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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 LOS ANGELES COUNTY - NORTHWEST JUDICIAL DISTRICT
10 VAN NUYS COURTHOUSE EAST

11 OLGA JIMENEZ, an individual,

12 Plaintiff

13 v.

14 VOLKSWAGEN GROUP OF
15 AMERICA, INC., a New Jersey
corporation; and
16 DOES 1 through 10,

17 Defendants.
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Case No.:

LC102918

COMPLAINT FOR:

1. BREACH OF EXPRESS WARRANTY;
AND
2. BREACH OF IMPLIED WARRANTY

1 SUMMARY

2 1. This is a "lemon law" lawsuit relating to a defective 2009 Audi A4. The Audi
3 A4 suffers from multiple defects which prevent one of its brake lights from working, cause
4 excessive oil consumption, and cause multiple vehicle warning lights to illuminate. Plaintiff
5 has taken the Audi A4 in for repair of these defects on at least eight occasions, but Defendant
6 Volkswagen Group of America, Inc. (which does business under the fictitious name "Audi of
7 America, Inc.") has been either unwilling or unable to remedy the defects, thereby preventing
8 Plaintiff from having the safe, reliable use of her vehicle.

9 2. Under the Song-Beverly Consumer Warranty Act (Civ. Code § 1790 *et seq.*)
10 (*i.e.*, the "California lemon law" statute), Plaintiff is entitled to have her vehicle repurchased by
11 Defendant, and she is also entitled to compensatory damages, a civil penalty, and her attorney's
12 fees, costs, and expenses.

13 PARTIES

14 3. Plaintiff Olga Jimenez is an individual residing in Alhambra, California.

15 4. Defendant Volkswagen Group of America, Inc. (hereafter "Volkswagen"), is
16 New Jersey corporation that does business throughout this State, including Los Angeles
17 County, under the fictitious business name "Audi of America, Inc." Defendant Volkswagen
18 Group of America, Inc. is hereafter referred to as "Audi of America."

19 5. Plaintiff does not know the true names and capacities, whether corporate,
20 partnership, associate, individual or otherwise of Defendants sued herein as Does 1 through
21 10, inclusive, under the provisions of section 474 of the California Code of Civil Procedure.
22 Defendants Does 1 through 10, inclusive, are in some manner responsible for the acts,
23 occurrences and transactions set forth herein, and are legally liable to Plaintiff. Plaintiff will
24 seek leave to amend this Complaint to set forth the true names and capacities of the fictitiously
25 named Defendants together with appropriate charging allegations when ascertained.

26 6. All acts of corporate employees as alleged were authorized or ratified by an
27 officer, director or managing agent of the corporate employer.

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2 FACTS

3 7. On or about November 3, 2012, Plaintiff purchased that certain 2009 Audi A4
4 with vehicle identification number WAUAF48H19K011298 (the "Audi A4") from Keyes Audi
5 in Van Nuys, California.

6 8. The Audi A4 was a "certified pre-owned" automobile. Accordingly, Plaintiff's
7 purchase of the Audi A4 was accompanied by Audi of America's express warranty and implied
8 warranty of merchantability.

9 9. Thereafter, Plaintiff returned the Audi A4 to Audi of America's authorized
10 repair facilities on at least eight occasions for repair of multiple defects that cause one of its
11 brake lights not work, which cause excessive oil consumption, and which cause several of the
12 vehicle's warning lights to illuminate (the "Defects").

13 10. However, on each occasion that Plaintiff sought repair of the Defects, Audi of
14 America's authorized repair facilities returned the Audi A4 to Plaintiff without properly
15 diagnosing and repairing the Defects.

16 FIRST CAUSE OF ACTION

17 Breach of Express Warranty

18 11. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
19 through 10.

20 12. Audi of America is the warrantor of the Audi A4's express warranty.

21 13. Pursuant to the Audi A4's express warranty, Audi of America undertook to
22 preserve or maintain the utility or performance of the Audi A4 or provide compensation if
23 there was a failure in such utility or performance.

24 14. The Audi A4 has and has had serious defects and nonconformities to warranty
25 including, but not limited to, the Defects described above.

26 15. Under the California lemon law statute, the Audi A4 is a "consumer good"
27 purchased primarily for personal, family, and household purposes, and Plaintiff has used the
28 Audi A4 primarily for those purposes.

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16. Plaintiff is a "buyer" of consumer goods under the California lemon law statute.

17. The foregoing defects and nonconformities to warranty manifested themselves within the applicable express warranty period. The nonconformities substantially impair the use, value and/or safety of the Audi A4.

18. Plaintiff delivered the Audi A4 to Audi of America's authorized repair facilities for repair of the Defects on numerous occasions.

19. Audi of America's authorized repair facilities have been unable to conform the Audi A4 to the applicable express warranties after a reasonable number of repair attempts.

20. By failure of Audi of America to remedy the Defects described above, or to issue a refund or replacement, Audi of America is in breach of its obligations under the California lemon law.

21. Plaintiff is entitled to justifiably revoke acceptance of Audi A4 under the California lemon law statute, and hereby does so.

22. Under the California lemon law, Plaintiff is entitled to reimbursement of all payments made towards the Audi A4 (less the amount directly attributable to Plaintiff's use of the Audi A4 prior to discovery of the nonconformities).

23. Plaintiff is also entitled to damages resulting from Audi of America's failure to comply with its obligations under the California lemon law statute.

24. Plaintiff is further entitled under the California lemon law to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably incurred in connection with the commencement and prosecution of this action.

25. In addition to the other amounts recovered, Plaintiff is also entitled to a civil penalty of up to two times the amount of actual damages because Audi of America willfully failed to comply with its responsibilities under the California lemon law statute.

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SECOND CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

26. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1 through 25.

27. Plaintiff's purchase of the Audi A4 was accompanied by Audi of America's implied warranty of merchantability.

28. The implied warranty of merchantability means and includes that the Audi A4 will comply with each of the following requirements: (1) it would pass without objection in the trade under the contract description; (2) it is fit for the ordinary purposes for which such goods are used; (3) it was adequately contained, packaged, and labeled; and (4) it conforms to the promises or affirmations of fact made on the container or label.

29. The Audi A4's Defects constitute a breaches of the implied warranty of merchantability because the Audi A4 (1) would not pass without objection in the trade under the contract description (*i.e.*, as a "certified pre-owned vehicle"), (2) is not fit for the ordinary purposes for which such goods are used, (3) was not adequately contained, packaged, and labeled, and (4) does not conform to the promises or affirmations of fact made on the container or label.

30. Plaintiff has notified Audi of America of the Audi A4's Defects.

31. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the Audi A4, and is entitled to rescind the Audi A4's purchase contract and to restitution of all money paid towards the Audi A4's purchase contract.

32. Plaintiff has been proximately damaged by Audi of America's failure to comply with their obligations under the implied warranty or merchantability.

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33. Plaintiff is entitled to the remedies provided in California Civil Code section 1794, including her attorney's fees, costs, and expenses.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Audi of America, as follows:

1. For an order compelling Audi of America to repurchase the Audi A4 under the California lemon law (or rescind the Audi A4's purchase contract) and to pay restitution totaling \$27,592.08;
2. For a civil penalty of \$55,084.16 as permitted under the California lemon law statute;
3. For general damages of \$5,600;
4. For prejudgment interest at the legal rate;
5. For attorney's fees, costs of suit, and out-of-pocket expenses; and
6. For such other and further relief as the Court deems just and proper under the circumstances.

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Date: May 8, 2015

Michael R. Vachon, Esq.
Attorney for Plaintiff Olga Jimenez