties.
20. The Defendant, VWGoC's, express warranties formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased their respective Affected Class Vehicles. Given the latent nature of the Turbocharger Defect, the Defendant, VWGoC, knew or ought to have known that the majority of the turbocharger failures (and corresponding engine damage) would occur outside of the warranty periods.
21. Class Members experienced the existence of the Turbocharger Defect within the warranty periods but had no knowledge of the existence of the Turbocharger Defect and associated safety risk, which were known and concealed by the Defendant, VWGoC. Despite the existence of the express warranties, the Defendant, VWGoC, failed to adequately inform the Plaintiff and Class Members that Affected Class Vehicles incorporated the Turbocharger Defect and failed to provide a suitable repair or replacement of the turbocharger free of charge within a reasonable time.
22. The failure to provide a suitable repair or replacement of the defective turbocharger constitutes futility of the warranty.
23. In addition, the Turbocharger Defect was substantially certain to prematurely fail.
24. The Defendant, VWGoC, breached the express warranty promising to repair and correct

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

25. The Defendant, VWGoC, has not suitably repaired or replaced the defective turbocharger free of charge for the Plaintiff and Class Members despite the existence of the Turbocharger Defect in Affected Class Vehicles at the time of sale and/or lease.
26. The Defendant, VWGoC, further breached its express warranties by selling and/or leasing the Affected Class Vehicles that were defective with respect to engine materials, workmanship, design and manufacture, and were accompanied by an Owner's Manual and/or maintenance schedule that incorporated no inspection and service materials for the turbocharger for the first 225,000 km, or later scheduled maintenance intervals, although the Defendant, VWGoC, knew of the Turbocharger Defect and that the turbocharger required periodic inspection and service.
27. Affected Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because the engine materials, workmanship, design and/or manufacturing defects which cause engine failure and/or failure to perform as warranted.
28. The Plaintiff and Class Members had sufficient direct dealings with the Defendant, VWGoC, and its agents and/or its authorized dealerships, to establish privity of contract between the Defendant, VWGoC, on the one hand, and the Plaintiff and Class Members, on the other hand. Nonetheless, privity is not required here because the Plaintiff and each Class Member are intended third-party beneficiaries of contracts between the Defendant, VWGoC, and its dealers, and specifically, of its warranties. The authorized dealers were not intended to be the ultimate users of the Affected Class Vehicles and have no rights under the warranty agreements provided with the Affected Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers of the Affected Class Vehicles only.
29. The Defendant, VWGoC, was provided notice of the Turbocharger Defect by numerous consumer complaints made to its authorized dealers and through its own testing, affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here because the Defendant, VWGoC, has known of and concealed the Turbocharger Defect and has failed to provide a suitable repair or replacement of the defective turbocharger free of charge within a reasonable

time.

30. Any attempt by the Defendant, VWGoC, to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, the Defendant, VWGoC's, warranty limitation is unenforceable because it knowingly sold a defective product without informing consumers of the Turbocharger Defect. The time limits incorporated in the Defendant, VWGoC's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. The Plaintiff and Class Members did not determine these time limitations, the terms of which unreasonably favored the Defendant, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and Class Members, and the Defendant, VWGoC, knew or ought to have known that Affected Class Vehicles were defective at the time of sale and/or lease and that the Turbocharger Defect posed a safety risk.
31. The limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because the Defendant, VWGoC, failed and/or has refused to adequately provide the promised remedies within a reasonable time.
32. The Defendant, VWGoC, knew that Affected Class Vehicles were inherently defective and did not conform to its warranties and the Plaintiff and Class Members were induced to purchase and/or lease Affected Class Vehicles under false and/or fraudulent pretenses.
33. Class Members experienced the existence of the Turbocharger Defect within the warranty periods but had no knowledge of the existence of the Turbocharger Defect which was known and concealed by the Defendant, VWGoC. Despite the existence of express warranties, the Defendant, VWGoC, failed to inform the Plaintiff and Class Members that Affected Class Vehicles incorporated the Turbocharger Defect during the warranty periods and wrongfully transferred the costs of repair or replacement of the turbocharger and damaged engines to the Plaintiff and Class Members.
34. As a result of the Turbocharger Defect Affected Class Vehicles are not reliable and owners and/or lessees of these vehicles have lost confidence in the ability of Affected Class Vehicles to perform the function of safe and reliable transportation.

35. The Plaintiff and Class Members could not have reasonably discovered the Turbocharger Defect.
36. As a direct and proximate result of the Defendant, VWGoC's, breach of express warranties, the Plaintiff and Class Members have suffered damages.
37. Finally, as a result of the Defendant, VWGoC's, breach of express warranty as set forth herein, the Plaintiff and Class Members assert, as additional and/or alternative remedies, the revocation of acceptance of goods and the return to the Plaintiff and Class Members the purchase price and/or lease payments of all Affected Class Vehicles currently owned and/or leased, and for such other incidental and consequential damages as allowed.

Breach of the Implied Warranty or Condition of Merchantability pursuant to SGA and Parallel Provincial Sale of Goods Legislation

38. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
39. The Defendant, VWGoC, is a "seller" with respect to motor vehicles within the meaning of the SGA, *Sale of Goods Act*, R.S.A. 2000, c. S-2; *Sale of Goods Act*, R.S.S. 1978, c. S-1; *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; *Sale of Goods Act*, R.S.O. 1990, c. S.1; *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; *Sale of Goods Act*, R.S.N.S. 1989, c. 408; *Sale of Goods Act*, R.S.N.B. 2016, c. 110; *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; *Sale of Goods Act*, R.S.Y. 2002, c. 198; *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.
40. The Defendant, VWGoC, is and was at all relevant times a seller with respect to Affected Class Vehicles equipped with the defective turbocharger. The Defendant, VWGoC, directly sold and marketed vehicles equipped with the defective turbocharger to customers through authorized dealers, like those from whom Class Members bought and/or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendant, VWGoC, knew that the Affected Class Vehicles equipped with the defective turbocharger would and did pass unchanged from the authorized dealers to

Class Members, with no modification to the turbocharger.

41. The turbocharger equipped in the Affected Class Vehicles is inherently defective as it causes an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine.
42. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the SGA, sections 16(2) and/or (4) of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.
43. The Defendant, VWGoC, marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
44. Affected Class Vehicles equipped with the said turbocharger were defective at the time they left the possession of the Defendant, VWGoC. The Defendant, VWGoC, knew of this defect at the time these transactions occurred. Thus, Affected Class Vehicles equipped with the defective turbocharger, when sold and/or leased and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.
45. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, VWGoC, through its subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or

lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendant, VWGoC, was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, VWGoC, as to its Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and Class Members are intended third-party beneficiaries of contracts between the Defendant, VWGoC, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant's VWGoC's, implied warranties.

46. The Defendant, VWGoC's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, VWGoC, and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendant, VWGoC, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendant, VWGoC's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
47. The Defendant, VWGoC, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.
48. As a result of the Turbocharger Defect, the Affected Class Vehicles were not in merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.
49. The Defendant, VWGoC, knew about the Turbocharger Defect in the Affected Class Vehicles, allowing it to cure its breach of warranty if it chose.
50. At all times that the Defendant, VWGoC, warranted, leased and/or sold its Affected Class Vehicles, it knew or should have known that its warranties were false and yet it did not disclose the truth or stop manufacturing or selling its Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendant, VWGoC, delivered them to its resellers, authorized dealers and/or distributors which leased and/or sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.

51. The Defendant, VWGoC's, attempt to disclaim or limit the implied warranty of merchantability *vis-à-vis* the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant, VWGoC's, warranty limitation is unenforceable because it knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Turbocharger Defect in the Affected Class Vehicles. The time limits contained in the Defendant, VWGoC's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and the Plaintiff and Class Members, and the Defendant, VWGoC, knew that the Affected Class Vehicles were equipped with a defective turbocharger which causes an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine.
52. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant, VWGoC's, conduct alleged herein. Affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties, therefore, would be unnecessary and futile.
53. As a direct and proximate result of the Defendant, VWGoC's, breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss, diminution and/or damage as a result of the Turbocharger Defect in the Affected Class Vehicles pursuant to sections 56 of the SGA, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

Violation of *BPCPA* and Parallel Provincial Consumer Protection Legislation

54. The Plaintiff and Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
55. The Defendant, VWGoC, is in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A".
56. The Affected Class Vehicles are consumer "goods" within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A".
57. Class Members in British Columbia who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are "consumers" within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A".
58. The purchase and/or lease of the Affected Class Vehicles by putative Class Members in British Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a "consumer transaction" within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A".
59. The Defendant, VWGoC, is a "supplier" within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A", as it carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendant, VWGoC, is the vehicle supplier and/or manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers including Class Members in British Columbia. At all relevant times, the Defendant, VWGoC, was a supplier and/or seller of the Affected Class Vehicles as its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, VWGoC.

60. By failing to disclose and actively concealing the Turbocharger Defect in the Affected Class Vehicles, the Defendant, VWGoC, engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A". The Defendant, VWGoC, knew that the Affected Class Vehicles equipped with a defective turbocharger caused an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine. The Defendant, VWGoC, made misleading statements or omissions concerning the Turbocharger Defect, but yet failed to adequately warn consumers.
61. As alleged herein, the Defendant, VWGoC, made misleading representations and omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles.
62. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, VWGoC's, failure to disclose its knowledge of the Turbocharger Defect and associated safety risk.
63. In particular, the Defendant, VWGoC, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles were equipped with a defective turbocharger, which caused an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, damage to the vehicle's engine and ending in a costly repair and/or replacement process that the Defendant, VWGoC, will not cover, as follows.
 - (a) failing to disclose that the Affected Class Vehicles equipped with the defective turbocharger was not of a particular standard, quality, or grade;
 - (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Turbocharger Defect;
 - (c) failing to disclose at the time of purchase and/or lease that the Affected Class

Vehicles, including the defective turbocharger, were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real and substantial danger or harm to occupants of the Affected Class Vehicles, and damage to the vehicle's engine;

- (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the defective turbocharger in the Affected Class Vehicles' to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, VWGoC, possessed exclusive knowledge of the inherent defect in the turbocharger equipped in the Affected Class Vehicles before and at the time of purchase and/or lease;
 - (e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the turbocharger equipped in the Affected Class Vehicles was defective, even though the Defendant, VWGoC, knew about the Turbocharger Defect; and
 - (f) representing that the Turbocharger Defect in the Affected Class Vehicles would be covered under its warranty program.
64. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, VWGoC's, failure to disclose its exclusive knowledge that the defective turbocharger equipped in the Affected Class Vehicles caused an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine
65. By failing to disclose and actively concealing the Turbocharger Defect, the Defendant, VWGoC, engaged in unfair or deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
66. Further, as alleged herein, the Defendant, VWGoC, made misleading representations and/or omissions concerning the quality, advanced technology, reliability, durability performance and/or safety of the Affected Class Vehicles equipped with the defective

turbocharger, by:

- (a) publishing owners' manuals that made materially misleading omissions as to claims of advanced technology, safety and dependability but which uniformly omitted any warning to consumers that the Affected Class Vehicles were equipped with a defective turbocharger, which caused an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine;
 - (b) advertisements which uniformly omitted any information about the Turbocharger Defect and which misled consumers into believing that the turbocharger would function properly; and
 - (c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles equipped with the defective turbocharger were dependable, technologically advanced, safe, of the highest quality and with exceptional capability.
67. The Defendant, VWGoC's, conduct as alleged herein was, and is, in violation of sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", in particular, by:
- (a) representing that the Affected Class Vehicles, including its turbocharger, were defect-free and did not pose a safety hazard, which it did not;
 - (b) representing that the Affected Class Vehicles, including its turbocharger, were of a particular standard, quality or grade, when they were not;
 - (c) advertising the Affected Class Vehicles, including its turbocharger, with the intent not to sell them as advertised; and
 - (d) representing that the Affected Class Vehicles, including its turbocharger, have been supplied in accordance with a previous representation as to quality, advanced technology, reliability, durability, performance and/or safety, when they have not.

68. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, VWGoC's, failure to disclose its exclusive knowledge of the Turbocharger Defect and/or its representations made as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles in its sales brochure materials, manuals, press releases and/or websites.
69. The Defendant, VWGoC, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the Turbocharger Defect, with an intent to mislead Class Members.
70. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, VWGoC's, failure to disclose its knowledge of the Turbocharger Defect and associated safety risk.
71. Class Members had no way of knowing of the Defendant, VWGoC's, representations were false, misleading and incomplete or knowing the true nature of the Turbocharger Defect in the Affected Class Vehicles. As alleged herein, the Defendant, VWGoC, engaged in a pattern of deception in the face of a known turbocharger defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendant's, VWGoC's, deception on their own.
72. The Defendant, VWGoC, knew, or ought to have known, that its conduct violated sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
73. The Defendant, VWGoC, owed Class Members a duty to disclose the truth about the Turbocharger Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, VWGoC,:
 - (a) possessed exclusive knowledge of the Turbocharger Defect in the Affected Class Vehicles;
 - (b) intentionally concealed the foregoing from Class Members; and/or
 - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had a turbocharger defect.

74. The Defendant, VWGoC, had a duty to disclose that the turbocharger equipped in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety hazard and Class Members relied on the Defendant, VWGoC's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Turbocharger Defect.
75. The Defendant, VWGoC's, conduct proximately caused injuries to Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
76. Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant, VWGoC's, conduct in that Class Members incurred costs related the Turbocharger Defect including, *inter alia*, repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
77. The Defendant, VWGoC's, violations cause continuing injuries to Class Members. The Defendant, VWGoC's, unlawful acts and practices complained of herein affect the public interest.
78. The Defendant, VWGoC, knew of the defective turbocharger equipped in the Affected Class Vehicles and which were materially compromised by the Turbocharger Defect.
79. The facts concealed and omitted by the Defendant, VWGoC, from Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had Class Members known about the defective nature of the turbocharger equipped in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.
80. Class Members' injuries were directly or proximately caused by the Defendant, VWGoC's, unlawful and deceptive business practices.
81. As a result of the Defendant, VWGoC's, conduct as alleged herein, Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, VWGoC, in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *BPCPA*, an injunction under

section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to such remedies under parallel provincial consumer protection legislation, as described in Schedule "A".

82. Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as a result of the Defendant, VWGoC's, failure to disclose and/or actively conceal the Turbocharger Defect from Class Members in British Columbia and its misrepresentations as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles.

Breach of the *Competition Act*

83. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

84. By making representations to the public as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, the Defendant, VWGoC, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:

- (a) were made to the public in the form of advertising brochures, manuals, statements and/or other standardized statements as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles;
- (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests;
- (c) stated safety of the Affected Class Vehicles; and
- (d) were false and misleading in a material respect.

85. At all relevant times, the Defendant, VWGoC, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, VWGoC, as to the Affected Class Vehicles as its resellers, authorized dealers and/or distributors at all

material times were acting as the agents of the Defendant, VWGoC.

86. The Defendant, VWGoC, engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Turbocharger Defect in the Affected Class Vehicles from Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Turbocharger Defect. The Defendant, VWGoC, should have disclosed this information because it was in a superior position to know the true facts related to the Turbocharger Defect and Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Turbocharger Defect.
87. The Turbocharger Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, VWGoC, knew that the Affected Class Vehicles equipped with the defective turbocharger caused an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine, which triggered the Defendant's, VWGoC's, duty to disclose the safety issue to consumers.
88. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Turbocharger Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendant, VWGoC, breached its duty to disclose these facts, violated the Competition Act and caused damage to the Plaintiff and Class Members. The Defendant, VWGoC's, omissions and concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.
89. Further, the Plaintiff and Class Members relied upon the Defendant, VWGoC's, misrepresentations as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.
90. The Plaintiff and Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

Fraudulent Concealment

91. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
92. The Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the fact that Affected Class Vehicles contain a turbocharger defect and corresponding safety risk, with the intent that the Plaintiff and Class Members rely on these omissions. As a direct result of this fraudulent conduct, the Plaintiff Class Members have suffered actual damages.
93. The Defendant, VWGoC, knew (at the time of sale and thereafter) as a result of pre-release testing that Affected Class Vehicles incorporated the Turbocharger Defect, concealed the Turbocharger Defect and never intended to repair or replace the turbocharger during the warranty periods. To date, the Defendant, VWGoC, has not provided Class Members with a repair or remedy for the Turbocharger Defect.
94. The Defendant, VWGoC, owed a duty to disclose the Turbocharger Defect and its corresponding safety risk to the Plaintiff and Class Members because the Defendant, VWGoC, possessed superior and exclusive knowledge concerning the Turbocharger Defect. The Defendant, VWGoC, had a duty to disclose any information relating to the safety, quality, functionality, and reliability of Affected Class Vehicles because it consistently marketed Affected Class Vehicles as safe.
95. As the Defendant, VWGoC, made representations to the public concerning Affected Class Vehicle safety, quality, functionality, and reliability, it was under a duty to disclose the omitted facts as to the Turbocharger Defect. Rather than disclose the Turbocharger Defect, the Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the presence of the Turbocharger Defect and corresponding safety risk, to sell additional Affected Class Vehicles and avoid the cost of repair or replacement of the turbocharger.
96. No reasonable consumer expects a vehicle to contain a concealed defect in design, manufacture, materials, or workmanship, such as the Turbocharger Defect, that will lead

to thousands of dollars in repair or replacement costs, and will cause catastrophic engine failure with little to no warning or time to take preventative measures or safely remove the vehicle from the road.

97. The Defendant, VWGoC, intended to conceal the material facts concerning the Turbocharger Defect with the intent to deceive. This intent was manifested by Defendant, VWGoC, concealing the Turbocharger Defect from prospective purchasers, owners and/or lessees during the warranty period while issuing TSBs to its dealers. The Defendant, VWGoC, benefitted by concealing the defect in that it could charge a higher price premium by concealing the information and were therefore motivated to do so.
98. The Plaintiff and Class Members would not have purchased and/or leased the Affected Class Vehicles but for the Defendant, VWGoC's, omissions and concealment of material facts concerning the nature and quality of Affected Class Vehicles and existence of the Turbocharger Defect and corresponding safety risk, or would have paid less for the Affected Class Vehicles. The Defendant, VWGoC, knew its concealment and suppression of material facts was false and misleading and knew the effect of concealing those material facts. The Defendant, VWGoC, knew its concealment and suppression of the Turbocharger Defect would sell more Affected Class Vehicles and would discourage the Plaintiff and Class Members from seeking replacement or repair of the Turbocharger Defect during the applicable warranty periods. The Defendant, VWGoC, intended to induce the Plaintiff and Class Members into purchasing and/or leasing the Affected Class Vehicles and to discourage them from seeking replacement or repair of the Turbocharger Defect in order to decrease costs and increase profits.
99. VWGoC acted with malice, oppression, and fraud.
100. The Plaintiff and Class Members reasonably relied upon the Defendant, VWGoC's, knowing concealment and omissions. As a direct and proximate result of the Defendant's, VWGoC, omissions and active concealment of material facts concerning the Turbocharger
101. Defect and associated safety risk, the Plaintiff and Class Members suffered actual damages in an amount to be determined at trial.

Tolling of the *Limitation Act*, S.B.C. 2012, c. 13

102. The Plaintiff and Class Members had no way of knowing about the Turbocharger Defect in the Affected Class Vehicles. The Defendant, VWGoC, concealed its knowledge of the Turbocharger Defect while continuing to market, sell and/or lease, the Affected Class Vehicles equipped with the defective turbocharger.
103. Within the Limitation Act, and to equivalent legislative provisions in the rest of Canada as described in Schedule "B", the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, VWGoC, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.
104. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the turbocharger equipped in the Affected Class Vehicles.
105. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "B", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
106. Further, due to Defendant, VWGoC's, knowledge and active concealment of the Turbocharger Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "A" has been tolled.
107. Instead of publicly disclosing the Turbocharger Defect in the Affected Class Vehicles, the Defendant, VWGoC, kept the Plaintiff and Class Members in the dark as to the Turbocharger Defect and the serious safety hazard it presented.
108. The Defendant, VWGoC, was under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Turbocharger Defect in the Affected Class Vehicles.
109. The Defendant, VWGoC, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
110. As such, the Defendant, VWGoC, is estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "B", in

defense of this proposed class proceeding.

Plaintiff's(s') address for service:

Dusevic & Garcha
Barristers & Solicitors
#210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

(604) 436-3302

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: April 3, 2025



Signature of K.S. Garcha
lawyer for plaintiff(s)

Schedule “A”

Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	<p><i>Consumer Protection Act</i>, RSA 2000, c. C-26.3</p> <p>“Goods” - Section 1(1)(e)(i); “Consumers” - Section 1(1)(b)(i); “Consumer Transaction” - Section 1(1)(c)(i); “Supplier” - Section 1(1)(i),(ii) and/or (iii); “Unfair Practices” - Sections 5 and 6; Statutory Remedies - Sections 13(1), (2) and 142.1; and Waiver of Notice - Section 7.1(1)</p>
Saskatchewan	<p><i>The Consumer Protection and Business Practices Act</i>, SS 2014, c. C-30.2</p> <p>“Goods” - Section 2(e); “Consumer” - Section 2(b); “Supplier” - Section 2(i); “Unfair Practices” - Sections 6 and 7; and Statutory Remedies - Section 93</p>
Manitoba	<p><i>Consumer Protection Act</i>, CCSM c. C200</p> <p>“Goods” - Section 1; “Consumer” - Section 1; “Consumer Transaction” - Section 1; “Supplier” - Section 1; “Unfair Business Practices” - Sections 2(1) and (3); and Statutory Remedies - 23(2)(a) and (b)</p>
Ontario	<p><i>Consumer Protection Act</i>, 2002, SO 2002, c. 30, Sch. A</p> <p>“Goods” - Section 1; “Consumer” - Section 1; “Supplier” - Section 1; “Unfair Practices” - Sections 14(1) and (2); Statutory Remedies - Sections 18(1) and (2); and Waiver of Notice - Sections 18(3) and (15)</p>

Province or Territory	Legislation
New Brunswick	<p><i>Consumer Product Warranty and Liability Act</i>, SNB 1978, c. C-18.1</p> <p>“Consumer Product” - Section 1(1); “Buyer” - Section 1(1); “Contract for the sale or supply of a consumer product” - Section 1(1); and “Seller” - Section 1(1);</p> <p><i>Consumer Protection Act</i>, SNB 2024, c1</p> <p>“Consumer” – Section 1; “Consumer Agreement” – Section 1; “Consumer Transaction” – Section 1; and “Unfair Practices” – Part 2, Section 10</p>
Québec	<p><i>Consumer Protection Act</i>, CQLR c. P-40.1</p> <p>“Goods” - Article 1(d); “Consumer” - Article 1(e); “Manufacturer” - Article 1(g); and “Merchant” - Article 1</p>

Schedule “B”

Limitation Act Legislation Across Canada

Province or Territory	Legislation
Alberta	<i>Limitations Act</i> , RSA 2000, c. L-12
Saskatchewan	<i>The Limitations Act</i> , SS 2004, c. L-16.1
Manitoba	<i>The Limitation of Actions Act</i> , CCSM c. L150
Ontario	<i>Limitations Act</i> , 2002, SO 2002, c. 24, Sch. B
Newfoundland and Labrador	<i>Limitations Act</i> , SNL 1995, c. L-16.1
Nova Scotia	<i>Limitation of Actions Act</i> , SNS 2014, c. 35
New Brunswick	<i>Limitation of Actions Act</i> , SNB 2009, c. L-8.5
Prince Edward Island	<i>Statute of Limitations</i> , RSPEI 1988, c. S-7
Yukon	<i>Limitation of Actions Act</i> , RSY 2002, c. 139
Northwest Territories	<i>Limitation of Actions Act</i> , RSNWT 1988, c. L-8
Nunavut	<i>Limitation of Actions Act</i> , RSNWT (Nu) 1988, c. L-8
Québec	<i>Civil Code of Québec</i> , CQLR, c. C-1991, art. 2908

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "**CJPTA**") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(i), (iii)(a) & (b), (f), (g), (h) and (l) of the *CJPTA* because this proceeding:

- (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia:
- (e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia;
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed auto defect multi-jurisdictional class proceeding involves certain model year Volkswagen and Audi vehicles installed with Generation 1, 2 or 3 EA888 engines, marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc., in Canada, including the Province of British Columbia, equipped with a defective turbocharger which causes an unexpected loss of engine power or ability to accelerate and/or maintain speed, placing the vehicle at risk of a collision or loss of control, all of which poses a real, substantial and imminent risk of harm or injury to vehicle occupants, and damage to the vehicle's engine.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28

3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1

4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and *Consumer Protection Act*, CQLR c. P-40.1

5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16

6. 49 U.S. Code 301 - *Motor Vehicle Safety Act*

7. *Court Order Interest Act*, R.S.B.C., c. 79

8. *Competition Act*, R.S.C 1985, c. C-34

9. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8; and *Civil Code of Quebec*, CQLR, c. C-1991, art. 2908