

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LEGEND AUTORAMA LTD. d/b/a
LEGEND AUDI,

Plaintiff,

- against -

VOLKSWAGEN GROUP OF AMERICA, INC.
d/b/a AUDI OF AMERICA, INC.,

Defendant.

**COMPLAINT AND
JURY DEMAND**

Case No. _____

Plaintiff Legend Autorama Ltd. d/b/a Legend Audi (“Legend”), by and through its attorneys, Arent Fox LLP, as and for its complaint against Volkswagen Group of America, Inc. d/b/a Audi of America, Inc. (“Audi”), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Legend is an Audi dealer located in Amityville, New York. This Complaint arises out of Audi’s unlawful and unjustified decision to cease payments of monetary bonuses to Plaintiff on the basis of a purported failure to comply with provisions of a facility construction agreement (“Facility Agreement”) entered into between the parties, after Audi expressly, in writing, agreed to extend the deadlines that Legend supposedly missed.

2. Audi, under the false guise that Legend did not meet deadlines under the Facility Agreement, seeks to punish Legend by unlawfully denying it Standards Bonus incentive payments that Audi knows is necessary for dealers such as Legend to be profitable, not to mention viable.

3. Legend, therefore, brings this action against Audi for breach of contract, for a declaratory judgment and injunctive relief, and for violation of New York's Franchised Motor Vehicle Dealer Act, N.Y. Veh. & Tr. L §§ 460, *et seq.* ("Dealer Act").

4. As described more fully below, Legend, like all Audi franchisees, is a party to a Dealer Agreement with Audi, and is subject to various requirements in order to qualify for Audi's bonus program, which accounts for a substantial part of Legend's annual profits.

5. These requirements include Legend maintaining, renovating and constructing new sales and service facilities pursuant to the Facility Agreement.

6. To receive Audi's Standards Bonus, Legend is required, among other things, to construct new sales and service facilities at a cost of over \$9,000,000.00 in accordance with the Facility Agreement and the schedule set forth therein.

7. Legend has already excavated the property and is about to commence footings, foundation and steel erection.

8. Pursuant to the Facility Agreement, Legend properly requested an extension of the schedule in order to complete construction of the new facility, and Audi agreed to that extension.

9. Despite Audi having agreed to Legend's extension request, and knowing of Legend's construction-related activities and phasing/scheduling needs, and knowing that Legend was relying on Audi's representations, Audi has now reneged on its agreement.

10. Despite Legend's continued compliance with the Facility Agreement, Audi informed Legend by letter dated August 5, 2015 that Audi was suspending all Standards Bonus payments to Legend. Audi delivered this letter knowing how critical the Standards Bonus is to

Legend's profitability and viability. Audi's actions now threaten Legend's ability to stay in business.

PARTIES

11. Plaintiff Legend is a corporation organized and existing under the laws of the State of New York, with a principal place of business in Suffolk County, New York. Legend has been a licensed and authorized Audi dealer since 1980. Legend is a franchised motor vehicle dealer as defined in the Dealer Act.

12. Volkswagen Group of America, Inc. d/b/a Audi of America, Inc. ("Audi"), is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in the Commonwealth of Virginia. Audi purchases Audi vehicles from corporate affiliates in Germany and then imports and sells these vehicles to franchised Audi dealers throughout the United States, including Legend. Audi is a franchisor as defined in the Dealer Act.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

14. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the acts giving rise to the claims occurred in this jurisdiction. Specifically, the Facility Agreement was negotiated in part, executed, and performance under the Facility Agreement occurred in this district.

FACTUAL ALLEGATIONS

A. The Facility Agreement

15. At Audi's insistence, in June 2013, Legend and Audi entered into an Audi Exclusive Facility Construction Agreement ("Facility Agreement"), dated May 16, 2013, and fully executed on June 19, 2013, to construct a new Exclusive Audi facility located at 5775 Merrick Road, Massapequa, New York. A copy of the Facility Agreement is attached hereto as Exhibit 1.

16. According to Audi, Legend needed to expand and renovate its facilities in order to remain compliant with their Dealer Agreement and in order to continue to earn bonus money needed by the dealership to remain profitable. Audi based these demands on its projections of expected future sales and service volume in Legend's assigned market territory.

17. The Facility Agreement set forth milestones that Legend was expected to meet in order to receive various bonus payments.

18. Legend agreed, *inter alia*, that it would complete construction drawings by May 31, 2014; obtain all necessary approvals and building permits and begin construction by June 30, 2014; and would complete construction by June 30, 2015. *See* Exh. 1, Facility Agreement.

B. Legend's Performance Under the Facility Agreement

19. On several occasions Legend requested an extension of the milestones set forth in the Facility Agreement. Upon information and belief, Audi regularly grants such extensions to its dealers provided they are making reasonable progress.

20. On April 3, 2015, Anita Salomon, Senior Manager, Network Development, Eastern Region of Audi, sent a letter via Federal Express to Michael Siegel of Legend, with a copy to Fred Stolle, Audi Area General Manager, and Jeffrey Tolerico, the Audi Director of the

Eastern Region, which is attached hereto as Exhibit 2. The April 3, 2015 letter, in relevant part, stated:

To continue to be eligible for the Standards Bonus, Legend Audi must meet the following construction milestones:

Construction Start: June 30, 2014

Construction Completion: June 30, 2016

(The LOI was amended per your request to extend construction start past the original deadline of June 30, 2015)

Further, if the facility project is not completed by May 31, 2016, Standards Bonus will cease until the facility is completed. If the project is not completed, Audi maintains the right to charge back all Standards Bonus payments made under the terms of the LOI.

C. Audi's Breach of the Facility Agreement

21. On August 10, 2015, Fred Stolle hand delivered a letter dated August 5, 2015 to Michael Siegel of Legend, which is attached hereto as Exhibit 3. Inexplicably, the letter, in relevant part, stated: "[t]he facility construction completion milestone of June 30, 2015 has not been met. Therefore, standard bonus payments will cease beginning with July payments until the facility project is completed. If the project is not completed, Audi maintains the right to charge back all payments made under the Audi standards bonus since the cure period began."

22. Mr. Siegel then showed Mr. Stolle a copy of Audi's April 3, 2015 extension letter. Mr. Stolle said he would speak with his superiors and get back to Mr. Siegel.

23. On August 13, 2015 Mr. Stolle responded by letter, a copy of which is attached hereto as Exhibit 4. In that letter, Mr. Stolle stated:

Naturally, I was surprised at the letter you produced stating you have received a construction extension from Audi changing your construction deadline. We have looked into the circumstances surrounding the letter you showed me, dated April 3, 2015. We now know that it was sent by a former Audi employee, who had neither the facts, nor authority to grant such extension. He used

Anita Salomon's electronic signature without prior approval. You showing me the letter was the first time I had even heard of it or been made aware of its contents. Ms. Salomon was similarly surprised. We apologize that this happened as there was never any thought given to an extension. Our position has not changed, and the Standards Bonus is still suspended.

24. In other words, four months after Audi agreed, in writing, that the "LOI was amended per [Legend's] request to extend construction start past the original deadline June 30, 2015," Audi now claims that the letter was sent in error even though it was signed by Anita Salomon, a member of senior management with the authority to do so, with copies to Fred Stolle and Jeffrey Tolerico. *See* Exhs. 2,3, 4.

25. Audi's failure to continue the payments of the Standard Bonus is a breach of the Facility Agreement as modified by the April 3, 2015 letter from Anita Salomon.

26. Audi's withholding of bonus payments from Legend also violates the price discrimination provisions of the Dealer Act, N.Y. Veh. & Tr. L § 463(2)(g). This illegal price discrimination will continue to have a substantial adverse financial impact on Legend if permitted to continue.

27. As a result of Audi's wrongful termination of Legend's bonus eligibility, Legend stands to lose approximately \$700,000.00 annually, which will render Legend unprofitable and further threaten its viability. In 2014, Legend received over \$696,000.00 in Standards Bonus payments. In contrast, in 2014, Legend earned a net profit of \$498,000. In short, by withholding the Standards Bonus, Audi has rendered Legend instantly unprofitable.

FIRST CAUSE OF ACTION

**Violation of the New York Franchised Motor Vehicle Dealer Act, N.Y. Veh. & Tr. L.
§ 463(2)(g) and for Money Damages and Injunctive Relief**

28. Legend repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

29. Under Audi's Margin and Bonus Program and the Facility Agreement, Legend has been eligible to receive the Standards Bonus of 3.75% of the Manufacturer's Suggested Retail Price ("MSRP") on every new Audi vehicle sold in a given month.

30. As such, receipt of the Standards Bonus affect the price dealers like Legend pay for vehicles purchased from Audi.

31. Audi's wrongful withholding of Standards Bonus payments from Legend results in unlawful price discrimination, as other Audi dealers receive such bonus payments and, therefore receive more favorable pricing than Legend.

32. Receipt of the bonus payments have the effect of reducing the price per new vehicle sold by Audi to Audi dealers and allow the dealers to remain competitive. The withholding of such bonus payments puts a dealer at a competitive pricing disadvantage both with respect to the net price that the dealer is required to pay Audi for a new vehicle and the price that the dealer can profitably sell the new vehicle to a customer.

33. Audi's summary and unilateral suspension of Legend's Standards Bonus violates Dealer Act § 463(2)(g), which makes it unlawful for a franchisor "[t]o sell or offer to sell any new motor vehicle to any franchised motor vehicle dealer at a lower actual price therefor than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price."

34. By unilaterally and summarily suspending Legend's Standards Bonus in violation of the Facility Agreement, the price discounts resulting from the Standards Bonus payments are not reasonably available to Legend on a proportionately equal basis with all other Audi dealers.

35. Legend seeks damages equal to the 3.75% of the MSRP of all new Audi vehicles sold by Legend after Audi suspended payment of the Standards Bonus.

36. In addition, Audi's withholding of the Standards Bonus from Legend will destroy its ability to remain competitive in the marketplace because other competitor Audi dealers will have a price advantage over Legend, both with respect to the net price they pay Audi for new vehicles and the price that they can sell those vehicles profitably to customers. Legend will not only lose sales because of its uncompetitive pricing, but it will also lose the ability to market to lost lease return customers, and lose allocation of new vehicle inventory going forward. This will have a dramatic and systemic negative impact on Legend's business that will be felt for years to come. Accordingly, Legend seeks, in an amount to be determined at trial, all lost profits on all sales lost as a result of the unlawful price discrimination.

37. Legend also seeks preliminary and permanent injunctive relief directing Audi to pay Legend all Standards Bonus payments for new Audi vehicles sold on or after July 1, 2015.

38. Pursuant to section 469 of the Dealer Act, "[a] franchised motor vehicle dealer who is or may be aggrieved by a violation . . . shall be entitled to . . . sue for, and have, injunctive relief and damages" Under this statutory language, an aggrieved dealer need not show irreparable harm to obtain an injunction.

39. Legend has, in any event, no adequate remedy at law. In calendar year 2014, Legend received Standards Bonus payments totaling over \$696,000, but only recognized a net

profit of \$498,000. In other words, the loss of the Standards Bonus renders Legend instantly unprofitable.

40. Moreover, damages are not easily calculable and will not fully compensate Legend for the harm caused by Audi's violation of the Dealer Act, especially considering that the Audi brand is expected to increase its market share in the immediate future. Further, it will be difficult to calculate the number of sales Legend will lose because it would be operating at a price disadvantage to its competitors. Surrounding dealers that receive the Standards Bonus can purchase new vehicles from Audi at lower net prices and offer their customers lower prices than Legend and yet make a larger profit than Legend.

41. It will also be difficult to calculate the amount of future sales lost to Legend and the damage to Legend's good will and consumer perception as a result of Audi's wrongful conduct alleged herein. If Legend cannot meet a competitor's price, it will lose credibility with that customer and in the marketplace. Moreover, most Audi transactions in this market are leases. Legend will not only lose customers today, but will also lose the opportunity to market to those customers when they return their lease vehicles to the selling dealership at the end of the lease. Finally, as a result of decreased sales, Legend will lose future allocation of new vehicle inventory, which will further drive down sales in the future even after the Standards Bonus is reinstated.

42. Accordingly, since Legend has an inadequate remedy at law, it is also entitled to preliminary and permanent injunctive relief pursuant to Fed R. Civ. P. 65 in addition to Dealer Act § 469(1).

SECOND CAUSE OF ACTION
Breach of Contract

43. Legend repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

44. The Facility Agreement is a valid and enforceable contract between Legend and Audi.

45. Legend has fully performed its obligations under the Facility Agreement and is not in breach thereof.

46. The requirements for Legend to continue to be eligible for the Standards Bonus were modified by the April 3, 2015 letter from Anita Salomon. Pursuant to that letter, construction completion had to occur by June 30, 2016. Exh. 2.

47. Legend is in compliance with the terms of the amended Facility Agreement. Nevertheless, on August 5, 2015, in breach of the Facility Agreement, Audi ceased payments of the Standards Bonus beginning with July payments.

48. By reason of the forgoing actions, Audi breached the express provisions of the Facility Agreement, or alternatively, Audi breached the implied covenant of good faith and fair dealing in the Facility Agreement.

49. Legend has been and will continue to be damaged as a result of Audi's contractual breaches.

50. As a result of Audi's wrongful breach of the express provisions of the Facility Agreement, or alternatively, the implied covenant of good faith and fair dealing therein, Legend has been damaged by the loss of Standards Bonus payments and will be further damaged by lost sales. The amount of damages that Legend has sustained to date, and will sustain in the future, will be proven at trial.

THIRD CAUSE OF ACTION
Declaratory Judgment and Injunctive Relief

51. Legend repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

52. Pursuant to the Facility Agreement, the parties contemplated completion of the milestone deadlines as set forth in the Facility Agreement and the completion of the renovated facilities by June 30, 2015. However, in all cases, those deadlines were subject to modification by the parties.

53. At all times, Legend has kept Audi fully informed of its progress through the various milestones outlines in the Facility Agreement and has been in compliance with its obligations under the Facility Agreement.

54. Audi's suspension of the Standards Bonus effective July 2015 is a breach of the Facility Agreement.

55. There exists an actual and justiciable controversy between Legend and Audi concerning its rights and obligations under the Facility Agreement.

56. Therefore, Legend seeks a judgment declaring that Legend has not breached the Facility Agreement and that Audi has materially breached the Facility Agreement by withholding Standards Bonus payments from Legend.

57. Legend also seeks preliminary and permanent injunctive relief enjoining Audi from terminating its Standards Bonus payments based on its false assertion that Legend is in breach of the Facility Agreement.

WHEREFORE, Legend requests that a judgment be awarded by the Court in its favor and against Defendant Audi as follows:

- (a) on the First Cause of Action, (i) compensatory damages in an amount to be proven at trial, plus prejudgment interest, costs and disbursements, (ii) injunctive relief to prevent Audi from withholding bonus payments, and (iii) attorneys' fees, as permitted under § 469 of the Dealer Act;
- (b) on the Second Cause of Action, (i) compensatory damages in an amount to be proven at trial plus prejudgment interest, costs and disbursements;
- (c) on the Third Cause of Action, (i) a judgment declaring that Audi is in breach of its obligations under the Facility Agreement, that Legend is in compliance with the Facility Agreement, together with preliminary and permanent injunctive relief enjoining Audi from suspending Legend's Standards Bonus payments and from taking any action against Legend based on its false assertion that Legend is in breach of the Facility Agreement; and
- (d) Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Dated: August 19, 2015
New York, New York

Respectfully submitted,

ARENT FOX LLP

By: /s/ Russell P. McRory

Russell P. McRory
James M. Westerlind
Lee A. Pepper
1675 Broadway
New York, New York 10019

*Attorneys for Plaintiff Legend Autorama Ltd. d/b/a
Legend Audi*

EXHIBIT 1

Audi

May 16, 2013

Audi of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
+1 703 364 7000
www.audiusa.com

Michael Siegel, Vice President
Legend Autorama, Ltd., d/b/a Legend Audi
158 Merrick Road
Amityville, New York 11701

Audi Exclusive Facility Construction Agreement

Dear Mr. Siegel:

Legend Autorama, Ltd., d/b/a Legend Audi ("Dealer") currently operates from a facility located at 158 Merrick Road, Amityville, New York 11701 (the "Dealership Premises"). Dealer has proposed to construct an Exclusive Audi facility located at 5775 Merrick Road, Massapequa, New York 11758 (the "Proposed Dealership Premises"). In furtherance of Dealer's proposal, Dealer and Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("AoA"), enter into this Audi Exclusive Facility Construction Agreement (the "Agreement"), and agree to the following:

1. **Facility Commitment; Construction.** Dealer will complete construction of an Exclusive Audi facility in accordance with all of the architectural details, corporate identity elements, colors, furniture, finishes, fixtures, materials, signage, operating capacities, and key design elements prescribed by AoA as per its Dealer Operating Standards requirements of Exclusive facilities (the "Facility") at the Proposed Dealership Premises. Dealer will adhere to the timetable set forth below for construction of the Facility at the Proposed Dealership Premises:
 - a. Construction Drawings. By May 31, 2014, Dealer shall complete and submit to AoA for its review, final Construction Drawings and a finish schedule for the Facility. Prior to the final submission of Construction Drawings, Dealer shall submit to the AoA appointed architect Construction Drawings for review and approval at 30%, 60%, and 90% complete intervals. The reviews and associated comments shall follow AoA Design Standards and define the facility design elements, site improvements and construction commitments. Dealer shall be charged \$20,000 for reviews, together with reasonable actual out-of-pocket expenses associated with the performance of site visits conducted during construction phase.
 - b. Building Permit, Construction Start. By June 30, 2014, Dealer will have obtained all of the necessary approvals and building permits and will begin construction of the Facility at the Proposed Dealership Premises.
 - c. Construction Completion and Fictitious Name. Within twelve (12) months of satisfying its obligation outlined in Paragraph 1(b), Dealer will complete construction of the Facility at the Proposed Dealership Premises and have it ready for use, in a manner fully approved by AoA and in accordance with the Construction Drawings or revised Construction Drawings approved by AoA. By this date, Dealer will occupy the Facility. Additionally, Dealer will

2. **Standards Bonus Eligibility – Design.** As of the date of this Agreement, Dealer is eligible for Brand Dedicated Standards Bonus Payments in connection with AoA's Margin and Bonus Program. Dealer shall continue to be eligible for Brand Dedicated Standards Bonus until its satisfaction of its obligation outlined in Paragraph 1(b) or June 30, 2014, whichever is sooner. Brand Dedicated Standards Bonus eligibility is contingent upon Dealer's continued adherence to a minimum of 85% of all Dealer Operating Standards. If Dealer has not satisfied its obligation outlined in Paragraph 1(b) by June 30, 2014, Dealer shall immediately forfeit any Standards Bonus eligibility until such time as it has achieved all provisions of Paragraph 1(b).
3. **Standards Bonus Eligibility – Construction.** At such time that Dealer has satisfied its obligation outlined in Paragraph 1(b), it shall be eligible for Exclusive Standards Bonus for a period not to exceed twelve (12) calendar months beginning in the month in which Construction Start occurs. Dealer's Exclusive Standards Bonus eligibility is contingent upon construction continuing in an uninterrupted manner from the time of Construction Start until the Facility is completed pursuant to Paragraph 1(c). During construction, Dealer's Exclusive Standards Bonus eligibility is further contingent upon Dealer's continued adherence to a minimum of 85% of all non-facility related Dealer Operating Standards, as defined by AoA. If Dealer's obligation specified in Paragraph 1(c) is not satisfied within twelve (12) calendar months of Construction Start, Dealer shall immediately forfeit any Standards Bonus eligibility until such time as it has completed the Facility at the Proposed Dealership Premises.
4. **Repayment and Covenant Not To Sue.** Should Dealer for any reason fail to perform any of its obligations as set forth above, Dealer will lose the right to receive any Standards Bonus and must immediately repay to AoA any Standards Bonus monies paid under this Agreement. Further, Dealer agrees not to dispute, either in a court of law, arbitration, or before a motor vehicle board, the decision by AoA regarding repayment of Standards Bonus monies. Dealer, by signing this Agreement, agrees and covenants not to sue AoA with respect to any alleged damages Dealer may suffer as a result of Dealer's loss of the right to receive any Standards Bonus or requirement to repay AoA any Standards Bonus monies arising out of Dealer's failure to perform its obligations under this Agreement, provided that AoA is in substantial compliance with its obligations as outlined in this Agreement.
5. **Miscellaneous.**
 - a. **Time is of the Essence.** Time is of the essence for all matters set forth in this Agreement. This is a material term of this Agreement.
 - b. **Assignment.** Dealer's rights and liabilities under this Agreement may not be assigned without the prior written consent of AoA, which may be withheld in AoA's sole discretion.
 - c. **Non-Waiver.** The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of AoA to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.
 - d. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No representations or statements other than those expressly set forth or referred to in this Agreement were made or relied upon in entering into this Agreement.

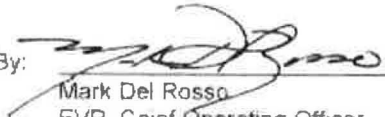
Should the performance of any obligation under this Agreement violate any law of that jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

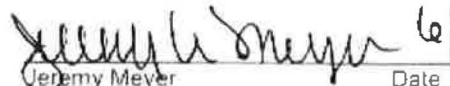
- f. Mutual Agreement. Both parties have negotiated regarding the terms of this Agreement, and both have participated in the drafting and editing of this Agreement. In the case of ambiguities, there will be no presumption against the purported drafter. Further, both parties have offered and have received consideration for their respective rights and remedies under this Agreement.
- g. Adequacy of Market. Dealer and its legal counsel have reviewed the laws applying to dealer/manufacture relations. Dealer agrees that the Facility requirements as expressed in this Agreement are reasonable and necessary in view of the need to service the public and further that the economic conditions in the industry and specifically in Dealer's relevant market area support this action.
- h. Legal Counsel. Both parties have had legal counsel of their choice review this Agreement and are fully advised as to the legal and binding nature of this Agreement.

Please acknowledge your understanding and approval of the terms of this Agreement by signing it below and returning it to AoA at this office no later than June 30, 2013, on which date, if not received, the offer represented by our execution of this Agreement will expire without any further action.

Sincerely yours,

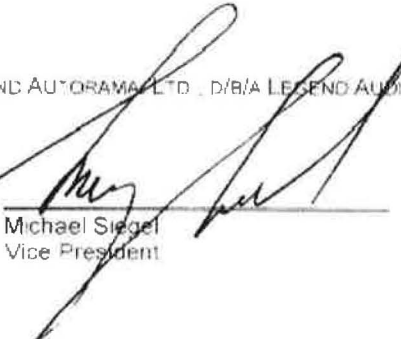
AUDI OF AMERICA, INC.

By:  6.15.13
 Mark Del Rosso Date
 EVP, Chief Operating Officer

By:  6/19/2013
 Jeremy Meyer Date
 General Manager, Network Development

AGREED TO AND ACCEPTED THIS _____ DAY OF _____, 2013

LEGEND AUTODRAMA LTD. D/B/A LEGEND AUDI

By: 
 Michael Siegel
 Vice President

Witness 

EXHIBIT 2

Sent via Federal Express Signature Required

April 3, 2015

Michael Siegel
Legend Autorama Ltd. d/b/a Legend Audi
158 Merrick Road
Amityville, NY 11701

Dear Mr. Siegel:

This letter serves as a reminder of the construction obligations that you agreed to in the Audi Facility Construction Agreement dated May 16, 2013 and fully executed on June 19, 2013 ("LOI").

To continue to be eligible for the Standards Bonus, Legend Audi must meet the following construction milestones:

Construction Start: June 30, 2014

Construction Completion: June 30, 2016

(The LOI was amended per your request to extend construction start past the original deadline of June 30, 2015)

Further, if the facility project is not completed by May 31, 2016, Standards Bonus will cease until the facility is completed. If the project is not completed, Audi maintains the right to charge back all Standards Bonus payments made under the terms of the LOI.

It is our intent to help Legend Audi keep the facility project on track. Please do not hesitate to contact me directly if you have any questions or need assistance.

Sincerely,



Anita Salomon
Sr. Manager, Network Development, Eastern Region

Cc: Jeffrey Tolerico, Director, Eastern Region
Fred Stolle, Area General Manager

Audi of America, Inc.
300 Tree Blvd
Woodcliff Lake, NJ 07677
Tel: 703-574-2809
www.audiusa.com

EXHIBIT 3

Hand Delivered

August 5, 2015

Michael Siegel
Wayne Siegel
Legend Autorama, Ltd., d/b/a Legend Audi
158 Merrick Road
Amityville, New York 11701

Dear Michael and Wayne,

On September 26, 2014, you received a letter from Anita Salomon reminding you of the construction milestone obligations agreed in your Facility Construction Agreement, commonly referred to as a "Letter of Intent," LOI, for Legend Audi. This letter also advised that standards bonus would cease if any construction milestones were not met. In addition, Anita and I met with both of you on February 6, 2015 to remind you of your construction milestone obligations.

Audi of America, Inc.
400 Lee Blvd
Woodcliff Lake, NJ 07677
© 2014 Audi of America
www.audiusa.com

The facility construction completion milestone of June 30, 2015 has not been met. Therefore, standards bonus payments will cease beginning with July payments until the facility project is completed. If the project is not completed, Audi maintains the right to charge back all payments made under the Audi standards bonus since the cure period began.

It is our intent to help your dealer team complete the facility project. Please do not hesitate to contact me if you have any questions.

Sincerely,



Fred Stolle
Area General Manager

Cc: Jeffrey Tolerico, Director, Eastern Region
Anita Salomon, Sr. Manager, Network Development

EXHIBIT 4

August 13, 2015

VIA FEDEX OVERNIGHT DELIVERY TRK# 7742 7798 9350

Michael Siegel
Legend Autorama Ltd. d/b/a Legend Audi
158 Merrick Road
Amityville, NY 11701

Audi of America, Inc.
200 1st Blvd.
Westport, N.Y. 11791
© 2015 Audi of America, Inc.
www.audi-usa.com

Dear Michael:

Thank you for meeting with me on Monday, August 10, 2015. The purpose of my visit was to again remind you of the deadlines for the completion of the facility, and to give you a letter stating that the dealership's failure to meet such deadlines means that your standards bonus is suspended as of June 30, 2015.

Naturally, I was surprised at the letter you produced stating you have received a construction extension from Audi changing your construction deadline. We have looked into the circumstances surrounding the letter you showed me, dated April 3, 2015. We now know that it was sent by a former Audi employee, who had neither the facts, nor authority to grant such extension. He used Anita Salomon's electronic signature without prior approval. Your showing me the letter was the first time I had even heard of it or been made aware of its contents. Ms. Salomon was similarly surprised. We apologize that this happened as there was never any thought given to an extension. Our position has not changed, and the Standards Bonus is still suspended.

Audi has met its obligations, having paid you for three years as outlined in the Letter of Intent contract that you signed stating the new Audi building in Massapequa needed to be complete by June 2015. We sent you several emails dated from August 2013, April 2014 and September 2014 reminding you of your construction milestones. In addition, both Anita and I met with you in February 2015 stating that if the construction completion deadline is not met we would stop the standards payments. We have had many conversations about the construction deadline and its implication to continuing Standards bonus.

I am somewhat surprised, given all these discussions and emails, that after you received the April 3 letter, which completely contradicts the last two years of interaction on this topic, you did not discuss it with me or anyone else at Audi. The letter has dates that are clearly not accurate and do not even make sense in relation to the LOI. Had you called me, I could have investigated the matter in

early April, and would have dispelled any confusion created therein. I would have told you that there was not any inclination to grant an extension, and that all dates remained as stated in the LOI.

Remarkably, even after the April 3 letter, you and I discussed the building and its progress numerous times and not once did you mention to me you received what you believed to be an extension letter.

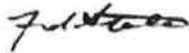
Page 2

In any regard, we are indeed sorry that this letter was sent. However, as noted, our position has not changed. Audi will restart Standards Bonus payments once the building is completed.

Finally, please also be aware that if construction does not continue, we reserve the right to charge back all payments made to you as outlined in the LOI agreement you signed.

Please understand that we look forward to the completion of the Audi Massapequa facility and celebrating a grand opening in the very near future.

Sincerely,



Fred Stolle
Area General Manager Area 74

cc: Jeffrey Tolerico, Director, Eastern Region
Anita Salomon, Sr. Manager, Network Development

JS 44 (Rev. 1/2013)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Legend Autorama Ltd. d/b/a Legend Audi

DEFENDANTS

Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.

(b) County of Residence of First Listed Plaintiff Suffolk County, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Fairfax County, Virginia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Arent Fox LLP, Russell P. McRory, James M. Westerlind, Lee A. Pepper
1675 Broadway, New York, New York 10019
(212) 484-3900

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☒ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☒ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☒ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Breach of franchise facility agreement and violation of NY Motor Vehicle Dealer Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
08/19/2015

SIGNATURE OF ATTORNEY OF RECORD

Lee A. Pepper

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Lee A. Pepper, counsel for Legend Autorama Ltd. d/b/a Legend Audi, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☐ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Not applicable.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No.
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes.
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes.

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: Lee A. Pepper

Eastern District of New York

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset