

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

N^o: 500-06-001092-200

LUC BARRÉ, residing and domiciled at 137, des Français, in the city of Mont-Saint-Hilaire, Province of Québec, J3H 6J2;

Applicant
-vs-

VOLKSWAGEN GROUP CANADA INC. is incorporated under the laws of Canada and is headquartered at 777 Bayly Street West, Ajax Ontario, Canada L1S 7G7

-and-

THE VOLKSWAGEN GROUP OF AMERICA Inc. is incorporated under the laws of the State of New-Jersey and is headquartered at 2200 Ferdinand Porsche Drive, in Herndon Virginia in the United-States of America at 20171.

-and-

AUDI CANADA INC. is a company incorporated under the laws of Canada and is headquartered at 777 Bayly Street West in Ajax, Ontario, Canada, L1S 7G7

-and-

AUDI OF AMERICA LLC. Is a company incorporated under the laws of the state of Delaware and is headquartered at 2200 Ferdinand Porsche Drive in Herndon Virginia in the United-States of America, 20171

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT A REPRESENTATIVE PLAINTIFF
(Art. 574 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES THE FOLLOWING:

GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following Class, of which he is a member, namely:
 - All persons in Quebec, who own or have owned, or lease or have leased, one or more of the Subject Vehicles affected by or may reasonably be expected to be affected by the timing chain system defect asserted by this Application.

“Subject Vehicles” include, but are not necessarily limited to, the following Volkswagen or Audi branded vehicles containing 1.8L or 2.0L engines:

- certain 2012-2014 VW Beetle;
- 2015-2018 VW Beetle;
- certain 2013-2014 VW Beetle Convertible;
- 2015-2017 VW Beetle Convertible;
- certain 2012 VW CC;
- 2013-2017 VW CC;
- 2012 VW Eos;
- 2013-2016 VW Eos;
- certain 2012 VW GTI;
- 2013-2018 VW GTI;
- 2015-2018 VW Jetta Sedan;
- certain 2012-2014 VW Jetta GLI;
- 2015-2018 VW Jetta GLI;
- 2014-2019 VW Passat Sedan;
- certain 2012-2013 VW Tiguan;
- 2014-2018 VW Tiguan;
- 2015-2018 VW Golf;
- certain 2012 Audi A3;
- 2013-2018 Audi A3;
- certain 2012-2013 Audi A4;
- 2014-2018 Audi A4;
- certain 2012-2013 Audi A5;
- 2014-2018 Audi A5;

- certain 2012 Audi A6;
- 2013-2018 Audi A6;
- certain 2012 Audi TT;
- 2013-2018 Audi TT;
- certain 2012 Audi Q5;
- 2013-2018 Audi Q5;
- and 2015-2018 Audi Q3

(« Class vehicles »)

(referred to herein as “Class Member(s)”, the “Class”, the “Member(s)”);

The Defendants

2. The Defendant, Volkswagen Group Canada, Inc. (“**Volkswagen Canada**”) is incorporated under the laws of Canada and is headquartered at 777 Bayly St W, Ajax, Ontario, L1S 7G7 Canada. Volkswagen Canada conducts business in Canada, including in Quebec, as it appears in a copy of an extract from the *Registrique des entreprises du Québec*, produced herein as **Exhibit P-1**;

3. The Defendant, Volkswagen Group of America, Inc. (“**Volkswagen America**”) is incorporated under the laws of the State of New Jersey and headquartered at 2200 Ferdinand Porsche Dr., Herndon Virginia 20171; as it appears on a page of the website of the State of New Jersey Business Records Service, <https://www.njportal.com/DOR/businessrecords/EntityDocs/BusinessStatCopies.aspx>, communicated herein as **Exhibit P-2**;

4. The Defendant Audi Canada Inc. (“**Audi Canada**”) is a company incorporated under the laws of Canada and is headquartered at Bayly Street, Ajax, Ontario, L1S 7G7 Canada. Audi Canada conducts business in Canada, including Quebec, as it appears in a copy of an extract from the *Registrique des entreprises du Québec*, produced herein as **Exhibit P-3**;

5. The Defendant Audi of America LLC. (“**Audi America**”) is incorporated under the laws of the State of Delaware and headquartered at 2200 Ferdinand Porsche Drive., Herndon Virginia,

20171 with a registered agent for service via the Corporation Service Company, 2711 Centreville Road Suite 400, Wilmington Delaware, 19808, as it appears on a page of the website of the State of Delaware Division of Corporations, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>, communicated herein as **Exhibit P-4;**

6. The business each of Volkswagen Canada, Volkswagen America, Audi Canada, and Audi America includes, but is not necessarily limited to, designing, developing, testing, manufacturing, marketing, and sale of vehicles in Quebec and Canada, including the Subject Vehicles identified herein.
7. The Applicant and Class Members could not reasonably be expected to know which of the Defendants has committed which individual act or omission at this stage;
8. Each of the Defendants are part of a common enterprise, one worldwide corporate entity, acting together for common goals. Each Defendant created and executed a common business plan to manufacture and sell their vehicles throughout the world including in Quebec. The Defendants are therefore solidarily liable for the acts and omissions of the other;
9. Hereinafter, Volkswagen Canada, Volkswagen America, Audi Canada, and Audi America will be collectively referred to as “**Volkswagen**” or the “**Defendants**”

General Facts:

10. The Defendants are major manufacturers of vehicles sold under the VW and Audi brands throughout Canada, including Quebec. The Defendants designed, manufactured, imported, distributed, marketed, and/or sold the Subject Vehicles in Canada, including Quebec. The Defendants also provided service and maintenance for the Subject Vehicles through their extensive network of authorized dealers and service providers nationwide;
11. The Defendants researched, designed, tested, manufactured, distributed, and promoted the Subject Vehicles, across Canada, including in Quebec:

- (a) Each created and executed a common business plan to design, manufacture, and sell Subject Vehicles in Quebec and in Canada and throughout the world for profit;
 - (b) Their business was inextricably interwoven. Each contributed money, effort, knowledge, and other assets and resources to the common enterprise; and
 - (c) Each undertook to be bound by the warranties given to Class Members of the sale of Subject Vehicles in Quebec;
12. The Applicant and Members of the Class purchased, leased, and/or own Subject Vehicles;
13. The Defendants wrongfully and intentionally concealed a defect in the timing chain system of the Subject Vehicles, which can fail at any time, which has forced or will force the Applicant and Members of the Class to incur out of pocket costs to repair or replace the damaged engine parts of their entire engine or will result in a diminished resale value of the Subject Vehicles causing damage for the Class;
14. Subject Vehicles are equipped with EA888 series 2.0L and 1.8L series engines containing the Timing Chain System Defect which is prone to premature failure, creating a safety risk, forcing Plaintiffs and members of the Classes to pay thousands of dollars to repair or replace the damaged engine parts or entire engine, and causing the Applicant and Members of the Class to overpay for their Subject Vehicles at the time of sale or lease;
15. Prior to the introduction of the EA888 series 2.0L and 1.8L series engines utilizing a camshaft timing chain, the Defendants used timing belts to synchronize the crankshaft and the camshafts. Beginning in the model year 2008, the Defendants began to use engines with timing chains to synchronize the operation of the crankshaft with the camshafts;
16. Generally, a timing chain and a timing belt perform the same function, synchronizing the crankshaft with the camshafts. However, noise level, cost-savings, and maintenance considerations, among others, influence a vehicle manufacturer's decision to use a timing chain or timing belt system. Timing chains usually last considerably longer than timing belts and are expected to last for the useful life of the engine;

Timing Chain Systems:

17. The timing chain system is compromised *inter alia*, of the camshaft sprockets, camshaft chain, hydraulic tensioner, timing gear-tensioning rail and timing gear chain rails;
18. In order for a conventional four stroke internal combustion engine to function, fuel and air must be mixed in a cylinder. The resulting “combustion” causes the pistons to reciprocate and the crankshaft to rotate. Waste products of the combustion process are then removed to permit further combustion to occur. In a conventional gasoline powered automobile, the combustion occurs in an engine cylinder. The addition of fuel and air and the removal of combustion products must occur in a carefully regulated sequence to permit the engine to operate;
19. To regulate the addition of fuel and air and removal of byproducts, all Subject Vehicles contain a timing system that controls the timing of the opening and closing of the engine’s intake valves (responsible for releasing fuel and air into the engine cylinder) and exhaust valves (responsible for clearing the byproducts of combusted fuel and air). A timing chain connects the crankshaft (connected to the pistons) to the camshafts—which opens and closes the cylinder valves. The camshafts is designed to open and close the intake valves and exhaust valves in specifically timed intervals synchronized to the pistons;
20. The Subject Vehicles have engines which use a double overhead camshaft configuration with two camshafts connected to the crankshaft by a timing chain to ensure that the operating cycle is timed correctly. These engines are a type of four-stroke engine in which one or more of the intake valves or the exhaust valves, in the fully open position, extend into the area into which the piston also travels. This design is known as an interference engine. Thus, if the camshaft timing is sufficiently off due to a stretched, broken, or slipped timing chain, catastrophic engine failure occurs because the pistons will slam into the valves, leading to damaged pistons or valves (or both) and requiring expensive repair or replacement of the engine;
21. For this four-stroke cycle to operate as designed, the crankshaft and the camshafts have to be synchronized to allow proper operation of the piston and valves. A physical connection between the crankshaft and camshaft is typically maintained through the use of a timing belt or a timing chain. The Subject Vehicles use a timing chain to make the connection between

the crankshaft and the camshaft. When the timing system fails, synchronization is lost and the four stroke cycle will be disrupted causing an inability to start, accelerate or maintain speed, immediate power loss, and/or catastrophic engine failure. When a piston drives into open valves, massive damage can be caused to the engine and it will suddenly fail. Numerous dangerous conditions occur when the engine suddenly fails, including that the power assisted brakes and power steering system may cease operating. Thus, additional force is required to steer and stop the vehicle;

22. A properly functioning Timing Chain System is crucial to the safe and reliable operation of the Subject Vehicles;

23. Without proper timing chain tension and synchronization, the engine will run very poorly (if at all) or, if sufficient chain skip and miss-synchronization occur, its failure to function properly will cause cylinder valves and pistons to collide, resulting in severe internal damage to the engine and additional fuel expense;

24. The timing chain system defect also presents a significant safety risk for the Applicant and Members of the Class because when the timing chain system suddenly and unexpectedly fails, the Subject Vehicles lose engine power, which causes a loss in the ability to accelerate, maintain speed, and adequately control the steering wheel or fully engage the brakes;

25. Thus, drivers and occupants of the Subject Vehicles are at risk of collisions and other mishaps as a result of the Defendants' failure to disclose the existence of the timing chain system defect and corresponding safety risk;

Defective Timing Chain Systems:

26. Despite the Defendants' knowledge of the timing chain system defect, the Defendants have never disclosed to the Applicant and members of the Class that the defect exists of that drivers and occupants of the Subject Vehicles are at risk;

27. Notwithstanding the fact that the timing chain system should operate normally in vehicles for at least 200,000 kilometers, the Defendants have refused to repair or replace the timing chain

system outside of the time periods covered by the manufacturer's warranties. Thus, the Defendants have wrongfully and intentionally transferred the cost of the repair or the replacement of the timing chain system to the Applicant and Members of the Class by fraudulently concealing the existence of the defect, which the Defendants know will typically occur after the expiration of the warranties;

28. The Subject Vehicles are equipped with EA888 1.8L or 2.0L engines, that contain the defective timing chain system;

29. As a result of the defect, the EA888 1.8L and 2.0L engines are prone to premature failure before the end of the useful life of the engine and before 200,000 driven kilometres—the lowest number of kilometres Defendants recommend for regularly scheduled maintenance;

30. The Defendants designed, manufactured, imported, distributed, marketed and sold the Subject Vehicles with the defective timing chain system;

31. The EA888 1.8L and 2.0L engines with the defective timing chain system is contained in at least the following Volkswagen and Audi vehicles;

- certain 2012-2014 VW Beetle;
- 2015-2018 VW Beetle;
- certain 2013-2014 VW Beetle Convertible;
- 2015-2017 VW Beetle Convertible;
- certain 2012 VW CC;
- 2013-2017 VW CC;
- 2012 VW Eos;
- 2013-2016 VW Eos;
- certain 2012 VW GTI;
- 2013-2018 VW GTI;
- 2015-2018 VW Jetta Sedan;
- certain 2012-2014 VW Jetta GLI;
- 2015-2018 VW Jetta GLI;
- 2014-2019 VW Passat Sedan;
- certain 2012-2013 VW Tiguan;
- 2014-2018 VW Tiguan;
- 2015-2018 VW Golf;
- certain 2012 Audi A3;

- 2013-2018 Audi A3;
- certain 2012-2013 Audi A4;
- 2014-2018 Audi A4;
- certain 2012-2013 Audi A5;
- 2014-2018 Audi A5;
- certain 2012 Audi A6;
- 2013-2018 Audi A6;
- certain 2012 Audi TT;
- 2013-2018 Audi TT;
- certain 2012 Audi Q5;
- 2013-2018 Audi Q5;
- and 2015-2018 Audi Q3.

32. Based on the Defendants' representation in the USA warranty and maintenance schedules for the Subject Vehicles, the timing chain system is expected to last for the useful life of the engine or at least 200,000 kilometers without the need for maintenance, repair, or replacement. Owners and lessees of Subject Vehicles were provided owner's manuals and USA warranty and maintenance schedules that do not show any timing chain system inspection or maintenance within the first 120,000 miles. Indeed, the timing chain system is omitted from the maintenance schedules;

33. Knowledge and information regarding the timing chain system defect was in the exclusive and superior possession of the Defendants and their dealers, and was not provided to the Applicant and the Class, who could not reasonably discover the defect through due diligence;

34. Based on pre-production testing, design failure mode analysis, and consumer complaints to dealers, *inter alia*, the Defendants were aware of the premature failure of the timing chain system in the Subject Vehicles and fraudulently concealed the defect from the Applicant and Members of the Class;

35. The Defendants' misrepresented the standard, quality or grade of the Subject Vehicles and knowingly, actively, and affirmatively concealed the existence of the timing chain system defect to increase profits and decrease costs by selling additional Subject Vehicles and transferring the Cost of the repair or replacement of the timing chain system to owners and lessees of the Subject Vehicles, including the Applicant and the Class.

36. The Defendants have secretly, so far as the Class is concerned, acknowledged the timing chain system defect by releasing several technical service bulletins describing the issue to their exclusive network of dealerships beginning in or around June 2010;
37. One part that has been identified as the source of the Defect in the Timing Chain System is the “Hydraulic Tensioner, Camshaft Chain Drive” (the “**Chain Tensioner**”). The Chain Tensioner is an internal engine component that automatically controls tension on the timing chain and prevents it from slipping on the camshaft or crankshaft sprockets. Correct Chain Tensioner operation is critical because if proper tension is not maintained on the timing chain, the chain can “jump a tooth” on a camshaft drive sprocket and cause the pistons to strike the valves causing bent cylinder valves, extensive damage to other engine parts, and catastrophic failure of the engine;
38. The Chain Tensioner controls tension by utilizing oil pressure augmented by an internal spring to push an integrated piston with a controlled force against a timing chain tensioning rail that presses against the chain and keeps it in proper tension. There is only oil pressure, however, when the vehicle is turned on and the engine is running. When the vehicle is turned off and during startup, when there is no oil pressure or oil pressure is low, the Chain Tensioner uses a mechanical mechanism to keep the piston from collapsing and releasing the tension in order to keep the chain tight;
39. With the exclusive and superior knowledge that the Chain Tensioner exhibited defects that caused the timing chain to slip on the chain sprockets thereby disrupting the engine camshaft timing, Defendants redesigned the Chain Tensioner in or around 2012. The redesigned chain tensioner is part number 06K 109 467 (with various letter suffixes);
40. The Defendants knowingly omitted, concealed and suppressed material facts regarding the defective timing chain system and its corresponding safety risk, and misrepresented the standard, quality and grade of the Subject Vehicles, which directly caused harm to the Applicant and Members of the Class;

41. As asserted herein, the Defendants' wrongful conduct has harmed owners and lessees of the Subject Vehicles and the Applicant and Class are entitled to damages and injunctive and declaratory relief;
42. As a direct result of the Defendants' wrongful conduct, the Applicant and Members of the Class have suffered damages or will suffer damages, including, *inter alia* (1) out of pocket expenses for repair and replacement of the timing chain system, other engine parts, or the entire engine; (2) costs for future repairs or replacements; (3) sale of their vehicle for a reduced value, and (4) diminished value of their vehicles;
43. Each of the Defendants acted in concert with the others. Each of the Defendants is vicariously liable for the actions of their respective servants, employees, agents or assigns. Each of the Defendants were part of one omnibus worldwide corporate entity acting together and in common ways;
44. Each of the Defendants implemented changes together and worked together, including the design and installation of the defective timing chain system in Subject Vehicles and each is responsible for the conduct of the others;
45. Because of the secrecy of the Defendants, the conduct and wrongful conduct of each of the Defendants cannot be distinguished by outsiders to know which Defendant did what, but rather outsiders, the Applicant, and Members of the Class, can only know about the Defendants, what the Defendants permit to be known;
46. The Defendants acted in similar ways, embarking on common practices and approaches, failing to correct the impression and inducing the false impression, on a class wide basis and within the stream of commerce, that Subject Vehicles purchased by the Applicant and Class Members were safe, free of defects, and would be fit for their intended purposes;
47. The Defendants collectively provided deceitful, deficient, and misleading information to the Applicant and Members of the Class with respect to the safety and reliability of the Subject Vehicles and by doing the same things contemporaneously and by acting in the same ways, the Defendants acting in concert, deceived the Class. Class Members could not have reasonably

and objectively have known that they were being deceived on a class wide basis by the Defendants;

48. The Applicant and the Class could not reasonable and objectively be expected to have known that the Defendants were being unjustly enriched through the anti-competitive practices of the Defendants and the inappropriate prices paid for Subject Vehicles by Class Members to the Defendants because of the actions of the Defendants, the commonality of their actions, and the class wide impression which the Defendants perpetrated , that prices for Subject Vehicles were justified, made knowing that the Defendants were being unjustly enriched impossible for Class Members to know and the Applicant and other Class Members did not know;

49. The Defendants illegally used false and misleading representations or omissions of material facts in connection with the marketing, promotion, and the sale of Subject Vehicles equipped with the defective timing chain systems;

50. The Defendants acted in concert with the predominant purpose of injuring the Applicant and the Class by installing the defective timing chain systems in Subject Vehicles and providing deceitful, deficient, and misleading information about Subject Vehicles causing damage to the Applicant and members of the Class which resulted in, among other things, increased revenues and profits for the defendants;

51. The unlawful conduct of the Defendants is ongoing;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

52. The Applicant, Luc Barré is a resident of Mont-Saint-Hilaire, Québec;

53. On the 7th of December 2012, he purchased a new 2013 Audi TT, one of the affected Subject Vehicles, a copy of the purchase contract communicated herein as **Exhibit P-5**;

54. On or about Saturday October 12, 2019, the Applicant wanted to use his vehicle to go and do some errands. As soon as he started his car, he heard weird terrific noises emitted from his vehicle and noticed a lot of smoke coming out of the exhaust. Worried about the condition of his vehicle and his safety, he decided to cancel his trip;

55. The Applicant did not use his car for that whole long weekend and canceled all his outings;
56. On October 14, 2019, he had no choice but to drive his car to the nearest garage specialized with Audi and Volkswagen cars, a couple of minutes (5 kilometers) away from his home. The car was making the same unusual noises and the engine seemed losing power;
57. On October 15, 2019, the Applicant was informed by his garage that his vehicle had a timing chain failure and that it needed to be replaced in order to be able to use his vehicle and avoid major damages to the engine;
58. On October 16, 2019, the Applicant had to have his timing chain replaced at approximately 119,826 km;
59. Meanwhile the Applicant's car was getting repaired, the latter could not go to his work and had to cancel the appointments that he had scheduled with his clients;
60. At the end of the day of October 16, 2019, the Applicant recuperated his vehicle and incurred costs of \$1,241.68, copy of the receipt and of the proof of payment, communicated herein as **Exhibit P-6;**
61. On the 23rd of October 2019, the Applicant addressed Audi Canada by email to inform them of the defect of the timing chain failure that he experienced, a copy of the email communicated herein as **Exhibit P-7;**
62. The Applicant tried even to call Audi Canada on many occasions to address his issue, but with no success;
63. On the 19th of November 2019, Laure Weneouda, a customer relations supervisor of Audi Canada formally informed the Applicant by email that he had to assume all costs related to the reparations of his vehicle, including the timing chain replacement since the limited guarantee of 4 years or 80 000 kilometers of his vehicle had ended, a copy of this email communicated herein as **Exhibit P-8;**
64. The defect was unknown and could not be known to the Applicant at the time of the purchase;

- 65. Had the Applicant known about this defect, he would not have purchased the vehicle;
- 66. In addition, due to the defect, the Applicant, in common with the Class, experienced a depreciation in his vehicle value as potential future buyers will be wary of purchasing unsafe vehicle;
- 67. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
- 68. As a consequence of the foregoing, the Applicant is justified in claiming damages;
- 69. The Applicant, in common with the Class, has had to or will have to take time out of their workday in order to bring their vehicle in for inquiries, greatly inconveniencing them and causing them to suffer further economic losses;
- 70. At the time that the Applicant purchased his vehicle, he was unaware, nor could have known about the defective timing chain systems in his vehicle;
- 71. The defendants knew the vehicle contained an essential defect but deliberately chose not to apprise the Applicant of the defect when he agreed to purchase his vehicle or at any time subsequent to his purchase;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS

- 72. Every Member of the Class owns, leases or otherwise possesses one of the Subject Vehicles;
- 73. Each Member of the Class is justified in claiming at least one or more of the following:
 - a) Resiliation of the sale or lease of the vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Subject Vehicles;
 - b) Damages for the costs associated with the defects or repairs to the Subject Vehicles;

- c) Damages for any injury suffered and costs related to said injuries;
- d) Damages for loss of use and enjoyment of their Subject Vehicles;
- e) Damages for trouble, inconvenience and loss of time;
- f) Damages for anxiety and fear;
- g) Punitive and/or exemplary damages;
- h) Such further and other relief as counsel may advise and this Honourable Court may allow.

74. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:

75. The number of persons included in the Class is estimated to be in the thousands;
76. The names and addresses of all persons included in the Class are not known to the Applicant but are known to the Defendants;
77. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Defendants would increase delay and expense to all parties and to the Court system;
78. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
79. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:

80. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:

- a) Is there a latent defect in the Timing Chain Tensioning System of Subject Vehicles?
- b) Is there a safety defect in the Subject Vehicles?
- c) Are the Subject Vehicles fit for the purpose they were intended?
- d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
- e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
- f) Have the Class Members suffered damages as a result of the defect in question?
- g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?
- h) What are the categories of damages for which the Defendants are responsible to pay to Class Members, and in what amount?
- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

81. The interests of justice favour that this application be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

82. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages for latent defect and negligence;

83. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

GRANT Plaintiff's action against Defendants;

ORDER the resiliation of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

ORDER and CONDEMN Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

OR SUBSIDIARILY, CONDEMN Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Subject Vehicles as a result of the existence and/or repair of the defect;

CONDEMN Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

CONDEMN Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Class;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the

interest of the Members of the Class;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

84. The Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Many Class Members are domiciled in the District of Montreal;
- b) The Defendants have a business establishment in the District of Montreal;
- c) Many of the Subject Vehicles were purchased or leased by Class Members in the District of the Montreal;
- d) The Applicant's counsel is domiciled in the District of Montreal;

85. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since Applicant:

- a) owns a 2013 Audi TT which is affected by the defect alleged above, and is thus a Member of the Class;
- b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;
- c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
- d) is ready and available to manage and direct the present action in the interest of the Class Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;

- e) does not have interests that are antagonistic to those of other members of the Class;
- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;

86. The present application is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as:

All persons in Quebec, who own or have owned, or lease or have leased, one or more of the Subject Vehicles affected by or may reasonably be expected to be affected by the timing chain system defect asserted by this claim.

“Subject Vehicles” include, but are not necessarily limited to, the following Volkswagen or Audi branded vehicles containing 1.8L or 2.0L engines:

- certain 2012-2014 VW Beetle;
- 2015-2018 VW Beetle;
- certain 2013-2014 VW Beetle Convertible;
- 2015-2017 VW Beetle Convertible;
- certain 2012 VW CC;
- 2013-2017 VW CC;
- 2012 VW Eos;
- 2013-2016 VW Eos;
- certain 2012 VW GTI;
- 2013-2018 VW GTI;
- 2015-2018 VW Jetta Sedan;
- certain 2012-2014 VW Jetta GLI;

- 2015-2018 VW Jetta GLI;
- 2014-2019 VW Passat Sedan;
- certain 2012-2013 VW Tiguan;
- 2014-2018 VW Tiguan;
- 2015-2018 VW Golf;
- certain 2012 Audi A3;
- 2013-2018 Audi A3;
- certain 2012-2013 Audi A4;
- 2014-2018 Audi A4;
- certain 2012-2013 Audi A5;
- 2014-2018 Audi A5;
- certain 2012 Audi A6;
- 2013-2018 Audi A6;
- certain 2012 Audi TT;
- 2013-2018 Audi TT;
- certain 2012 Audi Q5;
- 2013-2018 Audi Q5;
- and 2015-2018 Audi Q3

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Is there a latent defect in the Timing Chain Tensioning System of Subject Vehicles?
- b) Is there a safety defect in the Subject Vehicles?
- c) Are the Subject Vehicles fit for the purpose they were intended?
- d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
- e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
- f) Have the Class Members suffered damages as a result of the defect in question?
- g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?

- h) What are the categories of damages for which the Defendants are responsible to pay to Class Members, and in what amount?
- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants;

ORDER the rescission of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

ORDER and CONDEMN Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

OR SUBSIDIARILY, CONDEMN Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Subject Vehicles as a result of the existence and/or repair of the defect;

CONDEMN Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

CONDEMN Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Class;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Class;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Class in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

THE WHOLE with costs to follow.

MONTREAL, September 3rd, 2020


MERCHANT LAW GROUP LLP

Attorneys for the Applicant

SUMMONS

(Articles 145 and following C.C.P.)

Filing of a Judicial Application

Take notice that the Applicant has filed this Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montreal.

Defendants' Answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application to Authorize the Bringing of a Class Action and to Ascertain the Status of Representative, the Applicant intends to use the following exhibits:

Exhibit P-1: Volkswagen Group Canada, Inc. copy of an extract from the *Registraire des entreprises du Québec*;

Exhibit P-2: Volkswagen Group of America, Inc. a page of the website of the State of New Jersey Business Records Service;

Exhibit P-3: Audi Canada Inc. a copy of an extract from the *Registraire des entreprises du Québec*;

Exhibit P-4: Audi of America LLP a page of the website of the State of Delaware Division of Corporations;

Exhibit P-5: A copy of the purchase contract of the Applicant vehicle dated 7th of December

2012;

Exhibit P-6: A copy of the receipt of the reparation of the timing chain and proof of payment,

Exhibit P-7: A copy of the email of the applicant to Audi Canada dated October 23rd, 2019;

Exhibit P-8: A copy of the email of Mrs. Laure Wemeouda, customer relations supervisor of Audi Canada, dated 19th of November 2019,

These Exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, September 3rd, 2020

Merchant Law Group

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Notifications : gnasraoui@merchantlaw.com

Attorneys for the Applicant

NOTICE OF PRESENTATION
(Articles 146 and 574 al.2 C.P.C.)

TO: THE VOLKSWAGEN GROUP CANADA INC.
777 Bayly Street West,
Ajax Ontario, Canada L1S 7G7

TO: THE VOLKSWAGEN GROUP OF AMERICA Inc.
2200 Ferdinand Porsche Drive,
Herndon Virginia, United-States of America at 20171.
and

TO: AUDI CANADA INC.
777 Bayly Street West in Ajax,
Ontario, Canada, L1S 7G7
and

TO: AUDI OF AMERICA LLC.
2200 Ferdinand Porsche Drive
Herndon Virginia, United-States of America, 20171

TAKE NOTICE that the present *Application For Authorization to Institute a Class Action And To Appoint a Representative Plaintiff* will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montreal, September 3rd, 2020



Merchant Law Group LLP
Attorneys for the Applicant

N^o: 500-06-001092-200

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

DISTRICT OF MONTRÉAL

LUC BARRÉ

Applicant

- vs -

VOLKSWAGEN GROUP CANADA INC

-and-

THE VOLKSWAGEN GROUP OF AMERICA Inc.

-and-

AUDI CANADA INC.

-and-

AUDI OF AMERICA

Defendants

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF**

COPY

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