

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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|---|---|-----|
| NAPLETON AUTOMOTIVE OF URBANA, LLC |) | |
| d/b/a Napleton’s Volkswagen of Urbana, NAPLETON |) | |
| ORLANDO IMPORTS, LLC d/b/a Napleton’s |) | |
| Volkswagen of Orlando, NAPLETON SANFORD |) | No. |
| IMPORTS, LLC d/b/a Napleton’s Volkswagen of |) | |
| Sanford, EDWARD F. NAPLETON, and NORTH |) | |
| AMERICAN AUTOMOTIVE SERVICES, INC. d/b/a |) | |
| Napleton Dealership Group, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| VOLKSWAGEN GROUP OF AMERICA, INC., |) | |
| |) | |
| Defendant |) | |
| |) | |
| |) | |

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY:

PLEASE TAKE NOTICE that defendant Volkswagen Group of America, Inc. (“VWGoA”), by and through its counsel, McElroy, Deutsch, Mulvaney & Carpenter, LLP, pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes this action from the Superior Court of New Jersey, Law Division: Bergen County, to the United States District Court for the District of New Jersey. In further support hereof, VWGoA states as follows:

1. On or about October 22, 2020, plaintiffs Napleton Automotive of Urbana d/b/a Napleton’s Volkswagen of Urbana, Napleton Orlando Imports, LLC d/b/a Napleton’s Volkswagen of Orlando, Napleton Sanford Imports, LLC d/b/a Napleton’s Volkswagen of Sanford, Edward F. Napleton, and North American Automotive Services, Inc. d/b/a Napleton

Dealership Group attempted to commence an action against VWGoA in the Superior Court of New Jersey, Law Division: Bergen County (the “State Court Action”). VWGoA understands that plaintiffs attempted to file a Complaint, a Summons, a Civil Case Information Statement, a Memorandum of Law in Support of Plaintiffs’ Motion by Order to Show Cause to File the Complaint Under Seal, a proposed order to show cause, and a Certification of Counsel. (*See* Exhibit 1, Letter dated October 28, 2020 from Russell P. McRory to Owen Smith (without enclosures), at A.)¹

2. The Complaint has not yet been properly served on VWGoA. None of the other documents filed in the State Court Action has been properly served on VWGoA. Because none of the “process, pleadings, and orders” in the State Court Action has been served on VWGoA, VWGoA has not filed copies of any such documents with this Notice. *See* 28 U.S.C. § 1441(a) (requiring that the defendant file only the “process, pleadings, and orders” from the state court action that have been “served upon” the defendant).

3. Defendant VWGoA is, and was as of the attempted commencement of the State Court Action, the only defendant in the State Court Action.

4. VWGoA removes this action to the United States District Court for the District of New Jersey under the provisions of 28 U.S.C. § 1441(a), on the grounds that this Court has original jurisdiction under 28 U.S.C. § 1332(a)(1), there being diversity of citizenship between defendant VWGoA and each of the Plaintiffs, and the amount in controversy exceeds \$75,000.

¹ Contemporaneously with this Notice of Removal, VWGoA is filing the unsigned copies of papers emailed by counsel to plaintiffs on October 28, 2020. Two of those papers, an un-redacted Complaint and exhibit, are subject to a confidentiality clause and are being filed under seal with this Notice of Removal. Counsel to VWGoA will file a Motion to Seal those materials within fourteen days of this filing pursuant to Local Rule 5.3(c)(2)(ii)(a).

5. This Notice of Removal has been timely filed within thirty days of receipt by the defendant VWGoA of a copy of the Complaint and within one year of the attempted commencement of the State Court Action. *See* 28 U.S.C. § 1446(b)(1), (c)(1).

Citizenship of the Parties

6. In the following discussion, the statement as to the citizenship of each party, entity, and individual includes such citizenship on the date of this Notice and at the time the State Court Action was brought.

7. Defendant VWGoA is a New Jersey corporation with its principal place of business in Herndon, Virginia. VWGoA is a citizen of New Jersey and Virginia.

8. Plaintiff Edward F. Napleton is domiciled in either Florida or Illinois. Therefore, Edward F. Napleton is a citizen of either Florida or Illinois.

9. Plaintiff Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana ("Urbana LLC") is an Illinois limited liability company. The members of Urbana LLC are Edward F. Napleton Revocable Trust u/a/d 10/1/92; Edward F. Napleton Descendants Trust u/a/d 12/27/02; Katherine R. Napleton Descendants Trust u/a/d 12/27/02; and Bruce C. Etheridge. The citizenship of the members of Urbana LLC is the following:

a. *Edward F. Napleton Revocable Trust u/a/d 10/1/92*: The trustee of this trust is Edward F. Napleton, who is an individual domiciled in either Florida or Illinois, and is thus a citizen of Florida or Illinois. Accordingly, because the trustee is a citizen of either Florida or Illinois, the Edward F. Napleton Revocable Trust u/a/d 10/1/92 itself is a citizen of either Florida or Illinois.

b. *Edward F. Napleton Descendants Trust u/a/d 12/27/02*: The trustee of this trust is Bruce Etheridge, who is an individual domiciled in Illinois, and is thus a citizen of Illinois. Accordingly, because the trustee is a citizen of Illinois, the Edward F. Napleton Descendants Trust u/a/d 12/27/02 itself is a citizen of Illinois.

c. *Katherine R. Napleton Descendants Trust u/a/d 12/27/02*: The trustee of this trust is Bruce Etheridge, who is an individual domiciled in Illinois, and is thus a citizen of Illinois. Accordingly, because the trustee is a citizen of Illinois, the Katherine R. Napleton Descendants Trust u/a/d 12/27/02 itself is a citizen of Illinois.

d. Bruce C. Etheridge is an individual domiciled in Illinois, and is thus a citizen of Illinois.

10. Accordingly, Urbana LLC is a citizen of Illinois, and, possibly, Florida. None of the members of Urbana LLC is a citizen of New Jersey or Virginia, and, therefore, Urbana LLC is not a citizen of New Jersey or Virginia.

11. Plaintiff Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando ("Orlando LLC") is an Illinois limited liability company. The members of Orlando LLC are Edward F. Napleton Descendants Trust u/a/d 12/27/02; Katherine R. Napleton Descendants Trust u/a/d 12/27/02; Bruce C. Etheridge; Al Chalashtori; and Napleton Investment Partnership, LP. The citizenship of the members of Orlando LLC is the following:

a. Edward F. Napleton Descendants Trust u/a/d 12/27/02: The trustee of this trust is Bruce Etheridge, who is an individual domiciled in Illinois, and is thus a citizen of Illinois. Accordingly, because the trustee is a citizen of Illinois, the Edward F. Napleton Descendants Trust u/a/d 12/27/02 itself is a citizen of Illinois.

b. Katherine R. Napleton Descendants Trust u/a/d 12/27/02: The trustee of this trust is Bruce Etheridge, who is an individual domiciled in Illinois, and is thus a citizen of Illinois. Accordingly, because the trustee is a citizen of Illinois, the Katherine R. Napleton Descendants Trust u/a/d 12/27/02 itself is a citizen of Illinois.

c. Bruce C. Etheridge is an individual domiciled in Illinois, and is thus a citizen of Illinois.

d. Al Chalashtori is an individual domiciled in Florida, and is thus a citizen of Florida.

e. Napleton Investment Partnership, LP: The partners of this limited partnership are Napleton Management Company, LLC; Edward F. Napleton Descendants Trust; and Katherine R. Napleton Descendants Trust. The citizenship of the partners of Napleton Investment Partnership, LP is the following:

i. Napleton Management Company, LLC: The members of this limited liability company, and the citizenship of each such member, are the following:

A. Edward F. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92: The trustee of this trust is Edward F. Napleton, who is an individual domiciled in either Florida or Illinois, and is thus a citizen of Florida

or Illinois. Accordingly, because the trustee is a citizen of either Florida or Illinois, the Edward F. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92 itself is a citizen of either Florida or Illinois.

- B. Katherine R. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92: The trustee of this trust is Katherine R. Napleton, who is an individual domiciled in either Florida or Illinois, and is thus a citizen of Florida or Illinois. Accordingly, because the trustee is a citizen of either Florida or Illinois, the Katherine R. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92 itself is a citizen of either Florida or Illinois.
- C. Kristen N. Napleton Hrones is an individual domiciled in either Illinois or Florida, and is thus a citizen of Illinois or Florida.
- D. Colleen M. Napleton is an individual domiciled in either Illinois or Florida, and is thus a citizen of Illinois or Florida.
- E. Katherine E. Napleton is an individual domiciled in either Illinois or Florida, and is thus a citizen of Illinois or Florida.
- F. Edward W. Napleton is an individual domiciled in either Illinois or Florida, and is thus a citizen of Illinois or Florida.
- G. Brian F. Napleton is an individual domiciled in either Illinois or Florida, and is thus a citizen of Illinois or Florida.

12. Accordingly, Orlando LLC is a citizen of Illinois and Florida. None of the members of Orlando LLC is a citizen of New Jersey or Virginia, and, therefore, Orlando LLC is not a citizen of New Jersey or Virginia.

13. Plaintiff Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford ("Sanford LLC") is an Illinois limited liability company. The members of Sanford LLC are identical to the members of Orlando LLC. Accordingly, Sanford LLC is a citizen of Illinois and Florida. None of the members of Sanford LLC is a citizen of New Jersey or Virginia, and, therefore, Sanford LLC is not a citizen of New Jersey or Virginia.

14. Plaintiff North American Automotive Services, Inc. d/b/a Napleton Dealership Group (“NAAS”) is an Illinois corporation with its principal place of business in Illinois. Accordingly, NAAS is a citizen of Illinois.

15. Accordingly, this action is, as of both the time the State Court Action was brought and as of the instant Notice of Removal, between citizens of different states under 28 U.S.C. § 1332(a)(1).

16. Because VWGoA has not been “properly joined and served” as a defendant in the State Court Action, VWGoA’s citizenship in the forum state of the State Court Action (New Jersey) does not prevent removal under 28 U.S.C. § 1441(b)(2). *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147, 153 (3d Cir. 2018) (a forum defendant who has not yet been properly joined and served may remove a state-court action, provided diversity jurisdiction exists).

Amount in Controversy

17. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

18. The Complaint purports to state a single cause of action against VWGoA for a declaratory judgment against VWGoA. Plaintiffs seek, among other things, a declaration that, in evaluating (i) the proposed sale to plaintiff Edward F. Napleton of the assets of the Eitel Dahm Audi dealership in Michigan, and (ii) any business dealings involving the Audi and Volkswagen brands, VWGoA may not consider any of the grounds that VWGoA asserted in rejecting the June 2020 proposed sale of an Audi dealerships and a Volkswagen dealership to affiliates of the Napleton organization. Plaintiffs also seek a declaration that, in all business dealings between the parties, VWGoA may not consider actions or inactions of Edward F. Napleton or members of the

Napleton organization taken prior to the effective date of a certain settlement agreement that VWGoA entered with plaintiffs Urbana LLC, Orlando LLC, and Sanford LLC to resolve their lawsuit concerning diesel emissions claims. Plaintiffs also seek a declaration that they are entitled to recover all costs and expenses, including attorneys' fees, in bringing this action.

19. In a declaratory judgment claim, the amount-in-controversy is measured by the "value of the object of the litigation." *Auto-Owners Ins. Co. v. Stevens & Ricci Inc.*, 835 F.3d 388, 398 (3d Cir. 2016), quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 347 (1977); see also *Columbia Gas Transmission Corp. v. Tarbuck*, 62 F.3d 538, 541 (3d Cir. 1995) (jurisdictional amount satisfied because "object" of the declaratory relief sought included the prevention of future encroachment of the plaintiff's rights).

20. Here, plaintiffs seek to protect their right to pursue "business dealings," including acquisitions of Audi and Volkswagen dealerships, free from VWGoA's alleged breaches of the prior settlement agreement. With respect to one such proposed acquisition alone, plaintiffs allege that the value of the goodwill that Napleton agreed to pay in connection with its purchase of the assets of the Eitel Dahm Audi dealership in Michigan amounts to \$15,250,000, and the overall purchase price for the goodwill is \$31,500,000. Plaintiffs allege that, without the requested declarations prohibiting VWGoA from relying on prohibited grounds to reject the transaction, VWGoA would otherwise be required to approve the proposed Michigan asset sale.

21. In addition, VWGoA's contractual and statutory rights to evaluate and consent to or reject Napleton's acquisition of an Audi or Volkswagen dealership each have a value in excess \$75,000.

22. Plainly, the value of the "objects of the litigation"—*i.e.*, avoiding rejection of the multi-million dollar Michigan transaction, avoiding rejection of future transactions, and

VWGoA's contractual and statutory rights—meets the amount-in-controversy threshold of \$75,000.

23. Because each plaintiff's citizenship is completely diverse from the citizenship of the defendant, and because the amount-in-controversy exceeds \$75,000, this Court has diversity jurisdiction under 28 U.S.C. § 1332(a)(1).

24. Pursuant to 28 U.S.C. § 1446(D), written notice of the filing of this Notice of Removal is being forwarded to counsel for Plaintiffs, Michael McMahan, Esq., and this Notice of Removal will be filed with the Clerk of the Superior Court of New Jersey, Law Division: Bergen County.

25. By filing this Notice of Removal, VWGoA expressly reserves, and does not waive, any and all defenses VWGoA has or may have to Plaintiffs' claim asserted in the complaint, and VWGoA does not concede any of the allegations in Plaintiffs' complaint.

WHEREFORE, VWGoA prays that the above action now pending against it in the Superior Court of New Jersey, Law Division: Bergen County be removed to this Court.

Dated: October 30, 2020.

Respectfully submitted,

VOLKSWAGEN GROUP OF AMERICA, INC.

By: /s/ Nicholas K. Lagemann
One of Its Attorneys

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EXHIBIT A

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**NAPLETON AUTOMOTIVE OF
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Volkswagen of Urbana, NAPLETON
ORLANDO IMPORTS, LLC d/b/a
Napleton’s Volkswagen of Orlando,
NAPLETON SANFORD IMPORTS, LLC
d/b/a Napleton’s Volkswagen of Sanford,
EDWARD F. NAPLETON, individually and
NORTH AMERICAN AUTOMOTIVE
SERVICES, INC. d/b/a Napleton Dealership
Group, An Illinois Corporation,**

Plaintiffs,

vs.

**VOLKSWAGEN GROUP OF AMERICA,
INC., A New Jersey Corporation,**

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: _____

Civil Action

COMPLAINT

Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton’s Volkswagen of Urbana (“Napleton Urbana”), Napleton Orlando Imports, LLC d/b/a Napleton’s Volkswagen of Orlando (“Napleton Orlando”), Napleton Sanford Imports, LLC (“Napleton Sanford”) d/b/a Napleton’s Volkswagen of Sanford (also collectively referred to as “Dealers”), North American Automotive Services, Inc. d/b/a Napleton Dealership Group (“Napleton Dealership Group”) and Edward F. Napleton (“Mr. Napleton”) (Dealers, Napleton Dealership Group and Mr. Napleton being collectively referred to as “Plaintiffs” or “Napleton”), by their attorneys, Arent Fox LLP, as and

for their Complaint against Defendant Volkswagen Group of America, Inc. (“Volkswagen Group”), allege as follows:

NATURE OF THE ACTION

1. Napleton brings this action for declaratory judgment against Volkswagen Group based upon Volkswagen Group’s willful, unlawful, and material breaches of [REDACTED]

[REDACTED]

[REDACTED]¹ Along with the Dealers, who were parties to the [REDACTED], certain of the provisions of [REDACTED] applied also to the “Napleton Organization.”²

2. [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. On or about October 19, 2020, Mr. Napleton entered into [REDACTED]

[REDACTED]

5. On August 24, 2020, Volkswagen Group rejected the Napleton Organization's proposed purchase of two different Audi and VW franchises in Pennsylvania (the "Wyoming Valley Transaction"), taking the position that Mr. Napleton did "not exhibit upstanding character"

[REDACTED]

6. In issuing their rejections Volkswagen Group, through both Audi and VW, maintained that their decision was not based upon the cumulative weight of the misconduct but

rather that each instance of misconduct described above, standing alone, constituted a sufficient basis” for the rejections. But this is pretext. Most of the instances cited by Volkswagen Group were already known to Volkswagen Group [REDACTED]

[REDACTED]. [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]

7. If past is prologue, absent court intervention, Volkswagen Group will continue to use improper and unlawful factors to guide its business dealings with Mr. Napleton and once again reject Mr. Napleton as a qualified buyer under [REDACTED] for its role in the TDI Litigation, in violation of applicable state law [REDACTED].

8. Accordingly, Napleton now seeks redress for the imminent harm it will should Audi continue to act [REDACTED]. Plaintiffs bring this action seeking a declaration of their rights [REDACTED]: (a) in all business dealings between the parties, Volkswagen Group (including its Audi or Volkswagen operating divisions) may not directly or indirectly consider the actions or inactions of Mr. Napleton, or another member of the Napleton Organization [REDACTED] [REDACTED]; (b) Volkswagen Group (including its Audi and Volkswagen operating divisions) may not consider, directly or indirectly, any of the grounds stated or asserted in the August 24 Rejection Letters in connection with any business dealings between the parties regarding the Audi or Volkswagen brands, including but not limited to Volkswagen Group’s consideration of Mr. Napleton (or a Napleton affiliate) as the proposed transferee [REDACTED]; and (c) Napleton is entitled to

recover from Volkswagen Group all costs and expenses, including reasonable attorneys' fees incurred in bringing this action.

JURISDICTION AND VENUE

9. Subject-matter jurisdiction exists over this lawsuit under N.J. Const., Art. VI, § 3, ¶ 2.

10. This Court has personal jurisdiction over the Defendant, pursuant to N.J.S.A. 14A:3-1(b), because Defendant is a corporation organized under the laws of the State of New Jersey. This Court also has personal jurisdiction over the Defendant because Defendant is authorized to do business in the State of New Jersey and because the Defendant carries out continuous and systematic activities in the State of New Jersey.

11. Pursuant to R. 4:3-2(a)(3) and (b), venue is proper in this county because Defendant resides in Bergen County. Defendant's places of business, and the places where it actually does business, are located in Bergen County.

PARTIES AND RELEVANT NON-PARTIES

12. Plaintiff Napleton Urbana is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located at 3701 Northlake Boulevard, Lake Park, Florida 33403 [REDACTED].

13. Plaintiff Napleton Orlando is a limited company organized and existing under the laws of the State of Illinois with its principal place of business located at 12700 E. Colonial Drive, Orlando, Florida 32826 [REDACTED].

14. Plaintiff Napleton Sanford is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business located at 4175 S. Orlando Drive, Sanford, Florida 32773 [REDACTED].

15. Plaintiff, Napleton Dealership Group, is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business located at One Oakbrook Terrace, Suite 600, Oakbrook Terrace, IL 60181 [REDACTED].

16. Plaintiff Edward F. Napleton is a resident of the State of Florida whose address is 6393 N. Ocean Boulevard, Ocean Ridge, FL 33435 [REDACTED].

17. Collectively, Plaintiffs Napleton Urbana, Napleton Orlando and Napleton Sanford are part of a privately-held multi-generational dealership group with locations currently in eight (8) states having Napleton as its principal. Founded in 1931, the Napleton organization sells twenty-five (25) different brands of new vehicles operating out of forty-nine (49) locations.

18. Defendant Volkswagen Group is a corporation organized and existing under the laws of the State of New Jersey and with its principal place of business in Herndon, Virginia. Volkswagen Group imports and distributes Audi and Volkswagen-brand vehicles, parts, and accessories throughout the United States through two of its unincorporated divisions, Audi of America, Inc. (“Audi”) and Volkswagen of America, Inc. (“Volkswagen”), respectively. Audi and Volkswagen are not separately incorporated subsidiaries of Volkswagen Group, but rather they are fictitious names under which Volkswagen Group does business in the United States.

19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Edward Napleton, seeks relief, individually and as part of the Napleton Organization.

FACTUAL ALLEGATIONS

A. The Michigan APA

20. In April and May 2020, Edward Napleton, Napleton’s owner, began negotiating

[REDACTED]

21. On or about October 19, 2020, Napleton entered into [REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED] Volkswagen Group, and the other manufacturers’ consideration and approval of Mr. Napleton, or an entity controlled by him, [REDACTED] is circumscribed by the [REDACTED] which makes it unlawful to “[u]nreasonably withhold consent to the sale...of a new motor vehicle dealership to a qualified buyer that meets the manufacturer's uniformly applied requirements and criteria to be a new motor vehicle dealer and that is capable of being licensed as a new motor vehicle dealer in this state.”

23. On or about October 22, 2020, [REDACTED]

[REDACTED]

24. Mr. Napleton and his affiliates are qualified buyers under any reasonable definition and Mr. Napleton has proceeded to negotiate [REDACTED] under the good-faith belief that he should be approved by Volkswagen Group. However, given that the Volkswagen Group has once chosen to ignore [REDACTED]

[REDACTED]

Volkswagen Group may repeat such conduct and fail to consider any proposed transfer of an Audi or Volkswagen dealership to Mr. Napleton in good faith, [REDACTED]

[REDACTED]

25. Should Volkswagen Group act out of ill-will towards Mr. Napleton [REDACTED]

[REDACTED]

[REDACTED], and will lose the acquisition of an Audi dealership [REDACTED].

B. Volkswagen Group’s Long-Standing and Well-Documented Corporate Animus Towards Plaintiffs and the Napleton Organization

1. [REDACTED]

26. In or about 2016, Napleton was involved in a class action lawsuit against Audi related its well-publicized diesel defeat device scandal (the “TDI Litigation”).³

³ *Napleton Orlando Imports, LLC et al. v. Volkswagen Group of America et al.*, Case No. 3:16-cv-16-02086 (N.D. Cal. 2016).

27. Dealers agreed to act as the class representative when the action was filed, ironically, at the urging of VW Group itself. However, on November 18, 2016, Dealers elected to opt-out of the MDL Settlement, and proceeded in their case against Volkswagen Group (the “Napleton Opt Out”).

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Volkswagen Group Again Casts Major Aspersion on Napleton [REDACTED]

[REDACTED]

35. [REDACTED] Napleton was hopeful that Volkswagen Group dropped its corporate animus against it arising out of any dealings with Volkswagen

[REDACTED]

36. Accordingly, on or about June 25, 2020, Napleton Wyoming Valley Imports, LLC and Napleton Larksville Imports, LLC, entities affiliated with the Napleton Dealership Group, entered into a separate Asset Purchase Agreements to purchase, respectively, Wyoming Valley's Audi and Volkswagen dealerships located in Pennsylvania (the "Second Pennsylvania APAs")

(Napleton Wyoming Valley Imports, LLC and Napleton Larksville Imports, LLC collectively being referred to as the “Napleton Wyoming Valley Buyers”).

37. As part of the Second Pennsylvania APAs, Audi and Volkswagen, both under the same corporate parent entity, would need to approve the Napleton Wyoming Valley Buyers as a buyer of the subject Audi and Volkswagen dealerships.

38. On August 24, 2020 (the “August 24 Rejection Letters”), Audi and Volkswagen not only rejected the Napleton Wyoming Valley Buyers as an Audi/Volkswagen dealer under the Second Pennsylvania APAs, but chose to gratuitously cast aspersions on the entire Napleton Organization, Mr. Napleton and his family.

39. In its August 24 rejections, Volkswagen Group, through its operating divisions Audi and Volkswagen, asserted that the Napleton Wyoming Valley Buyers were not qualified buyers, based on pretextual reasons [REDACTED] The August 24 rejections, *inter alia*, cited the following reasons why the Napleton Wyoming Valley Buyers were not qualified buyers: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. On information and belief, all of the grounds stated by Volkswagen Group in the August 24 rejections are mere pretext and subterfuge, and instead are designed to be actions against Plaintiffs for opting out of the diesel class action settlement, pursuing its claims against Volkswagen Group and [REDACTED]

41. It is these letters that provide Napleton with its belief that Volkswagen Group could unreasonably attempt to reject Mr. Napleton or any entity in the Napleton Organization, once again, as an Audi franchisee [REDACTED]

C. **Volkswagen Group's Actions Telegraph Its Intention to Act in Bad Faith and Unreasonably Withhold Consent to [REDACTED] Based on Alleged Actions that Pre-date the [REDACTED]**

42. Volkswagen Group has shown no compunction [REDACTED]
[REDACTED]
[REDACTED]

43. Plaintiffs have no affirmative reason to believe that Volkswagen Group might change course and give Napleton fair consideration to be the proposed purchaser of [REDACTED]
[REDACTED] without this Court's intervention.

44. Volkswagen Group's continued conduct violates [REDACTED]
[REDACTED]

45. Unless stopped by this Court, Volkswagen Group's continued conduct will harm Napleton, [REDACTED].

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

46. Napleton repeats, reiterates and realleges all of the allegations contained in the preceding paragraphs as if each were fully set forth herein.

47. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. Plaintiff contends that Volkswagen Group has materially breached [REDACTED] [REDACTED] by, *inter alia*, considering, directly or indirectly, actions taken by Napleton prior to the effective date [REDACTED] when evaluating the Napleton Wyoming Valley Buyers as the successor Audi and Volkswagen dealer under the Second Pennsylvania APAs. Upon information and belief, the reasons cited by Volkswagen Group in the August 24 Rejection Letters were pretextual and made in bad faith for an improper purpose, namely, arising from Dealers' participation in the TDI Litigation.

50. Plaintiffs contend that the August 24 Rejection Letters, to the extent that they might potentially signal that Volkswagen Group might continue to evaluate its future business dealings with Napleton based on improper criteria [REDACTED], constitutes a material breach [REDACTED]. Upon information and belief, Napleton contends that, absent Court intervention, Volkswagen Group will be unimpeded in its ability to continue to violate [REDACTED] by rejecting Napleton out of hand in future business dealings between the parties regarding the Audi and Volkswagen brands, driven by its animus over the TDI Litigation.

51. Plaintiff contends that Mr. Napleton, or any affiliate to which he may assign his interest in [REDACTED], is a qualified buyer that meets Volkswagen Group's, and its operating division, Audi's, uniformly applied requirements and criteria for a new motor vehicle

dealer and is capable of being licensed as a new motor vehicle dealer [REDACTED]. Plaintiffs contend that under the Settlement Agreement, the Dealer Act, and [REDACTED] law, Audi may not reject Mr. Napleton, or his permitted assignee, as the buyer of the Audi Dealership Location.

52. Plaintiff contends that Volkswagen Group has considered, or might attempt to consider, directly or indirectly, Napleton's actions or inactions occurring prior to the effective date [REDACTED], including but not limited to the purported reasons cited in the August 24 Rejection Letters, when evaluating current or future business transactions involving Volkswagen Group and Napleton, including but not limited to the [REDACTED], as pretextual reasons animated by TDI-related animus [REDACTED].

53. To the extent that Volkswagen Group might contend that Napleton is not a qualified buyer of any Audi or Volkswagen-branded franchise, [REDACTED] [REDACTED] it would be, upon knowledge and belief, based on pretextual reasons [REDACTED].

54. Upon information and belief, Volkswagen Group contends (or will contend in any future business transactions involving the parties) that its consideration of the actions or inactions of Napleton prior to the effective date [REDACTED], including but not limited to, the grounds stated in the August 24 Rejection Letters, does not breach [REDACTED] [REDACTED].

55. A real and actual controversy therefore exists between Volkswagen Group and Plaintiff with respect to Plaintiff's rights [REDACTED] to pursue future business opportunities with Volkswagen Group and its operating divisions, including Audi, unabated by conduct proscribed [REDACTED].

56. Under both New Jersey law (the law of this Court) and [REDACTED], this Court has jurisdiction to grant a declaratory judgment in cases of actual controversy and to order such further relief as is necessary or proper in connection with this controversy arising under Volkswagen Group's violation [REDACTED].

57. Accordingly, a declaratory judgment should be entered protecting Plaintiffs' rights under the terms of [REDACTED]. Specifically, Napleton respectfully requests a declaration, specifying that: (a) in all business dealings between the parties, Volkswagen Group (including its Audi or Volkswagen operating divisions), may not directly or indirectly consider the actions or inactions of Mr. Napleton, Dealers and/or another member of the Napleton Organization [REDACTED] taken prior to the effective date [REDACTED]; (b) Volkswagen Group (including its Audi or Volkswagen operating divisions), may not consider, directly or indirectly, any of the grounds stated or asserted in the August 24 Rejection Letters in connection with any business dealings between the parties regarding the Audi or Volkswagen brands, including but not limited to Volkswagen Group's consideration of Napleton (or a Napleton affiliate) as the proposed transferee under [REDACTED]; and (c) Napleton is entitled to recover from Volkswagen Group all costs and expenses, including reasonable attorney's fees, incurred in bringing this action.

58. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS respectfully requests this Court declare:

- a. In all business dealings between the parties, Volkswagen Group (including its Audi or Volkswagen operating divisions), may not directly or indirectly consider the actions or inactions of Mr. Napleton, Dealers and/or another member of the Napleton Organization [REDACTED]
[REDACTED]
[REDACTED]
- b. Volkswagen Group (including its Audi or Volkswagen operating divisions), may not consider, directly or indirectly, any of the grounds stated or asserted in the August 24 Rejection Letters in connection with any business dealings between the parties regarding the Audi or Volkswagen brands, including but not limited to Volkswagen Group's consideration of Napleton, Dealers and/or another member of the Napleton Organization [REDACTED]
[REDACTED]
[REDACTED]
- c. Napleton is entitled to recover from Volkswagen Group all costs and expenses, including reasonable attorney's fees, incurred in bringing this action; and
- d. Such other relief as this Court deems just and proper.

Dated: Bergen County, New Jersey
October 22, 2020

ARENT FOX LLP

By: _____
Michael P. McMahan (ID No. 031802009)
Russell P. McRory (*pro hac vice forthcoming*)
Charles A. Gallae (ID No. 123632014)
1301 Avenue of the Americas, Fl. 42
New York, NY 10019
(212) 484-3900

*Attorneys for Plaintiffs Napleton Automotive of
Urbana, LLC d/b/a Napleton's Volkswagen of
Urbana, Napleton Orlando Imports, LLC d/b/a
Napleton's Volkswagen of Orlando, Napleton
Sanford Imports, LLC d/b/a Napleton's
Volkswagen of Sanford, and North American
Automotive Services, Inc. d/b/a Napleton
Dealership Group*

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of New Jersey Court Rules, Rule 4:25-4, Russell P. McRory, Esq., Michael P. McMahan, Esq., and Charles A. Gallaer, Esq., of the law firm Arent Fox LLP are hereby designated as trial counsel for Plaintiffs, Napleton Automotive of Urbana, LLC, Napleton Orlando Imports, LLC, Napleton Sanford Imports, LLC, and North American Automotive Services, Inc. d/b/a Napleton Dealership Group.

ARENT FOX LLP
1301 Avenue of the Americas
New York, New York 10019
(212) 484-3900

By: _____
MICHAEL P. MCMAHAN, ESQ.
RUSSELL P. MCRORY, ESQ.
(*pro hac vice* forthcoming)
CHARLES A. GALLAER, ESQ.

Attorneys for Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana, Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford, and North American Automotive Services, Inc. d/b/a Napleton Dealership Group

Dated: October 22, 2020

JURY DEMAND

Plaintiff North American Automotive Services, Inc. d/b/a Napleton Dealership Group,
through its counsel, hereby demands a trial by jury on all triable issues.

ARENT FOX LLP
1301 Avenue of the Americas
New York, New York 10019
(212) 484-3900

By: _____

MICHAEL P. MCMAHAN, ESQ.
RUSSELL P. MCRORY, ESQ.
(*pro hac vice* forthcoming)
CHARLES A. GALLAER, ESQ.

Attorneys for Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana, Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford, and North American Automotive Services, Inc. d/b/a Napleton Dealership Group

Dated: October 22, 2020

RULE 4:5-1 CERTIFICATION

Pursuant to the provisions of New Jersey Court Rules, Rule 4:5-1(b)(2), we, the undersigned, do hereby certify, to the best of my knowledge and belief, that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of the undersigned's knowledge or belief. We, the undersigned, further certify that, to best of our belief, no other action or arbitration proceeding is contemplated. We, the undersigned, further certify that, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we, the undersigned, recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

ARENT FOX LLP
1301 Avenue of the Americas
New York, New York 10019
(212) 484-3900

Attorneys for Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana, Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford, and North American Automotive Services, Inc. d/b/a Napleton Dealership Group

By: _____
MICHAEL P. MCMAHAN, ESQ.

Dated: October 22, 2020

Michael P. McMahan, Esq., Atty. ID No. 031802009
Russell P. McRory, Esq. (*pro hac vice forthcoming*)
Charles A. Gallaer, Esq., Atty. ID No. 123632014
ARENT FOX LLP
1301 Avenue of the Americas
New York, New York 10019-5820
(212) 484-3900

Attorneys for Plaintiffs

NAPLETON AUTOMOTIVE OF URBANA,
LLC d/b/a Napleton's Volkswagen of Urbana,
NAPLETON ORLANDO IMPORTS, LLC
d/b/a Napleton's Volkswagen of Orlando,
NAPLETON SANFORD IMPORTS, LLC
d/b/a Napleton's Volkswagen of Sanford,
EDWARD F. NAPLETON, individually and
NORTH AMERICAN AUTOMOTIVE
SERVICES, INC. d/b/a Napleton Dealership
Group, An Illinois Corporation,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., A New Jersey Corporation,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: _____

CIVIL ACTION

SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

VOLKSWAGEN GROUP OF AMERICA, INC.

The plaintiffs, named above, have filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf and is also provided below). If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971,

Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiffs' attorney whose name and address appears above, or to plaintiffs, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiffs demand, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf and is also provided below.

/s/ Michelle M. Smith

Michelle M. Smith

Clerk of the Superior Court

DATED: October 22, 2020

Name of Defendant to Be Served:

Volkswagen Group of America, Inc.



Address of Defendant to Be Served:

c/o Corporate Service Company

Princeton South Corporate Center, Suite 160

100 Charles Ewing Blvd

Ewing, NJ 08628

| | | | |
|--|--|---|---|
|  | <h2 style="margin: 0;">Civil Case Information Statement</h2> <h3 style="margin: 0;">(CIS)</h3> <p style="margin: 0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p> | | For Use by Clerk's Office Only |
| | | | Payment type: <input type="checkbox"/> ck <input type="checkbox"/> cg <input type="checkbox"/> ca |
| | | | Chg/Ck Number: |
| | | | Amount: |
| | | | Overpayment: |
| | | Batch Number: | |
| Attorney/Pro Se Name Michael P. McMahan, Esq. | Telephone Number (242) 484-3990 | County of Venue Bergen | |
| Firm Name (if applicable) Arent Fox LLP | | Docket Number (when available) | |
| Office Address 1301 Avenue of the Americas, Fl. 42 New York, NY 10019 | | Document Type Initial Pleadings | |
| | | Jury Demand <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| Name of Party (e.g., John Doe, Plaintiff) Napleton Automotive of Urbana, LLC, Napleton Orlando Imports, Napleton Sanford Imports, LLC | | Caption Napleton Automotive of Urbana, LLC et al. v. Volkswagen Group of America, Inc. | |
| Case Type Number (See reverse side for listing) 599 | Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you have checked "Yes," see <i>N.J.S.A. 2A:53A-27</i> and applicable case law regarding your obligation to file an affidavit of merit. | |
| Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | If "Yes," list docket numbers | |
| Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | Name of defendant's primary insurance company (if known) <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown | |
| The Information Provided on This Form Cannot be Introduced into Evidence. | | | |
| Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation | | | |
| Do parties have a current, past or recurrent relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | If "Yes," is that relationship: <input type="checkbox"/> Employer/Employee <input type="checkbox"/> Friend/Neighbor <input type="checkbox"/> Other (explain) <input type="checkbox"/> Familial <input checked="" type="checkbox"/> Business | |
| Does the statute governing this case provide for payment of fees by the losing party? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |
| Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition | | | |
| | | | |
|  Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, please identify the requested accommodation: | | |
| Will an interpreter be needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If yes, for what language? | | |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> . | | | |
| Attorney Signature: | | | |

Side 2



Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1***CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days discovery**

| | |
|--|---|
| 151 Name Change | 506 PIP Coverage |
| 175 Forfeiture | 510 UM or UIM Claim (coverage issues only) |
| 302 Tenancy | 511 Action on Negotiable Instrument |
| 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction) | 512 Lemon Law |
| 502 Book Account (debt collection matters only) | 801 Summary Action |
| 505 Other Insurance Claim (including declaratory judgment actions) | 802 Open Public Records Act (summary action) |
| | 999 Other (briefly describe nature of action) |

Track II - 300 days discovery

| | |
|---|---|
| 305 Construction | 603Y Auto Negligence – Personal Injury (verbal threshold) |
| 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD)) | 605 Personal Injury |
| 599 Contract/Commercial Transaction | 610 Auto Negligence – Property Damage |
| 603N Auto Negligence – Personal Injury (non-verbal threshold) | 621 UM or UIM Claim (includes bodily injury) |
| | 699 Tort – Other |

Track III - 450 days discovery

| | |
|------------------------------|--|
| 005 Civil Rights | 608 Toxic Tort |
| 301 Condemnation | 609 Defamation |
| 602 Assault and Battery | 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases |
| 604 Medical Malpractice | 617 Inverse Condemnation |
| 606 Product Liability | 618 Law Against Discrimination (LAD) Cases |
| 607 Professional Malpractice | |

Track IV - Active Case Management by Individual Judge / 450 days discovery

| | |
|---|--|
| 156 Environmental/Environmental Coverage Litigation | 514 Insurance Fraud |
| 303 Mt. Laurel | 620 False Claims Act |
| 508 Complex Commercial | 701 Actions in Lieu of Prerogative Writs |
| 513 Complex Construction | |

Multicounty Litigation (Track IV)

| | |
|---|---|
| 271 Accutane/Isotretinoin | 601 Asbestos |
| 274 Risperdal/Seroquel/Zyprexa | 623 Propecia |
| 281 Bristol-Myers Squibb Environmental | 624 Stryker LFIT CoCr V40 Femoral Heads |
| 282 Fosamax | 625 Firefighter Hearing Loss Litigation |
| 285 Stryker Trident Hip Implants | 626 Abilify |
| 286 Levaquin | 627 Physiomesch Flexible Composite Mesh |
| 289 Reglan | 628 Taxotere/Docetaxel |
| 291 Pelvic Mesh/Gynecare | 629 Zostavax |
| 292 Pelvic Mesh/Bard | 630 Proceed Mesh/Patch |
| 293 DePuy ASR Hip Implant Litigation | 631 Proton-Pump Inhibitors |
| 295 AlloDerm Regenerative Tissue Matrix | 632 HealthPlus Surgery Center |
| 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components | 633 Prolene Hernia System Mesh |
| 297 Mirena Contraceptive Device | |
| 299 Olmesartan Medoxomil Medications/Benicar | |
| 300 Talc-Based Body Powders | |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59 Consumer Fraud

Michael P. McMahan, Esq., Atty. ID No. 031802009
Russell P. McRory, Esq. (*pro hac vice forthcoming*)
Charles A. Gallaer, Esq., Atty. ID No. 123632014
ARENT FOX LLP
1301 Avenue of the Americas
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(212) 484-3900

Attorneys for Plaintiffs

NAPLETON AUTOMOTIVE OF URBANA,
LLC d/b/a Napleton's Volkswagen of Urbana,
NAPLETON ORLANDO IMPORTS, LLC
d/b/a Napleton's Volkswagen of Orlando,
NAPLETON SANFORD IMPORTS, LLC
d/b/a Napleton's Volkswagen of Sanford,
EDWARD F. NAPLETON, individually and
NORTH AMERICAN AUTOMOTIVE
SERVICES, INC. d/b/a Napleton Dealership
Group, An Illinois Corporation,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., A New Jersey Corporation,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: _____

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
BY ORDER TO SHOW CAUSE TO FILE THE COMPLAINT UNDER SEAL**

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PRELIMINARY STATEMENT

Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana ("Napleton Urbana"), Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando ("Napleton Orlando"), Napleton Sanford Imports, LLC ("Napleton Sanford") d/b/a Napleton's Volkswagen of Sanford (also collectively referred to as "Dealers"), North American Automotive Services, Inc. d/b/a Napleton Dealership Group ("Napleton Dealership Group") and Edward F. Napleton ("Mr. Napleton") (Dealers, Napleton Dealership Group and Mr. Napleton being collectively referred to as "Plaintiffs" or "Napleton"), by their attorneys, Arent Fox LLP, file this motion by order to show cause seeking an Order permitting Plaintiffs to file the Summons and Complaint under seal.

In or about 2016, Napleton was involved in a class action lawsuit against Audi related to its well-publicized diesel defeat device scandal (the "TDI Litigation"). At the request of Defendant, Dealers agreed to act as class representative when the case was initiated but subsequently elected to opt-out of the MDL Settlement, and proceeded in their case against Volkswagen Group (the "Napleton Opt Out"). On or about June 1, 2018, Napleton and Volkswagen Group signed a confidential settlement and release agreement ("TDI Settlement Agreement"). *See* Comp. Exhibit 1. The TDI Settlement Agreement contains a confidentiality provision precluding disclosure of the contents of the agreement absent mutual consent or governmental or judicial intervention. The Complaint also makes reference to the Michigan APA, which is also an agreement containing a confidentiality provision. Because these agreements contain confidential information that disclose sensitive commercial information and contain confidentiality provisions limiting the manner in which each party may disclose the confidential information, disclosure of this information through the filing of the Complaint could be argued to breach these agreements.

Accordingly, Plaintiffs respectfully request that their motion to file under seal the

Complaint and exhibit attached thereto be granted in all respects.

STATEMENT OF FACTS

A. Plaintiffs' Agreements Proscribe Public Disclosure of Confidential Information

a. The TDI Settlement

As discussed more fully in Plaintiffs' Complaint, Napleton was involved in a class action lawsuit against Audi related its well-publicized diesel defeat device scandal (the "TDI Litigation"). The Dealers agreed to act as the class representative at the inception of the case, at the urging of VW Group itself. However, the Dealers subsequently elected to opt-out of the MDL Settlement, and proceeded in their case against Volkswagen Group (the "Napleton Opt Out").

On or about June 1, 2018, Napleton and Volkswagen Group signed a confidential settlement and release agreement ("TDI Settlement Agreement"). *See Complaint Exhibit 1.* The TDI Settlement Agreement expressly prohibits disclosure of the contents of the agreement absent mutual consent or judicial or governmental action. Specifically, Paragraph 13 of the Settlement Agreement states:

Except as required by law, **the Parties agree that neither they nor their representatives shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this Agreement or any conditions precedent to those terms, absent the prior written consent of the remaining Parties. Notwithstanding the above, the Parties and their counsel are not precluded from disclosing:** (a) the fact that this Agreement was reached on mutually agreed terms; and **(b) the terms of this Agreement** to their accountants, tax preparers, paid financial advisors, shareholders, members, directors, management level employees, immediate family members (with agreement that they shall not disclose it to any person not authorized under this Agreement) **or any governmental or judicial authority which might compel the disclosure of this Agreement**, or from disclosing the terms of this Agreement as necessary to enforce the terms and conditions of this Agreement..

(Emphasis added).

The TDI Settlement Agreement purportedly prohibits disclosure of its contents to the

public. Given this agreement contains confidential information that discloses sensitive commercial information and contains confidentiality provisions limiting the manner in which each party may disclose the confidential information, Plaintiffs respectfully request that this Court grant their motion to file the Complaint and the TDI Settlement Agreement attached thereto under seal.

ARGUMENT

I. THE COURT SHOULD PERMIT PLAINTIFFS TO FILE THE COMPLAINT UNDER SEAL IN ORDER TO PROTECT ALL PARTIES

“Whether to seal or unseal documents” is left to the discretion of the trial court, and records may only be sealed upon a showing of good cause. *Lederman v. Prudential Life Ins. Co. of Am.*, 385 N.J. Super. 307, 316, 317 (App. Div. 2006) (citing R. 1:2-1). What constitutes good cause is governed by a standard of reasonableness. *Hammock by Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356, 376 (1995). Good cause exists here. It is reasonable to request that this Court seals the Complaint and accompanying TDI Settlement Agreement as both parties to that agreement are involved in this case and neither party has an interest in the disclosure of confidential and sensitive commercial information. Although “resolution of the issue of the sealing of court records must also involve an examination of R.12-1 and R.4:10-3,” the former rule allows for sealing for good cause and the latter rule is inapplicable here as it relates to discovery issues. *Ocean Spray Cranberries, Inc. v. Holt Cargo Sys., Inc.*, 345 N.J. Super. 515, 527, 785 A.2d 955, 962 (Law. Div. 2000). Neither rule presents a stumbling block to sealing the relevant documents here.

Further, public disclosure of confidential information contained in the Complaint and the accompanying TDI Settlement would undermine the confidentiality provisions in the TDI Settlement Agreement and the public’s interest in honoring settlement agreement terms. Therefore, there is sufficient good cause for this Court to grant Plaintiffs’ motion to seal at this stage of the litigation to allow the filing of the Complaint now and give the Defendant time to support, or

oppose, the sealing of the Complaint and its exhibit.

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that the Court grants the relief requested and allows Plaintiffs to file the Complaint and accompanying Settlement Agreement under seal.

Dated: October 22, 2020

Respectfully submitted,

Arent Fox LLP

By: _____

Michael P. McMahan

Russell P. McRory

Charles A. Gallaer

1301 Avenue of the Americas, 42nd Flr.

New York, NY 10019-5874

Attorneys for Plaintiffs

Michael P. McMahan, Esq., Atty. ID No. 031802009
Russell P. McRory, Esq. (*pro hac vice forthcoming*)
Charles A. Gallaer, Esq., Atty. ID No. 123632014
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1301 Avenue of the Americas
New York, New York 10019-5820
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Attorneys for Plaintiffs

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LLC d/b/a Napleton’s Volkswagen of Urbana,
NAPLETON ORLANDO IMPORTS, LLC
d/b/a Napleton’s Volkswagen of Orlando,
NAPLETON SANFORD IMPORTS, LLC
d/b/a Napleton’s Volkswagen of Sanford,
EDWARD F. NAPLETON, individually and
NORTH AMERICAN AUTOMOTIVE
SERVICES, INC. d/b/a Napleton Dealership
Group, An Illinois Corporation,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., A New Jersey Corporation,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: _____

ORDER TO SHOW CAUSE

Upon the reading and filing of the Complaint dated October 22, 2020 by _____,
the Certification of Michael P. McMahan dated October 22, 2020, and the Memorandum Of Law
collectively submitted in support of the motion brought on by Order to Show Cause, to file the
Complaint and accompanying sealing motion under seal, and sufficient cause being shown, it is
hereby:

ORDERED, that Defendant Volkswagen Group of America, Inc. (“Volkswagen Group”
or “Defendant”) show cause before this Court, at the Bergen County Superior Courthouse, 10

Main Street, Hackensack, New Jersey 07601, on the _____ day of October 2020, at _____
in the fore/after noon, before the Hon. _____, Room _____,
or as soon thereafter as counsel may be heard, why an Order should not be entered:

- (i) directing, pursuant to R. 1:38-11, the Clerk of the Court to seal the Complaint and exhibits annexed thereto which contain contracts and information deemed confidential by Plaintiffs and/or Defendant; and
- (ii) directing, pursuant to R. 1:38-11, the Clerk of the Court to accept for filing under seal court papers and exhibits that contain confidential or proprietary information.

WHEREAS this is an action for declaratory judgment brought by Plaintiffs against the Defendant; and

WHEREAS a settlement agreement between Plaintiffs and the Defendant contain confidential information that disclose sensitive commercial information and contain confidentiality provisions limiting the manner in which each party may disclose the confidential information; and

WHEREAS the settlement agreement purports to prohibit any of the parties from disclosing its terms without the prior written consent of all parties; and

SUFFICIENT CAUSE BEING ALLEGED, IT IS HEREBY ORDERED, that pending the hearing and determination of this motion:

- (i) the Complaint and other filings related to the MOTION TO SEAL shall be sealed by the Clerk of the Court pursuant to R. 1:38-11; and
- (ii) the file of this case shall be restricted to the parties, their attorneys and court personnel.

IT IS FURTHER ORDERED, that service of a copy of this Order to Show Cause, the Complaint, and the papers upon which each is based, shall be deemed good and sufficient service if made by a nationally-recognized overnight courier upon Defendant or its counsel on or before the _____ day of _____, 2020; and it is further

ORDERED, that Defendant's opposing papers, if any, shall be filed with this Court and served by a nationally-recognized overnight courier upon Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, New York 10019, Attn.: Michael P. McMahan, counsel for Plaintiffs and email (michael.mcmahan@arentfox.com), so as to be received on or before the _____ day of _____, 2020.; and it is further

ORDERED, that if Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

Signed this _____ day of _____, 2020, at _____, New Jersey.

ENTER:

J.S.C.

Michael P. McMahan, Esq., Atty. ID No. 031802009
Russell P. McRory, Esq. (*pro hac vice forthcoming*)
Charles A. Gallaer, Esq., Atty. ID No. 123632014
ARENT FOX LLP
1301 Avenue of the Americas
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(212) 484-3900

Attorneys for Plaintiffs

NAPLETON AUTOMOTIVE OF URBANA,
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d/b/a Napleton’s Volkswagen of Orlando,
NAPLETON SANFORD IMPORTS, LLC
d/b/a Napleton’s Volkswagen of Sanford,
EDWARD F. NAPLETON, individually and
NORTH AMERICAN AUTOMOTIVE
SERVICES, INC. d/b/a Napleton Dealership
Group, An Illinois Corporation,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., A New Jersey Corporation,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: _____

CERTIFICATION OF COUNSEL

I, Michael P. McMahan, Esq., hereby certifies as follows:

1. I am an attorney licensed to practice in the State of New Jersey and an associate of the law firm Arent Fox, LLP, attorneys for Plaintiffs Napleton Automotive of Urbana, LLC d/b/a Napleton’s Volkswagen of Urbana (“Napleton Urbana”), Napleton Orlando Imports, LLC d/b/a Napleton’s Volkswagen of Orlando (“Napleton Orlando”), Napleton Sanford Imports, LLC (“Napleton Sanford”) d/b/a Napleton’s Volkswagen of Sanford (also collectively referred to as “Dealers”), North American Automotive Services, Inc. d/b/a Napleton Dealership Group

(“Napleton Dealership Group”) and Edward F. Napleton (“Mr. Napleton”) (Dealers, Napleton Dealership Group and Mr. Napleton being collectively referred to as “Plaintiffs” or “Napleton”), being of full age, certifies and says licensed attorney in the State of New Jersey. I am fully familiar with the facts and circumstances of the above caption action and as set forth below.

2. I respectfully submit this certification in support of Plaintiffs’ Order to Show Cause to seal the Complaint and exhibits annexed thereto pursuant to R. 1:38-1.

3. Plaintiffs bring this action for declaratory judgment against Defendant Volkswagen Group of America, Inc. (“Volkswagen Group”) based upon Defendant’s willful, unlawful, and material breaches of a confidential June 1, 2018 Settlement Agreement. *See Exhibit 1 - Complaint.*

4. The Settlement Agreement contains confidential information that discloses sensitive commercial information related to the parties’ settlement of a lawsuit reached on mutually agreeable terms. It also contains a confidentiality provision that purports to limit the disclosure of the terms of the Settlement Agreement.

5. The privacy of the corporations and individuals involved substantially outweighs the presumption that all court and administrative records are open for public inspection at this stage of the litigation. Volkswagen Group should be allowed the opportunity to argue why this information should not be made public but, in the meantime, the Court should grant the sealing application so that no confidential information is disclosed in the interim upon the filing of the Complaint and the accompanying exhibits and sealing motion.

6. Plaintiffs therefore respectfully request that the Complaint and its related exhibits, as well as this certification and the accompanying memorandum of law be filed under seal by the Court, prohibiting non-party access to the documents as provided for in R 1:38-11.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 22, 2020
Bergen County, New Jersey

Respectfully submitted,

ARENT FOX LLP
1301 Avenue of the Americas, Fl. 42
New York, NY 10019
(212) 484-3900

Attorneys for Plaintiffs

Michael P. McMahan, Esq.



Arent Fox LLP / Attorneys at Law
Boston / Los Angeles / New York / San Francisco / Washington, DC

October 28, 2020

VIA E-MAIL

Owen H. Smith
Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, Illinois 60606

Russell P. McRory

212.484.3942 DIRECT
212.484.3990 FAX
russell.mcrory@arentfox.com

Re: *Napleton Automotive of Urbana, LLC, et al. vs. Volkswagen Group of America Inc.,*
Superior Court of New Jersey, Law Division, Bergen County

Dear Owen:

We represent Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana, Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford, Edward F. Napleton, and North American Automotive Services, Inc. d/b/a Napleton Dealership Group (collectively "Plaintiffs" or "Napleton") with respect to the above-captioned action filed against Volkswagen Group of America Inc. last week in Superior Court, Bergen County New Jersey.

The papers were presented to the Court on Thursday, October 22, 2020, but due to the coronavirus pandemic, the Courthouse is closed to all visitor traffic, including the clerk's office. We are still awaiting receipt of file-stamped copies with Case Number for service, but in the meantime we are providing these unsigned courtesy copies for your reference. You will note that we have moved under Order to Show Cause to file the Complaint and Exhibits under seal, as the subject-matter of the Complaint and the Exhibit is governed by a confidentiality clause. We will notify you when the Court schedules a hearing on the confidentiality motion—please let us know if your client consents to the sealing.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

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Arent Fox

Owen H. Smith, Esq.
October 28, 2020
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Sincerely,

A handwritten signature in black ink, appearing to be "R. McRory", written in a cursive style.

Russell P. McRory

cc: Les Stracher, Esq.

Enclosures