

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

<p>JOANNE NEALE, ET AL.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>VOLVO CARS OF NORTH AMERICA, LLC ET AL.,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 2:10-CV-04407-DMC-MF</p> <p>ANSWER OF DEFENDANTS VOLVO CARS OF NORTH AMERICA, LLC AND VOLVO CAR CORPORATION TO PLAINTIFFS' SECOND AMENDED COMPLAINT</p>
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Defendants Volvo Cars of North America, LLC (“VCNA”) and Volvo Car Corporation (“VCC”) (collectively “Volvo”) respond to Plaintiffs’ Second Amended Complaint as follows:

INTRODUCTION

1. Volvo admits that plaintiffs bring this action both individually and on behalf of a purported class, but denies that these actions have merit or are appropriate for class treatment.

Volvo denies the remaining allegations in this paragraph.

- 2. Volvo denies the allegations in this paragraph.
- 3. Volvo denies the allegations in this paragraph.
- 4. Volvo denies the allegations in this paragraph.

JURISDICTION AND VENUE

5. This paragraph states a legal conclusion to which no response is necessary. To the extent that a response is deemed required, Volvo admits the allegations in this paragraph.

6. This paragraph states a legal conclusion to which no response is necessary. To the extent that a response is deemed required, Volvo admits that it has a North American

headquarters in this district, and is deemed to be a citizen of this district. Volvo denies the remaining allegations in this paragraph.

7. This paragraph states a legal conclusion to which no response is necessary. To the extent that a response is deemed required, Volvo admits that it has a North American headquarters located in Rockleigh, New Jersey. Volvo denies the remaining allegations in this paragraph.

THE PARTIES

The Plaintiffs

A. Plaintiff Neale

8. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

9. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in the text of this paragraph and therefore denies the allegations in this paragraph. With respect to the first sentence of footnote 2, Volvo states that the terms of the New Vehicle Limited Warranty speak for themselves and respectfully refers the Court to its 2004 New Vehicle Limited Warranty for the actual language and full text. Volvo denies the second sentence of footnote 2.

10. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

11. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

12. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

13. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

14. Volvo denies the allegations in this paragraph.

15. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

B. Plaintiff Hay

16. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

17. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

18. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

19. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

20. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

21. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

22. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

23. Volvo denies the allegations in this paragraph.

24. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

C. Plaintiff McGary

25. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

26. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

27. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

28. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

29. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

30. Volvo denies the allegations in this paragraph.

31. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

D. Plaintiff Berg

32. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

33. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

34. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

35. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

36. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

37. Volvo denies the allegations in this paragraph.

38. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

E. Plaintiff Burns

39. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

40. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

41. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

42. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

43. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

44. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

45. Volvo denies the allegations in this paragraph.

46. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

F. Plaintiff Taft

47. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

48. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and in footnote 3, and therefore denies the allegations in this paragraph and in footnote 3.

49. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

50. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

51. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

52. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

54. Volvo denies the allegations in this paragraph.

55. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

G. Plaintiff Kruger

56. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

57. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and in footnote 4, and therefore denies the allegations in this paragraph and in footnote 4.

58. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

59. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

60. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

61. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

62. Volvo denies the allegations in this paragraph.

63. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

H. Plaintiff Collopy

64. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

65. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

66. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

67. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

68. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

69. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

70. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

71. Volvo denies the allegations in this paragraph.

72. Volvo denies the allegations in this paragraph, including, specifically, the existence of a defect in the sunroof drainage system.

The Defendants

73. Volvo admits the allegations in this paragraph.

74. Volvo admits the allegations in this paragraph.

75. Volvo admits that VCNA and VCC communicate with each other concerning aspects of products it distributes within the United States. Volvo denies the remaining allegations of this paragraph.

76. Volvo denies the allegations in this paragraph.

77. Volvo admits the allegations in this paragraph.

78. This paragraph states a legal conclusion to which no response is necessary. To the extent that a response is deemed required, Volvo denies the allegations in this paragraph.

TOLLING OF STATUTES OF LIMITATION

79. Volvo denies the allegations in this paragraph.

80. Volvo denies the allegations in this paragraph.

FACTUAL ALLEGATIONS

A. The Defective Sunroof Design within the Class Vehicles.

81. Volvo admits the allegations in this paragraph.

82. With respect to the first sentence in this paragraph, Volvo admits that an available feature for the Class Vehicles was a power glass moonroof or sunroof. With respect to the second sentence, Volvo admits that the referenced Warranty and Service Records Information

and Sales Brochures speak for themselves and respectfully refers the Court to them for their actual language and full text.

83. Volvo admits that certain XC90 vehicles had a power glass moonroof. Volvo further admits that the referenced Sales Brochures speak for themselves and respectfully refers the Court to them for their actual language and full text. Except as expressly admitted, Volvo denies the allegations in this paragraph.

84. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is required, Volvo denies the first sentence in this paragraph. With respect to the second sentence, Volvo denies that the sunroof design at issue in this case was “insufficient” but otherwise admits the allegations in this sentence.

85. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is required, Volvo denies this paragraph to the extent it alleges that a vehicle’s sunroof must be designed to withstand all foreseeable environmental and usage conditions.

86. Volvo admits that the design of the sunroofs include drain holes, drain tubes, sound plugs, sound traps and other features as parts of a system that is intended to, and does, divert water to the exterior of the vehicle. Volvo denies the remaining allegations in this paragraph.

87. Volvo denies the allegations in this paragraph, including footnote 8.

88. Volvo admits the allegations in the first sentence of this paragraph. With respect to the second sentence, Volvo admits that the referenced Sales Brochures speak for themselves and respectfully refers the Court to them for the actual language and full text.

89. With respect to the first sentence of this paragraph, Volvo admits that the XC90 class vehicle is equipped with a Roll Stability Control. With respect to the second sentence, Volvo admits that the Sales Brochures referenced speak for themselves and respectfully refers the Court to them for the actual language and full text.

90. Volvo admits the allegations in the first sentence of this paragraph. Volvo denies the remaining allegations in this paragraph.

91. Volvo admits that the Electronic Stability Control is a function of the Dynamic Stability Control system and it performs the functions as is stated in the respective Owner's Manuals.

92. Volvo can neither admit nor deny the allegations in this paragraph because it does not know what plaintiffs mean by a "typical" ESC system.

93. Volvo admits that the active yaw control is a feature of the dynamic stability traction control system and its functions include those as are stated in the respective Class Vehicle Owner's Manuals. Volvo denies the remaining allegations in this paragraph.

94. Volvo admits that in some oversteer and some understeer situations some ESC systems will apply the brakes as described in this paragraph. Volvo denies the remaining allegations of this paragraph.

95. Volvo admits that a non-functioning and/or damaged yaw sensor may not function as intended. Further answering, Volvo states that those Class Vehicles with a yaw sensor will provide a dashboard warning if the yaw sensor is inoperable.

96. Volvo admits that the yaw sensor is located on the floorpan of the Class Vehicles and in some Class Vehicles, the audio system components are also located on the floorpan. Volvo denies the remaining allegations in this paragraph.

97. Volvo admits that it did not recommend a maintenance program for the sunroof drainage system within the Class Vehicles Owners' Manuals. Volvo further admits that its factory maintenance schedules speak for themselves and respectfully refers the Court to them for their actual language and full text.

98. Volvo admits that it did not recommend a maintenance program for the sunroof drainage system within the Class Vehicles Owners' Manuals. Volvo further admits that its factory maintenance schedules speak for themselves and respectfully refers the Court to them for their actual language and full text.

99. Volvo admits that Technical Service Bulletin No. 83-84 is a Technical Note and not a Technical Service Bulletin. Volvo further admits that the Technical Note speaks for itself and respectfully refers the Court to it for the actual language and full text. Volvo denies that Exhibit A was attached to the Second Amended Complaint.

100. Volvo admits TSB Retailer Technical Journal 14545 Retailer speaks for itself and respectfully refers the Court to it for the actual language and full text. Volvo denies that Exhibit B was attached to the Second Amended Complaint.

101. With respect to the allegations in the first sentence, Volvo admits that Technical Note 83-84 addresses some 2003 and later model XC90 vehicles and that Retailer Technical Journal 14545 addresses some 2004 and later model S40 vehicles and some 2005 and later model V50 vehicles. With respect to the second sentence, Volvo admits that plaintiffs allege that "such 'sunroof water leakage' defect issues are present in all models of Class Vehicles," but Volvo denies the truth of such allegations. Except as expressly admitted, Volvo denies the allegations in this paragraph.

102. Volvo admits that Tech Notes and Retailer Technical Journals are designed to, among other things, provide guidance to mechanics and service technicians, including mechanics and service technicians employed by Volvo dealers, in diagnosing the causes of problems experienced by owners of Volvo vehicles and in repairing such problems. Volvo further admits that the Technical Note and Retailer Journal speak for themselves and respectfully refers the Court to them for the actual language and full text. Except as expressly admitted, Volvo denies the allegations in this paragraph.

103. Volvo admits that the Technical Note and Retailer Journal speak for themselves and respectfully refers the Court to them for the actual language and full text.

104. Volvo admits that the design of the sunroofs include drain holes, drain tubes, sound plugs, traps and other features as parts of a system that is intended to, and does, divert water to the exterior of the vehicle. Volvo admits that the Technical Note and Retailer Journal speak for themselves and respectfully refers the Court to them for the actual language and full text.

105. Volvo denies the allegations of the first two sentences in this paragraph. Volvo admits that the Technical Note referenced in the third sentence speaks for itself and respectfully refers the Court to it for the actual language and full text.

106. Volvo admits that Retailer Technical Journal 14545 speaks for itself and respectfully refers the Court to it for the actual language and full text. Except as expressly admitted, Volvo denies the remaining allegations in this paragraph

107. Volvo denies the allegations in this paragraph.

108. Volvo admits that the Technical Note speaks for itself and respectfully refers the Court to it for the actual language and full text. Except as expressly admitted, Volvo denies the remaining allegations in this paragraph

109. Volvo admits that the Technical Note speaks for itself and respectfully refers the Court to it for the actual language and full text. Except as expressly admitted, Volvo denies the remaining allegations in this paragraph

110. Volvo denies the allegations in this paragraph.

111. Volvo admits that sunroof drainage systems, including those installed in Volvo vehicles, are designed with the intent that most sunroof drainage systems in most vehicles will function for periods (and mileages) in excess of the express warranty period. Volvo denies the remaining allegations in this paragraph

112. Volvo denies the allegations in this paragraph.

113. Volvo denies the allegations in this paragraph.

114. Volvo denies the allegations in this paragraph.

115. Volvo denies the allegations in this paragraph.

B. Complaints by Other Class Members.

116. Volvo denies the allegations in the first sentence of this paragraph. Volvo admits that some blogs or websites on the internet purport to contain complaints by some people regarding some water leaks in some Volvo vehicles with sunroofs, just as other blogs or websites on the internet purport to contain complaints by vehicle owners or lessees regarding sunroof water leaks in vehicles manufactured by others. *See e.g.*, <http://townhall-talk.edmunds.com/direct/view/.f19fdc2/0>; <http://townhall-talk.edmunds.com/WebX/.f102b89>; <http://blog.bavauto.com/9558/bmw-x3-leaking-sunroof/>; <http://www.bimmerfest.com/forums/>

showthread.php?t=521718; <http://townhall-talk.edmunds.com/direct/view/.f19fdc2/0>;
<http://townhall-talk.edmunds.com/WebX/.f102b89>; <http://blog.bavauto.com/9558/bmw-x3-leaking-sunroof/>; <http://www.bimmerfest.com/forums/showthread.php?t=521718>;
<http://townhall-talk.edmunds.com/direct/view/.f1ac04d/4>; <http://townhall-talk.edmunds.com/direct/view/.f1e12d1/5>; <http://townhall-talk.edmunds.com/direct/view/.f1e12d1/19>; <http://townhall-talk.edmunds.com/direct/view/.f187353/10>;
<http://townhall-talk.edmunds.com/direct/view/.f184d3e/0>; <http://townhall-talk.edmunds.com/direct/view/.f1e12d1/9>; <http://townhall-talk.edmunds.com/direct/view/.f17fc13/25>;
<http://townhall-talk.edmunds.com/direct/view/.f0f2a28/3>; <http://townhall-talk.edmunds.com/direct/view/.f0f2a28/1>; <http://townhall-talk.edmunds.com/direct/view/.f182d4f/1>; <http://townhall-talk.edmunds.com/direct/view/.f17cc21/6>; <http://townhall-talk.edmunds.com/direct/view/.f17cc21/8>; <http://townhall-talk.edmunds.com/direct/view/.ef8b1f7/429>; <http://townhall-talk.edmunds.com/direct/view/.f16791a/29>; <http://townhall-talk.edmunds.com/direct/view/.f184d3e/0>; <http://townhall-talk.edmunds.com/direct/view/.f0f2a28/1>; <http://townhall-talk.edmunds.com/direct/view/.f11733a/6>; <http://townhall-talk.edmunds.com/direct/view/.f17cc21/8>; <http://townhall-talk.edmunds.com/direct/view/.ef56b95/264>; <http://townhall-talk.edmunds.com/direct/view/.f0ce1a6/93>; <http://tsx.acurazine.com/forums/showthread.php?p=12157533&ref=esp-link>; <http://tl.acurazine.com/forums/showthread.php?t=770571&ref=esp-link>; <http://tl.acurazine.com/forums/showthread.php?t=777523&ref=esp-link>; <http://rl.acurazine.com/forums/showthread.php?t=822258&ref=esp-link>; <http://tsx.acurazine.com/forums/showthread.php?t=672277&ref=esp-link>; <http://www.tl.acurazine.com/forums/showthread.php?t=859111>;
<http://www.acadiaforum.net/index.php?topic=9856.0>; <http://www.chevyequinoxforum.com/>

[showthread.php?t=570](http://www.team-integra.net/forum/11-generation-three/140989-sunroof-drain-problem.html); <http://www.team-integra.net/forum/11-generation-three/140989-sunroof-drain-problem.html>; <http://www.subaruforester.org/vbulletin/f88/2011-moonroof-leaking-98767/>; <http://www.subaruoutback.org/forums/110-gen-2-2000-2004/41863-wet-shoulder-harness.html>; <http://www.subaruoutback.org/forums/66-problems-maintenance/34280-2010-outback-sunroof-leak-warranty.html>; <http://www.subaruoutback.org/forums/109-gen-3-2005-2009/41298-still-chasing-water-leak-passenger-footwells.html>; <http://www.audiforums.com/forum/audi-a6-9/2004-a6-water-leak-pass-front-117023/>; <http://www.benzworld.org/forums/w123-e-ce-d-cd-td/666313-sunroof-leak.html>; <http://www.benzworld.org/forums/w210-e-class/1196147-sunroof-leak.html>; <http://www.benzworld.org/forums/w210-e-class/1365774-sunroof-leak.html>; <http://www.benzworld.org/forums/w210-e-class/1501824-sunroof-leak.html>; <http://www.benzworld.org/forums/w123-e-ce-d-cd-td/1492702-sunroof-leak.html>; <http://www.benzworld.org/forums/w220-s-class/1648146-reason-sunroof-leak.html>; <http://www.benzforum.com/forum/showthread.php?t=14075> (all sites last accessed June 1, 2012). Volvo denies the remaining allegations in this paragraph.

C. New Jersey Law Should Apply.

117. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, Volvo denies the allegations in this paragraph.

118. Volvo denies the allegations in this paragraph.

119. Volvo admits the allegations in this paragraph.

120. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, Volvo admits that it owns property and conducts business in New Jersey, but denies the remainder of the allegations in this paragraph.

121. Volvo admits that some members of the putative class as defined in this Complaint reside in New Jersey and purchased vehicles in New Jersey. Volvo denies the remaining allegations in this paragraph.

122. Volvo denies the allegations in this paragraph.

123. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, Volvo denies the allegations in this paragraph.

CLASS ACTION ALLEGATIONS

124. Volvo admits that plaintiffs purport to bring an action pursuant to Rule 23 and that plaintiffs define the purported class as stated in this paragraph. Volvo denies that the proposed class can be appropriately certified in this case.

125. Volvo admits that plaintiffs purport to bring an action pursuant to Rule 23 and that plaintiffs define those purported classes as stated in this paragraph. Volvo denies that the proposed classes can be appropriately certified in this case.

126. Volvo admits that plaintiffs define certain proposed state-wide classes as the “State Sub-Classes” in the first sentence of this paragraph. Volvo admits that plaintiffs seek to exclude certain people or entities from the proposed State Sub-Classes as indicated in the second sentence in this paragraph. The third sentence of this paragraph regarding a “reservation of rights” is not an allegation to which a response is required. To the extent that a response is deemed to be required, Volvo denies the allegation in the third sentence in this paragraph because the federal rules govern this case and any purported “reservation of right” is void. Volvo denies that these proposed classes can be appropriately certified in this case.

127. Volvo denies the allegations in this paragraph.

128. Volvo denies the allegations in this paragraph, including all subparts thereof.

- 129. Volvo denies the allegations in this paragraph.
- 130. Volvo denies the allegations in this paragraph.
- 131. Volvo denies the allegations in this paragraph.
- 132. Volvo denies the allegations in this paragraph.

VIOLATIONS ALLEGED

COUNT I

**VIOLATION OF THE NJCFA
(On Behalf of the Nationwide Class or,
Alternatively, the New Jersey Class)**

- 133. Volvo incorporates its responses to Paragraphs 1-132.
- 134. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs correctly quote some language from N.J.S.A. 56:8-2 and respectfully refers the Court to the statute for the actual language and full text.
- 135. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.
- 136. Volvo denies the allegations in this paragraph.
- 137. Volvo denies the allegations in this paragraph.
- 138. Volvo denies the allegations in this paragraph.
- 139. Volvo denies the allegations in this paragraph.
- 140. Volvo denies the allegations in this paragraph.

COUNT II

**BREACH OF EXPRESS WARRANTY
(On Behalf of the Nationwide Class or,
Alternatively, each of the State Sub-Classes)**

- 141. Volvo incorporates its responses to Paragraphs 1-140.

142. Volvo denies the allegations in this paragraph.

143. Volvo denies the allegations in this paragraph.

144. Volvo denies the allegations in this paragraph.

145. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence in this paragraph, and, therefore, denies the allegations. Volvo denies the remaining allegations in this paragraph.

146. Volvo denies the allegations in this paragraph.

147. Volvo denies the allegations in this paragraph.

148. Volvo denies the allegations in this paragraph.

149. Volvo denies the allegations in this paragraph.

150. Volvo denies the allegations in this paragraph.

151. Volvo denies the allegations in this paragraph.

152. Volvo denies the allegations in this paragraph.

COUNT III

**BREACH OF THE
IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of the Nationwide Class or,
Alternatively, each of the State Sub-Classes)**

153. Volvo incorporates its responses to Paragraphs 1-152.

154. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations in this paragraph.

155. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations in this paragraph.

156. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations in this paragraph.

- 157. Volvo denies the allegations in this paragraph.
- 158. Volvo denies the allegations in this paragraph.
- 159. Volvo denies the allegations in this paragraph.
- 160. Volvo denies the allegations in this paragraph.
- 161. Volvo denies the allegations in this paragraph.

COUNT IV

**COMMON LAW FRAUD
(On Behalf of the Nationwide Class or,
Alternatively, the New Jersey Class)**

- 162. Volvo incorporates its responses to Paragraphs 1-161.
- 163. Volvo denies the allegations in this paragraph.
- 164. Volvo denies the allegations in this paragraph.
- 165. Volvo denies the allegations in this paragraph.

COUNT V

**BREACH OF THE DUTY OF GOOD FAITH
AND FAIR DEALING
(On Behalf of the Nationwide Class or,
Alternatively, the New Jersey Sub-Class)**

- 166. Volvo incorporates its responses to Paragraphs 1-165.
- 167. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations of this paragraph.
- 168. Volvo denies the allegations in this paragraph.
- 169. Volvo denies the allegations in this paragraph.

COUNT VI

**VIOLATION OF THE
MASSACHUSETTS CONSUMER PROTECTION LAW
(On Behalf of the Massachusetts Sub-Class)**

- 170. Volvo incorporates its responses to Paragraphs 1-169.

171. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs paraphrase some language from MASS. GEN. LAWS Ch. 93A § 1 and respectfully refers the Court to the statute for the actual language and full text.

172. Volvo denies the allegations in this paragraph.

173. Volvo denies the allegations in this paragraph.

COUNT VII
VIOLATION OF THE FLORIDA
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(On Behalf of the Florida Sub-Class)

174. Volvo incorporates its responses to Paragraphs 1-173.

175. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs quote some language from FLA. STAT. § 501.202 and respectfully refers the Court to the statute for the actual language and full text.

176. Volvo denies the allegations in this paragraph.

177. Volvo denies the allegations in this paragraph.

COUNT VIII
VIOLATION OF THE HAWAII UNIFORM
DECEPTIVE TRADE PRACTICE ACT
(On Behalf of the Hawaii Sub-Class)

178. Volvo incorporates its responses to Paragraphs 1-177.

179. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs quote some language from HAW. REV. STAT. § 481A-3 and respectfully refers the Court to the statute for the actual language and full text.

180. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the allegations in this paragraph.

181. Volvo denies the allegations in this paragraph.

182. Volvo denies the allegations in this paragraph.

183. Volvo denies the allegations in this paragraph.

184. Volvo denies the allegations in this paragraph.

185. Volvo denies the allegations in this paragraph.

186. Volvo admits that plaintiffs purport to seek damages to the fullest extent permissible under the HUDTPA, but denies that plaintiffs are entitled under the law to any damages or other relief that they seek.

COUNT IX

VIOLATION OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200 (On Behalf of the California Sub-Class)

187. Volvo incorporates its responses to Paragraphs 1-186.

188. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs quote some language from Cal. Bus. & Prof. Code § 17200 and respectfully refers the Court to the statute for the actual language and full text.

189. Volvo denies the allegations in this paragraph.

190. Volvo denies the allegations in this paragraph.

191. Volvo denies the allegations in this paragraph.

192. Volvo denies the allegations in this paragraph.

193. Volvo admits that plaintiffs purport to seek relief under Cal. Bus. & Prof. Code § 17200, but denies that plaintiffs are entitled under the law to any damages or other relief that they seek.

COUNT X

**VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,
CALIFORNIA CIVIL CODE § 1750, *ET.SEQ.*
(On Behalf of the California Sub-Class)**

194. Volvo incorporates its responses to Paragraphs 1-193.

195. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that plaintiffs quote some language from CAL. CIV. CODE § 1770 and respectfully refers the Court to the statute for the actual language and full text.

196. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations in this paragraph.

197. Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in his paragraph, and, therefore, denies the allegations.

198. Volvo denies the allegations in this paragraph, including all subparts thereof.

199. Volvo denies the allegations in this paragraph.

200. Volvo denies the allegations in this paragraph.

201. Volvo denies the allegations in this paragraph, including all subparts thereof.

202. Volvo denies the allegations in this paragraph.

203. Volvo denies the allegations in this paragraph.

204. Volvo denies the allegations in this paragraph.

205. Volvo admits the allegations in this paragraph.

206. Volvo admits that plaintiffs purport to seek relief under the CLRA, but denies that plaintiffs are entitled under the law to any damages or other relief that they seek.

COUNT XI

**THE SONG-BEVERLY ACT-BREACH OF EXPRESS WARRANTY VIOLATIONS OF
CIVIL CODE § 1750, *ET.SEQ.*
(On Behalf of the California Sub-Class)**

207. Volvo incorporates its responses to Paragraphs 1-206.

208. Volvo admits that Plaintiffs Taft and Kruger purport to assert their cause of action on behalf of themselves and the California Sub-Class as stated in the paragraph. Volvo denies that the proposed class can be appropriately certified in this case.

209. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo denies the allegations in this paragraph.

210. Volvo denies the allegations in this paragraph.

211. Volvo denies the allegations in this paragraph.

COUNT XII

**FAILURE TO FULLY SET FORTH TERMS OF WARRANTY IN WRITING
PURSUANT TO SONG-BEVERLY CONSUMER WARRANTY ACT, CALIFORNIA
CIVIL CODE § 1750, *ET.SEQ.*
(On Behalf of the California Sub-Class)**

212. Volvo incorporates its responses to Paragraphs 1-211.

213. This paragraph states a legal conclusion to which no response is necessary. To the extent a response is deemed to be required, Volvo admits that Plaintiffs paraphrase some language from CAL. CIV. CODE § 1770 and respectfully refers the Court to the statute for the actual language and full text.

214. Volvo denies the allegations in this paragraph.

215. Volvo admits that plaintiffs purport to seek relief under CAL.CIV. CODE § 1794, but denies that plaintiffs are entitled under the law to any damages or other relief that they seek.

COUNT XIII

BREACH OF IMPLIED WARRANTY PURSUANT TO SONG-BEVERLY CONSUMER WARRANTY ACT, CALIFORNIA CIVIL CODE § 1790, *ET.SEQ.*, 1792 AND 1791.1 *ET.SEQ.* (On Behalf of the California Sub-Class)

216. Volvo incorporates its responses to Paragraphs 1-215.

217. With respect to the first sentence in this paragraph, Volvo is without knowledge or information sufficient to form a belief as to the truth of the allegations in this sentence and therefore denies the allegations in the first sentence. Volvo denies the remaining allegations in this paragraph.

218. Volvo denies the allegations in this paragraph.

219. Volvo denies the allegations in this paragraph.

220. Volvo denies the allegations in this paragraph.

221. Volvo denies the allegations in this paragraph.

222. Volvo denies the allegations in this paragraph.

PRAYER FOR RELIEF

Plaintiffs' Prayer for Relief following Paragraph 222 of the Complaint, including subparts a through g is not an allegation, and therefore, no responsive pleading is required. Should a response be deemed required, Volvo admits only that plaintiffs purport to demand judgment and certain forms of relief, but Volvo denies there is any legal or factual basis for awarding same. Volvo denies any and all remaining allegations set forth in the final un-numbered paragraph of the Complaint beginning "WHEREFORE" and following Paragraph 222 of the Complaint, including all subparts.

AFFIRMATIVE AND ADDITIONAL DEFENSES

As and for its separate, distinct, and affirmative and additional defenses to plaintiffs' Second Complaint, and to each cause of action thereof, Volvo alleges as follows:

1. Volvo denies all allegations not expressly admitted and specifically reserves all affirmative or other defenses that it may have against the purported class. It is not necessary at this time for Volvo to delineate such defenses against the purported class because no class has been certified and the putative class members are not parties to this litigation.

2. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief may be granted.

3. The claims of some Named Plaintiffs or some members of the purported class are barred because they never suffered the alleged problem.

4. The claims of some Named Plaintiffs or some members of the purported class are barred because they never suffered the alleged problem within the period of the limited warranty.

5. Named Plaintiffs or some members of the purported class may not recover under a theory of breach of warranty since their vehicles were repaired or conformed to the written limited warranty.

6. Named Plaintiffs or some members of the purported class lack standing to bring an action because they have no cognizable damages or injury.

7. The claims of Named Plaintiffs or some members of the purported class are barred by the statute of limitations.

8. The claims of Named Plaintiffs or some members of the purported class are barred by releases.

9. The claims of Named Plaintiffs or some members of the purported classes are barred by accord and satisfaction.

10. The warranty claims of Named Plaintiffs or some members of the purported class are barred by their failure to give the required pre-litigation notice to Volvo.

11. The warranty claims of Named Plaintiffs or some members of the purported class are barred by a lack of privity.

12. Plaintiffs' request for punitive damages, or for double or treble damages, violates the United States Constitution and the constitutions of the various states under which they purport to bring causes of action.

13. Plaintiffs' consumer protection act claims are barred because the sun roofs drainage system outperformed its warranty.

14. To the extent that plaintiffs seek recovery of economic damages under the New Jersey Consumer Fraud Act related to a safety concern, the claims are subsumed by the New Jersey Product Liability Act, N.J.S.A. § 2A:58C-6, et. sec.

15. Volvo reserves the right to raise such additional affirmative defenses as may be established during discovery and by the evidence in this case

WHEREFORE, Volvo prays that the Court determine and adjudge:

- (a) that the complaint be dismissed on its merits;
- (b) that plaintiffs take nothing by the complaint;
- (c) that Volvo be awarded its costs, disbursements and attorneys' fees and expenses incurred herein; and
- (d) that Volvo be awarded such other and further relief as the Court deems proper.

Demand for Jury Trial

Volvo hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

By: /s/ Paul Daly _____

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America, LLC and Volvo Car Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 7, 2012, a copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel of record.

/s/ Paul Daly _____