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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

RICHARD AND JUDITH FICKES)
 3666 Mary Lou Lane)
 Melbourne, FL 32934)
 on behalf of themselves and)
 all others similarly situated)
 Plaintiffs,)
 vs)
 VOLKSWAGEN OF AMERICA, INC)
 2200 Ferdinand Porsche Drive)
 Herndon, VA 20171)
 Defendant)

05-2012-CA-045407-XXXX-XX

Civil Action Case No

FILED
2012 JUN 8 A 10:33
CLERK OF COURT
BREVARD COUNTY FLORIDA

MITCH NEEDELMAN

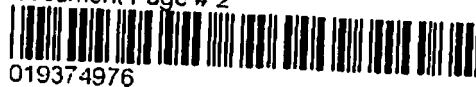
CLASS REPRESENTATION

COMPLAINT

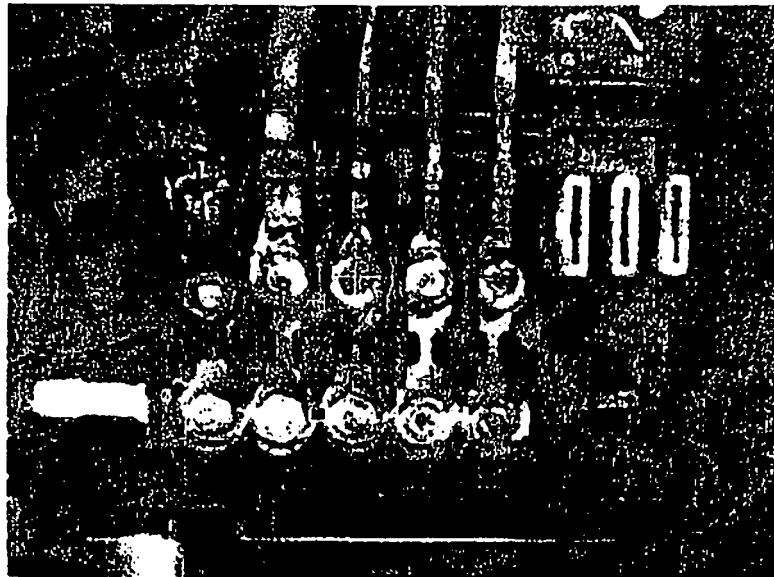
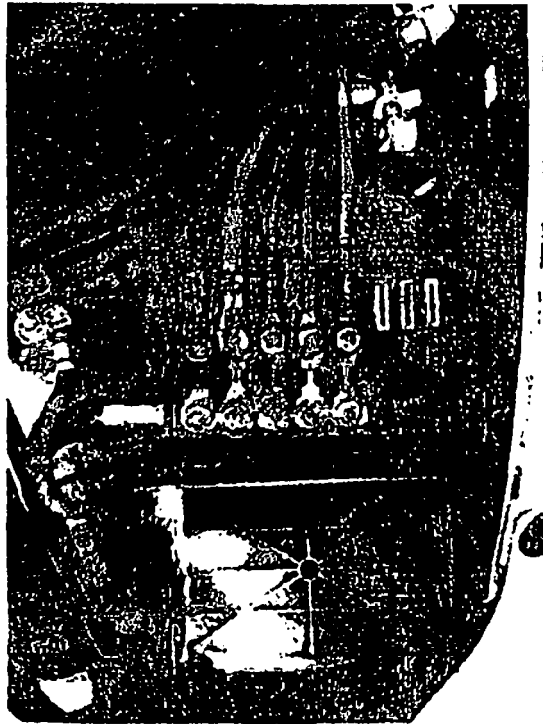
Plaintiffs, Richard and Judith Fickes ("the Fickeses" or "Plaintiffs"), on behalf of themselves and all others similarly situated, by their undersigned counsel, allege, against Defendant Volkswagen of America, Inc ("Volkswagen" or "Defendant"), the following upon personal knowledge as to their own acts, and upon information and belief, based on the investigation conducted by their counsel, as to all other allegations.

SUMMARY OF THE ACTION

1 Plaintiffs bring this class action complaint on behalf of themselves and all other persons in the State of Florida who purchased and/or leased a Volkswagen vehicle for personal, family or household use, which vehicle had or currently has a defective fuse box/alternator cable



electrical system that melted or burned, or is at risk of melting or burning, thereby causing or threatening to cause the vehicle to lose power while underway in traffic or to catch fire. A photograph of a typical damaged fuse box/alternator cable assembly can be seen below.



Pictures available at <http://newbeetle.org/forums/questions-issues-concerns-problems-new-beetle/28982-battery-fuse-box-melting-04-new-beetle.html>, accessed on September 20, 2011

2 The vehicles affected include (a) the 2003-2005 New Beetle Convertible, (b) and (b) the 1999-2005 New Beetle (the "Vehicles")

3 The failure of the fuse box/alternator cable assemblies is not a result of normal wear and tear or a reasonably expected failure rate for new parts, but is a basic design defect that existed at the time of manufacture of each vehicle and is believed to be related to the current carrying capacity of one or more components of the assemblies

4 By complaints of its customers, both directly and through its dealers, Volkswagen was on notice that the fuse box/alternator cable assemblies were defective and not fit for their intended purpose of properly and effectively distributing electrical charge to the battery and power to other systems. Volkswagen actively concealed and/or failed to notify the public of the existence and nature of said defects or of the possible safety issues presented by the defects. Volkswagen has not recalled the Vehicles to repair the defects, it has not offered to repair the defects to its customers free of charge, and it has not offered to reimburse owners, present or past, who incurred costs relating to system repairs

5 Plaintiffs allege that Volkswagen is responsible and liable for the costs of inspecting and replacing the defective fuse box/alternator cable assemblies and reasonable attorneys' fees

PARTIES

6 Plaintiffs Richard and Judith Fickes bring this action in their individual capacities and on behalf of all others similarly situated. On May 7, 2008, Plaintiffs purchased a 2004 New Beetle

convertible from Gator Chrysler, Inc , of Melbourne, Florida At the time of purchase, Plaintiffs were residents of Brevard County, Florida, and the vehicle was registered and insured in the State of Florida Plaintiffs intended to use, and continue to use, the vehicle in Florida They are currently residents of the State of Florida where said vehicle is now registered

7 Defendant Volkswagen is a domestic corporation, with its principal place of business and national headquarters located in Herndon, Virginia Defendant designs, manufacturers and sells automobiles under the Volkswagen brand name throughout the United States, including in the State of Florida Defendant does business in Florida Defendant's Volkswagen models are advertised, distributed and sold at multiple places of business in Florida through Defendant's dealers, including Prestige Volkswagen of Melbourne, Florida, where Plaintiffs have their vehicle serviced These locations were and are maintained by Defendant's dealers for the sale of Defendant's vehicles, including the 2004 New Beetle, and Defendant has sold the years and models in question in the Florida during the Class Period and presently

JURISDICTION AND VENUE

8 Jurisdiction and venue for purposes of this action are conferred upon this Court pursuant to Fla Stat § 501.201 The total damages to the class are alleged to be less than \$5,000,000 Plaintiffs will neither seek nor accept damages for the class in excess of \$5,000 000 In addition, Plaintiffs' damages are less than \$75,000, and Plaintiffs will neither seek nor accept damages in excess of \$75,000

FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS

9 Plaintiffs purchased their 2004 New Beetle on May 7, 2008 At the time of purchase, Volkswagen's 4-year warranty on parts and service had expired This warranty as applied to the

defects here is unconscionable and serves mainly to protect the Defendant from liability for the cost of replacement. The fuse box/alternator cable assembly was defective, and was known by Defendant to be defective, from time of manufacture and before the vehicle's original sale on April 10, 2004, and was therefore defective before the warranty began to run. Neither the Plaintiffs nor the prior owners knew, or could have known, of this defect at the time of Plaintiffs' purchase or at the time an original purchaser purchased the Vehicle.

10 At the time of original sale in 2004, Volkswagen, through its dealerships, employees, agents and servants represented to the public that the Vehicles containing the defectively designed assembly were in good condition and fit for their intended purpose. In this manner, Volkswagen was able to place the Vehicles in commerce and profit from their sales.

11 From the date of purchase to the present, Plaintiffs serviced the vehicle timely and properly.

12. In June 2011, Plaintiff Richard Fickes took the vehicle to Prestige Volkswagen to have a problem with the rear window repaired. While the vehicle was at Prestige, the mechanic recommended checking the fuse box/alternator cable assembly because of known problems with the assembly components overheating and melting the fuse box. Upon inspection, the mechanic determined that the fuse box had been seriously burned and needed to be replaced. The notation on Plaintiffs' invoice for the replacement costs stated

POSITIVE BATTERY CABLE AND FUSE PANEL BURNT
FOUND AUX FUSE PANEL BURNT AND ALTERNATOR CABLE DAMAGED
REPLACED AUX FUSE PANEL AND REPLACED ALTERNATOR CABLE
2.0 HRS TOTAL [sic]
CONTACTED VOLKSWAGEN OF AMERICA FOR ASSISTANCE REQUEST

A copy of the Prestige invoice is attached as Exhibit A hereto.

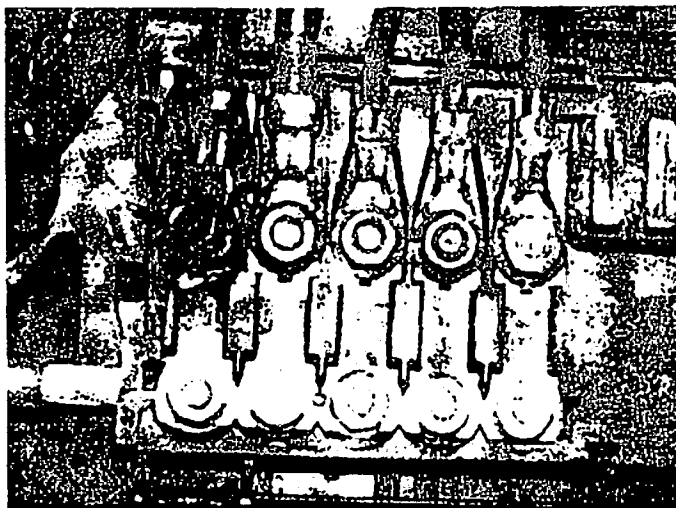
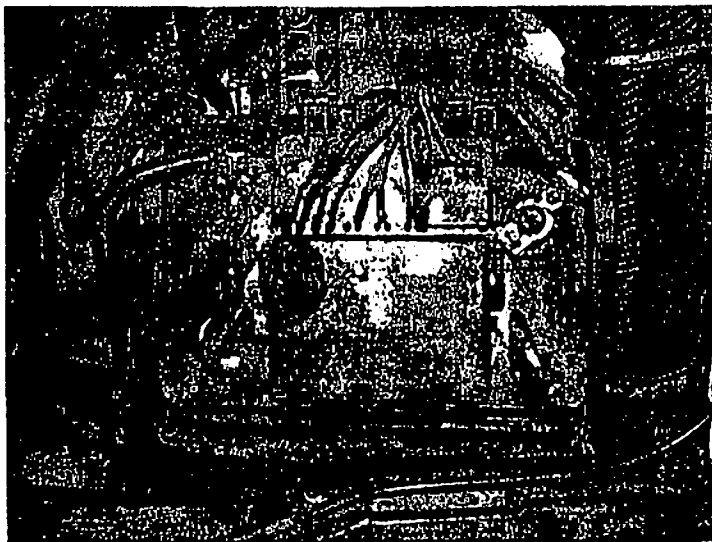
13 Plaintiffs paid the entire amount of \$438.58 billed for labor and parts related to the repair of the fuse box and cables. Volkswagen paid nothing.

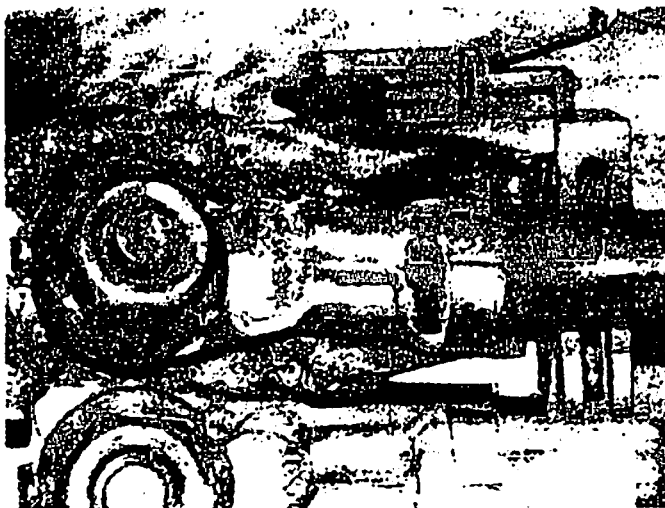
14 Volkswagen, through its dealerships, agents, servants and employees, were put on actual and/or constructive notice of the defective fuse box/alternator cable assembly since at least 2001, and most likely earlier. For example, in a safety review on the website "car-and-safety.com," on May 16, 2001, a consumer reported a problem with.

**ELECTRICAL SYSTEM FUSES AND CIRCUIT BREAKERS
COOLING FAN FUSE HOLDER ASSEMBLY SIT [sic] ON TOP OF
THE BATTERY IN THE ENGINE COMPARTMENT THIS HOLDER
HAS A HISTORY OF FAILURE (ACCORDING TO THE
MECHANIC AT THE DEALERSHIP) THE FUSE ARCHED
AND MELTED THE ASSEMBLY THIS IS TROUBLESOME GIVEN
THE CLOSE PROXIMITY TO THE EXPLOSIVE GASES WHICH ARE
GENERATED BY THE BATTERY [emphasis supplied]**

VOLKSWAGEN NEW BEETLE 1999 Safety Review #745454 (May 16, 2001), <http://car-and-safety.com/volkswagen-new-beetle-safety/volkswagen-new-beetle-1999.htm>, accessed on September 20, 2011.

Similarly, another consumer noted on October 11, 2010, that he had gone through 2 fuse boxes and was looking to replace the alternator wire. See <http://volkswagenforum.com/forum/volkswagen-beetle-20/melted-fuse-box-24117/>, accessed on September 20, 2011. Many other consumers have experienced the same problems, and numerous pictures of the failure have been posted to the web, <http://forums.fourtitude.com/showthread.php?4562591>, accessed on September 20, 2011.





15 Upon information and belief, there have been many reports of the Vehicles being consumed by fire from sources under the hood. *See, e g* , VOLKSWAGEN NEW BEETLE 1999 Safety Review #762540 (May 28, 2002), <http://car-and-safety.com/volkswagen-new-beetle-safety/volkswagen-new-beetle-2000.htm> (total loss by fire from under the hood “seems to be happening to other Beetles as well”) These fires could well have been caused by the defect in the fuse box alternator cable assembly VOLKSWAGEN NEW BEETLE 1999 Safety Review #745454 (May 16, 2001), *supra* See also VOLKSWAGEN NEW BEETLE 1999 Safety Review #8023221 (Feb 12, 2002)

THE DESIGN OF THE BATTERY CABLE ASSEMBLY COULD POSSIBLY START A FIRE UNDER THE HOOD THE BATTERY CABLE WAS SITUATED ON TOP OF THE BATTERY ALONG WITH THE FUSE BOX THIS RESULTED IN THE CABLE BEING “EATEN” THROUGH AND DRAINED THE BATTERY

<http://car-and-safety.com/volkswagen-new-beetle-safety/volkswagen-new-beetle-1999.htm>

16. Volkswagen’s failure to address the defect in its fuse box/alternator cable assembly continues to this day Retailers’ advertisements for replacement fuse boxes on the

internet clearly demonstrate the longstanding problem that Volkswagen refuses to address. *See, e.g.*, VolksToy advertisement, July 25, 2011, for replacement fuse boxes

This is an electrical part that commonly goes bad on VW's. They burn out at the fuse terminals. Fuse panel sits on top of the battery and houses bus fuses and push in fuses for various systems including the ABS, fans, charging system and lighting system

VolksToy Advertisement, <http://volkstoymotorsports.com/99-05-VW-Jetta-Golf-Beetle-Fuse-Panel-Box-Top-of-Batt-P382568.aspx>

17 Volkswagen has failed to disclose the existence of the fuse box/alternator cable assembly defect to consumers or to inform them of the safety issues presented, and it has failed to correct the defects or issue a recall

CLASS REPRESENTATION ALLEGATIONS

18 Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated, pursuant to Florida Rule of Civil Procedure 1.220 (Class Actions). Pursuant to Rule 1.220(b)(3), the Class consists of all persons who own or lease Vehicles containing the aforementioned defect and have expended unreimbursed money to repair the defect or who have the defective assemblies where the fuse box/alternator cable has not yet melted or burned

19 The Class which Plaintiff seeks to represent is defined as

All residents of the State of Florida who purchased and/or leased the following Volkswagen vehicles for personal, family or household use and who therefore have vehicles with the defective fuse box/alternator cable assemblies: (a) the 2003-2005 New Beetle Convertible, or (b) the 1999-2005 New Beetle (the "Vehicles"). Excluded from this Class are any person, firm, trust, corporation, or other entity related to or affiliated with Defendant, any person, firm, trust, corporation, or other entity who purchased a Vehicle, for resale, from Defendant, or any entity who has an action for damages for personal injury or death or property damage against Defendants

NUMEROSITY

20 The members of the Class are so numerous that joinder of all members is impracticable. The Class is made up of thousands of members. The precise number of Class members can only be ascertained through discovery, which includes Defendant's sales, service, maintenance and complaint records. The disposition of their claims through a class action will benefit both the parties and this Court.

COMMON QUESTIONS OF LAW AND FACT

21 There is a well-defined community of interest in the questions of law and fact affecting the members of the Class.

22 Pursuant to Rule 1.220(b)(3), the questions of law and fact common to the Class predominate over questions which may affect individual members, and include the following:

- a whether the fuse box/alternator cable assemblies by Defendant in the Vehicles contained design defects that caused the fuse box and cables to melt or burn,
- b whether all or an identifiable portion of the Vehicles possess the design or material defect alleged,
- c whether the Defendant violated Florida's Deceptive and Unfair Trade Practices Act, Fla Stat 501 201 *et seq*,
- d whether members of the Class are entitled to be notified and warned about the defect and are entitled to the entry of final and injunctive relief compelling Defendant to issue a notification and warning to all class members concerning such a defect,
- e whether Class members are entitled to actual damages and if so, the appropriate amount thereof,

f whether Defendant deliberately failed to disclose material facts to Plaintiffs and the Class members

g whether Defendant gave an express warranty which was limited by time despite Defendant's knowledge that the defect may become apparent after the warranty period had expired,

h whether the limits of the Basic Warranty are unconscionable and therefore unenforceable

i whether the fuse box/alternator assembly is inherently defective and should be replaced by Defendant at no cost to the Class Member, even where the assembly has not burned or melted, because of the safety hazards presented.

TYPICALITY

23 The claims and defenses of the Fickeses as the representative Plaintiffs are typical of the claims and defenses of the Class because Plaintiffs and the Class members all owned Vehicles with defective fuse box/alternator cable assemblies which were designed, manufactured and sold by Defendant. Plaintiffs, like all class members, purchased their Vehicle without having received any warning or notification from the Defendant of the defect. Plaintiffs also qualify as typical of each subclass

ADEQUACY OF REPRESENTATION

24 The Fickes, as the representative Plaintiffs, will fairly and adequately assert and protect the interests of the Class as

a Plaintiffs have hired attorneys who are experienced in prosecuting class action claims and will adequately represent the interests of the Class, and

- b Plaintiffs have no conflict of interest that will interfere with the maintenance of this class action.

PREDOMINANCE

25 Questions common to the Class predominate over those which only affect individual owners. This case involves two specific models of cars. The defective system parts are interchangeable from one model and year to the next. The systems are defective regardless of who was driving the Vehicles or how they were being driven. Liability will primarily be predicated upon the jury's evaluation of the design and/or material used for the defective assemblies and Defendant's awareness of the problem and its effort to resolve it.

SUPERIORITY

26 A class action provides a fair and efficient method for the adjudication of controversy for the following reasons:

- a. The common questions of law and fact set forth above predominate over any questions affecting only individual Class members,
- b. The Class is so numerous as to make joinder impracticable. The Class, however, is not so numerous as to create manageability problems. There are no unusual legal or factual issues which would create manageability problems;
- c. Prosecution of a separate action by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendant when confronted with incompatible standards of conduct,

- d The claims of the individual Class members are small in relation to the expenses of litigation, making a class action the only procedure in which Class members can, as a practical matter, recover
- e A class action would be superior to and more efficient than adjudicating thousands of individual lawsuits

FIRST CAUSE OF ACTION
(Deceptive and Unfair Trade Practices)
(Violation of Fla. Stat. 501.201 *et seq.*)

27 Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein

28 Plaintiffs assert this cause of action on behalf of themselves and the Class.

29 Volkswagen's practices, acts, policies and course of conduct, including its omissions, as described above, were intended to induce, and did induce, Plaintiff and the Class members to purchase the above-mentioned Vehicles with defective fuse box/alternator cable assemblies

31 Volkswagen's practices, acts, policies and course of conduct violated Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*, in that

- a Volkswagen failed to give adequate warnings and notices regarding the use, defects and problems with the Vehicles' fuse box/alternator cable assemblies, to customers and consumers who purchased said Vehicles, whether original or subsequent purchasers, despite the fact that Volkswagen possessed prior knowledge of the inherent defects to the assemblies,
- b Volkswagen failed to disclose to Plaintiffs and the Class members, either through warnings or recall notices, and/or actively concealed fact from them

the fact that the Vehicles' fuse box/alternator cable assemblies were defective, despite the fact that it learned of such defects at least by the beginning of 2001 and probably before, and

- c. Volkswagen forced Plaintiffs and the Class members to expend sums of money at its dealerships to repair and/or replace defective assemblies on the Vehicles, despite the fact Defendant had prior knowledge of the defects at the time of purchase

31 The aforementioned conduct is and was deceptive, false, fraudulent and constitutes an unconscionable, unfair, and deceptive act or practice in that Volkswagen has, by the use of knowing intentional material omissions concealed the true defective nature of the fuse box/alternator cable assemblies

32 Volkswagen has knowingly and intentionally concealed material facts and breached its duty not to do so

33 Members of the public were deceived by Defendant's failure to disclose

34. As a direct and proximate result of these unconscionable, unfair, and deceptive acts or practices, Plaintiffs and the Class members have been damaged as alleged herein, and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial

35 In addition, Plaintiffs seek reasonable attorneys fees

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for a judgment against Defendant as follows.

- a For an order certifying the Class pursuant to Florida Rule of Civil Procedure 1 220(b)(3), appointing Plaintiffs as representatives of the Class and appointing the law firms representing Plaintiff as counsel for the Class,
- b For compensatory damages sustained by Plaintiff and the Class,
- c For compensatory damages and/or restitution of all funds acquired by Defendant from Plaintiffs and the general public as a result of Defendant's unlawful, unfair, fraudulent, deceptive and unconscionable practices described hereinabove in the Deceptive and Unfair Trade Practices Act claim;
- d For payment of costs of suit herein incurred,
- e For both pre-and post-judgment interest on any amounts awarded,
- f For payment of reasonable attorneys' fees and expert fees, and
- h For such other and further relief as the Court may deem proper

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated. June 1, 2012

By



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* *pro hac vice* admission to be sought