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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

MDL 2672 CRB (JSC)

PLAINTIFFS' NOTICE OF MOTION, MOTION, AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF THE CLASS ACTION AGREEMENT AND APPROVAL OF CLASS NOTICE

Hearing: July 26, 2016
Time: 8:00 a.m.
Courtroom: 6, 17th floor

The Honorable Charles R. Breyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page(s)

I. INTRODUCTION 1
II. BACKGROUND AND PROCEDURAL HISTORY 4
A. Factual Background 4
B. Procedural History 5
III. TERMS OF THE SETTLEMENT 7
A. The Class Definition 7
B. Benefits to Class Members 8
IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL 11
A. The Class Action Settlement Process 11
B. The Standard For Preliminary Approval 12
C. The Settlement Is Substantively Fair Because It Provides Very Significant Benefits In Exchange For The Compromise Of Strong Claims 14
D. The Settlement Is The Product Of Good Faith, Informed, And Arm's-Length Negotiations, and It Is Procedurally Fair 17
V. THE COURT SHOULD CERTIFY THE CLASS 18
A. The Class Meets The Requirements Of Rule 23(a) 19
1. The Class Is Sufficiently Numerous 19
2. There Are Common Questions of Both Law and Fact 19
3. The Settlement Class Representatives' Claims Are Typical of Other Class Members' Claims 21
4. The Settlement Class Representatives and Class Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class 22
a. The Interests of the Settlement Class Representatives Are Directly Aligned with those of the Absent Class Members and the Settlement Class Representatives Have Diligently Pursued the Action on Their Behalf 23
b. Class Counsel Are Qualified To Serve as Settlement Class Counsel 23
B. The Requirements Of Rule 23(b)(3) Are Met 24
1. Common Issues of Law and Fact Predominate 24
2. Class Treatment Is Superior in This Case 27
VI. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST PRACTICABLE NOTICE IN PLAIN LANGUAGE, BY DIRECT MAIL AND EXTENSIVE PULICATION 29
VII. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE 32
VIII. CONCLUSION 33

CERTIFICATE OF SERVICE 36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

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521 U.S. 591 (1997) 19, 26

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No. 2:07-CV-02159-FCD-EFB, 2009 WL 2982887 (E.D. Cal. Sept. 14, 2009) 28

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534 F.3d 1017 (9th Cir. 2008) 16

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No. C 15-01431 WHA, 2016 WL 1461944 (N.D. Cal. Apr. 14, 2016) 23, 24

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303 F.R.D. 376 (S.D. Cal. 2014) 21

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87 F.R.D. 15 (N.D.Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) 13

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No. C 09-03156 SI, 2010 WL 2231790 (N.D. Cal. June 2, 2010) 20

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No. CV 06-6282 AHM (CTx), 2009 WL 2711956 (C.D. Cal. Aug. 25, 2009) 27

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976 F.2d 497 (9th Cir. 1992) 22

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No. 3:12-CV-06003-CRB, 2015 WL 1153864 (N.D. Cal. Mar. 13, 2015) 13

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No. 5:11-CV-00379 EJD, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013) 12

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No. C–06–3515–JF, 2009 WL 166689 (N.D. Cal. Jan. 20, 2009) 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page(s)

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No. C 07-05634 CRB, 2015 WL 3396829 (N.D. Cal. May 26, 2015) 26

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97 F.R.D. 355 (E.D.N.Y. 1982) 17

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838 F. Supp. 2d 929 (C.D. Cal. 2012) 16

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No. C 11-03796 LB, 2012 WL 5948951 (N.D. Cal. Nov. 28, 2012) 15

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382 F.3d 1241 (11th Cir. 2004) 27

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996 F. Supp. 451 (E.D. Pa. 1998) 16

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696 F.3d 811, 819 (9th Cir. 2012), *cert. denied,* 134 S.Ct. 8 (2013) 13

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224 F.R.D. 462 (N.D. Cal. 2004) 27

Marshall v. Holiday Magic, Inc.,
550 F.2d 1173 (9th Cir. 1977) 17

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213 F.3d 454 (9th Cir. 2000) 12, 14, 15, 17

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623 F.3d 1338 (9th Cir. 1980) 29

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251 F.R.D. 417 (N.D. Cal. 2008) 28

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339 U.S. 306 (1950) 29

Negrete v. Allianz Life Ins. Co. of N. Am.,
238 F.R.D. 482 (C.D. Cal. 2006) 21

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No. C 06-3723 CRB, 2009 WL 1854965 (N.D. Cal. June 29, 2009) 13, 15

Officers for Justice v. Civil Service Comm'n,
688 F.2d 615 (9th Cir. 1982) 12, 13, 14

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754 F.3d at 657 (9th Cir. 2014) 21, 22

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2015 U.S. Dist. LEXIS 109074 (E.D. Cal. Aug. 17, 2015) 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page(s)

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No. C 11-01283 SBA, 2013 WL 5402120 (N.D. Cal. Sept. 26, 2013) 18

Ries v. Arizona Beverages USA LLC,
287 F.R.D. 523 (N.D. Cal. 2012) 21

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2015 WL 304142 (C.D. Cal. Jan. 14, 2015) 16

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No. 11-cv-03003-JST, 2014 WL 988992 (N.D. Cal. Mar. 9, 2014) 26

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591 F.3d 1105 (9th Cir. 2010) 22

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No. 1:09-cv-00707-AWI-JLT, 2015 WL 446091 (E.D. Cal. July 21, 2015) 18

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2012 WL 10634428 (C.D. Cal. Nov. 15, 2012) 16

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190 F.R.D. 649 (C.D. Cal. 2000) 19

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No. 07-2104 SC, 2008 WL 4156364 (N.D. Cal. Sept. 5, 2008) 28

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No. C11-2867 TEH, 2012 WL 994644 (N.D. Cal. Mar. 23, 2012) 21

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749 F.3d 1107 (9th Cir. 2014) 20

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764 F.3d 750 (7th Cir. 2014) 21

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285 F.R.D. 279 (S.D.N.Y. 2012) 21

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No. 13-CV-0607-LHK, 2014 WL 4145448 (N.D. Cal. Aug. 21, 2014) 23, 27

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__U.S.__, 136 S. Ct. 1036 (2016) 25

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497 F.3d 615 (6th Cir. 2007) 15

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No. C 12-05053 LB, 2014 WL 7240339 (N.D. Cal. Dec. 18, 2014) 26

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No. CV 10-9198 JVS (RNBx), 2012 WL 7170602 (C.D. Cal. Nov. 9, 2012) 28

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564 U.S. 338 (2011) 20, 21

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617 F.3d 1168 (9th Cir. 2010) 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

49 U.S.C. § 30120(a)(1)(A)(iii) 16
Cal. Civ. Code § 1793.2(d)(2)(C) 15, 16

RULES

Fed. R. Civ. P. 23(a).... 19, 24
Fed. R. Civ. P. 23(a)(1) 19
Fed. R. Civ. P. 23(a)(2) 20
Fed. R. Civ. P. 23(a)(3) 22
Fed. R. Civ. P. 23(a)(4) 22, 23
Fed. R. Civ. P. 23(b)(3).... 19, 25, 27, 29
Fed. R. Civ. P. 23(c)(2)(B).... 29, 30
Fed. R. Civ. P. 23(e).... 11, 12
Fed. R. Civ. P. 23(e)(1) 29
Fed. R. Civ. P. 23(g) 24

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NOTICE OF MOTION AND MOTION

TO THE ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 26, 2016, at 8:00 a.m., or at such other date as may be agreed upon, in Courtroom 6 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Lead Counsel and the Plaintiffs' Steering Committee, on behalf of a proposed Settlement Class of certain owners and lessees of Volkswagen and Audi branded 2.0-liter TDI vehicles defined in the Class Action Settlement, will and hereby do move the Court for an order granting preliminary approval of the Class Action Settlement, provisionally certifying the Class, directing notice to the Class, and scheduling a fairness hearing.

As discussed in the attached Memorandum and Points of Authorities, the Parties have reached an historic settlement that remediates past environmental harm, minimizes future environmental harm, and compensates consumers for their losses. Moreover, the proposed notice program, which includes direct mail notice and an extensive media outreach, is the best notice practicable under the circumstances. The proposed Settlement Class Representatives thus respectfully request that the Court grant preliminary approval, provisionally certify the Class, direct notice to the Class, and schedule a fairness hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For six years, Volkswagen sold its Volkswagen and Audi branded TDI diesel vehicles in the U.S. with resounding success. These cars were marketed as fuel-efficient, safe, well-performing, and reliable cars, and in all these respects, they delivered. In one respect, they deceived. The Volkswagen and Audi TDI were also marketed as "clean diesels," while in fact they violated federal and state emissions rules. The more TDI owners drove, the more the environment was harmed.

When this deception was publicly disclosed on September 18, 2015, the owners and lessees alleged harm too, because the market value of their cars dropped. The mission of these resulting MDL proceedings, comprised of hundreds of consumer suits, and actions by the United

States Department of Justice ("DOJ") on behalf of the United States Environmental Protection Agency ("EPA"), the Federal Trade Commission ("FTC"), and the State of California by and through the California Air Resources Board ("CARB") and California's Office of the Attorney General, has been, as the Court has acknowledged and urged, to "get[] the polluting cars fixed or off the road" and to compensate Volkswagen's aggrieved customers. March 24, 2016, Status Conference Hr'g Tr. 8:20-21 (Dkt. 1384).

The proposed class action settlement (the "Settlement" or "Class Action Agreement"), and the related EPA/CARB and FTC agreements with Volkswagen, combine to accomplish this environmentally restorative goal in the speediest practicable manner, without the delays, uncertainties, and enforcement problems of protracted litigation. They do so in three ways, summarized here and described more fully in this brief and the Settlement:

1. Repairing the environmental harm by paying TDI owners and lessees to make their cars emissions compliant by choosing to have Volkswagen install, at its expense, EPA-approved emissions modifications as these become available;

2. Enabling TDI owners to recoup their lost vehicle value by selling back their operable cars, regardless of condition, to Volkswagen at September 2015 NADA Clean Trade (pre-"scandal") values, with a cash payment on top of this frozen-in-time, vehicle- specific value. Cars recovered by Volkswagen in this "buyback" program cannot be resold, anywhere in the world, unless they are fixed to EPA standards; and

3. Pursuant to Volkswagen's agreement with the DOJ, requiring Volkswagen to pay a total of $4.7 Billion, (on top of the $10.033 billion funding pool for the Buyback and Emissions Modification program) in environmental reparations, to be administered and enforced by the EPA.

This historic and extraordinary litigation resolving all 2.0-liter TDI claims against Volkswagen, has now reached a partial resolution[1] that represents the largest auto-related class action settlement in U.S. history. The settlement was achieved through an historic and

[1] Plaintiffs' unreleased claims include those concerning 3.0-liter vehicles and all claims against Robert Bosch, LLC, Robert Bosch GmbH, and Volkmar Denner.

extraordinary collaboration among private litigants, DOJ, EPA, CARB and FTC, all facilitated by the diligence of the Court and its specially appointed Settlement Master. The Settlement, in combination with the related and simultaneously-negotiated FTC Consent Order and DOJ Consent Decree (together, the "Settlements"), are valued at approximately $15 billion, resolve Class Members'[2] claims pertaining to Volkswagen and Audi 2.0-liter TDI vehicles ("Eligible Vehicles") against Volkswagen and honor consumer choice by providing owners and lessees with the options of either a "buyback" or "fix" of their vehicles, while also providing them additional compensation in the form of substantial restitution payments. The Settlements require Volkswagen to create a $10.033 billion Funding Pool, and also to pay an additional $4.7 billion to environmental remediation and zero emission technology initiatives, to ensure significant ecological mitigation and future environmental protection.[3]

The Settlement comes only nine months after news of Volkswagen's diesel scandal broke, and only five months after this Court appointed Lead Counsel and the Plaintiffs' Steering Committee ("PSC") (together, "Class Counsel"). However, the truncated time frame within which the Settlement was reached belies the Herculean efforts undertaken by Class Counsel and others, including defense counsel, counsel on behalf of multiple government entities, Settlement Master Mueller and his team, and the Court. Indeed, for the past five months, weekends and weekdays were synonymous and holidays did not exist, as every day that passed without a resolution was another day that the Eligible Vehicles were spewing excessive levels of harmful pollutants into the atmosphere. The hours worked by Class Counsel (and, indeed, by counsel for all settling parties) are more typical of a multi-year complex litigation than a multi-month litigation. While these intensive settlement efforts went on around the clock, the litigation did not

[2] Capitalized terms have the meaning ascribed to them in Section 2 of the Class Action Settlement.

[3] In addition, a consortium of Attorneys General have reached a related agreement to resolve their states' unfair and deceptive practice act claims against both Volkswagen and Porsche in exchange for (1) $1,100 for each 2.0- and 3.0-liter vehicle originally sold or leased in the participating states prior to September 18, 2015, (2) payment of $20,000,000 to the National Association of Attorneys General ("NAAG"), and (3) an injunction against future unfair and deceptive acts or practices. The Attorneys General settlement increases the total value of the Settlements to well over $15 billion.

halt—the PSC continued its brisk pace of factual investigation, document review and analysis, and continued to build the case against settling and non-settling Defendants alike. Class Counsel have, without question, fulfilled (and will continue to fulfill) their commitment to the Court to personally devote their own time, and the time and resources of their respective firms, towards the litigation and resolution of this case.

Plaintiffs are proud to present the Settlement to the Court and respectfully request its approval. For the reasons explained herein, pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court should enter an order preliminarily approving the Settlement, provisionally certifying the Settlement Class, directing notice of Settlement to the Class in the manner proposed herein, and setting a schedule for final approval of the Settlement.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

As alleged in the Consolidated Consumer Class Action Complaint (the "Complaint") (Dkt. 1230), this multidistrict litigation arises from Volkswagen's deliberate use of a Defeat Device, a secretly embedded software algorithm installed in its TDI "clean diesel" vehicles that was designed to cheat emissions tests and fool regulators into approving for sale and lease hundreds of thousands of non-compliant Eligible Vehicles. The Defeat Device engages emission controls to temporarily lower emissions when the TDI engines are being tested, and then deactivates the emission controls when the cars return to normal driving conditions. Volkswagen was able to obtain Certificates of Conformity ("COCs") from the EPA, and Executive Orders ("EOs") from CARB, only by using the Defeat Device, by misrepresenting the true levels of emissions from the Eligible Vehicles, and by concealing the use of the Defeat Device in its certification applications. With the Defeat Devices installed and the emissions controls deactivated during normal use, the Eligible Vehicles polluted at an alarming rate of up to forty times the legal limit. And yet, all the while, Volkswagen deceptively pitched itself—through an extensive, worldwide advertising campaign—as the world's foremost innovator of "clean" diesel technology to hundreds of thousands of consumers who paid a premium to purchase or lease what they believed to be "clean" diesel vehicles.

From 2009-2015, Volkswagen's Defeat Device scheme remained hidden, and the Eligible Vehicles were sold and leased at record numbers to Class Members. Even after road tests uncovered that the TDI engines were actually spewing up to 40 times the allowable limits of pollutants during normal road driving, Volkswagen continued to obfuscate the truth and mislead regulators and consumers for over a year. Finally, after running out of plausible excuses for the discrepancies in the test results, Volkswagen was forced to admit its fraudulent conduct to Congress, to regulators, and to consumers who purchased and leased vehicles equipped with so-called "clean" diesel engines.

B. Procedural History

On September 3, 2015, Volkswagen officials formally disclosed to EPA and CARB that it had installed Defeat Device software in the Eligible Vehicles. On September 18, 2015, the EPA issued a Notice of Violation of the Clean Air Act ("CAA") and CARB sent a letter advising that it had initiated an enforcement investigation of Volkswagen. In the months that followed, consumers filed over 500 class action lawsuits against Volkswagen across the United States, with 101 of those lawsuits filed in the state of California alone. Since Volkswagen's revelation of its scheme, DOJ filed a complaint at the request of the EPA for violations of the CAA, FTC filed a complaint for violations of the FTC Act, California and other state attorneys general announced investigations or filed lawsuits. Many other domestic and foreign government entities also launched criminal and civil investigations of Volkswagen and related individuals and entities around the world.

On December 8, 2015, the Judicial Panel on Multidistrict Litigation transferred all related federal actions (including over 500 putative class actions) to the Northern District of California for coordinated pretrial proceedings before this Court. Dkt. 1. On January 19, 2016, the Court appointed former FBI Director Robert S. Mueller as Settlement Master to attempt to facilitate a settlement between the parties. Dkt. 797. On January 21, 2016, the Court appointed Plaintiffs' Lead Counsel and the PSC. Dkt. 1084.

In the weeks and months that followed, a fully-deployed PSC worked tirelessly both to prosecute the civil cases on behalf of consumers and to work with Volkswagen, federal and state

agencies, and the Settlement Master to try to resolve some or all of the claims asserted in this litigation. Lead Counsel created more than a dozen PSC working groups to ensure that the prosecution and settlement tracks proceeded in parallel, and that the enormous amount of work that needed to be done in a very short period of time was done in the most organized and efficient manner possible. Those working groups focused simultaneously on both litigation and settlement tasks, including drafting the consolidated class complaints; serving, responding to, and reviewing voluminous discovery; analyzing economic damages (and retaining experts concerning those issues); reviewing Volkswagen's financial condition and ability to pay any settlement or judgment; assessing technical and engineering issues; coordinating with multiple federal and state governmental agencies as well as with plaintiffs in state court actions; and researching environmental issues, among others.

On February 22, 2016, Class Counsel filed a 719-page Consolidated Consumer Class Action Complaint asserting claims for fraud, breach of contract, and unjust enrichment, and for violations of The Racketeer Influenced and Corrupt Organizations Act ("RICO"), The Magnuson-Moss Warranty Act ("MMWA"), and all fifty States' consumer protection laws. Dkt. 1230. The length of, and detail in, the Complaint reflects the arduous process undertaken by Class Counsel in understanding the factual complexities of the alleged fraud, and researching and developing the various claims at issue and the remedies available to those who were harmed by Volkswagen's conduct.

Following the filing of the Complaint, Class Counsel served Volkswagen with extensive written discovery requests, including interrogatories, requests for production, and requests for admissions, and negotiated comprehensive expert, deposition, preservation, confidentiality, and ESI protocols. To date, Volkswagen has produced almost 12 million pages of documents, and Class Counsel have reviewed and analyzed approximately 70% of them through a massive, around the clock effort. That effort required the reviewing attorneys not only to understand the legal complexities of the dozens of claims Plaintiffs asserted, but also to master the difficulties and nuances involved when working with documents written in German. At the same time, Class Counsel responded to Volkswagen's discovery requests, producing documents from 174 named

Plaintiffs, in addition to compiling information to complete comprehensive fact sheets, which also included document requests, for each named Plaintiff.

Under the Settlement Master's guidance and supervision, Lead Counsel and a settlement working group of the PSC engaged in arm's-length settlement negotiations with Volkswagen in an effort to resolve some or all of the consumer claims brought by Plaintiffs. At the Court's direction, the settlement negotiations began from almost the moment the Court appointed the Settlement Master, Plaintiffs' Lead Counsel, and the PSC in January 2016. Since that time, settlement discussions have occurred on both coasts of the United States, in person and telephonically, without regard to holidays, weekends, or time zones. The negotiations have been extraordinarily intense and complex, particularly considering the timeframe and number of issues and parties involved, including attorney representatives from numerous governmental entities. The result of all these meetings and negotiations is an unprecedented trio of settlements with different emphases—including an outstanding Class Settlement for owners and lessees of 2.0-liter TDI vehicles—that converge to achieve a common restorative goal.

III. TERMS OF THE SETTLEMENT

A. The Class Definition

The Settlement Class consists of all persons (including individuals and entities) who, on September 18, 2015, were registered owners or lessees of a Volkswagen or Audi 2.0-liter TDI vehicle in the United States or its territories (an "Eligible Vehicle," defined more fully in the Class Action Agreement), or who, between September 18, 2015, and the end of the Claim Period, become a registered owner of an Eligible Vehicle. The following entities and individuals are excluded from the Class:

(1) Owners who acquired their Volkswagen or Audi 2.0-liter TDI vehicles after September 18, 2015, and transfer title before participating in the Settlement Program through a Buyback or an Approved Emissions Modification;

(2) Lessees of a Volkswagen or Audi 2.0-liter TDI vehicle that is leased from a leasing company other than VW Credit, Inc.;

(3) Owners whose Volkswagen or Audi 2.0-liter TDI vehicle (i) could not be driven

under the power of its own 2.0-liter TDI engine on June 28, 2016, or (ii) had a Branded Title of Assembled, Dismantled, Flood, Junk, Rebuilt, Reconstructed, or Salvage on September 18, 2015, and was acquired from a junkyard or salvage yard after September 18, 2015;

(4) Owners who sell or otherwise transfer ownership of their Volkswagen or Audi 2.0-liter TDI vehicle between June 28, 2016, and September 16, 2016 (the "Opt-Out Deadline"), inclusive of those dates;

(5) Volkswagen's officers, directors and employees; Volkswagen's affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and Volkswagen Dealers and Volkswagen Dealers' officers and directors;

(6) Judicial officers and their immediate family members and associated court staff assigned to this case; and

(7) Persons or entities who or which timely and properly exclude themselves from the Class as provided in this Agreement.

B. Benefits to Class Members

Pursuant to the Settlement, Volkswagen will provide the following benefits to the Class Members:

(1) Creation of a Funding Pool of $10.033 billion ($10,033,000,000) from which funds will be drawn to compensate Class Members under the Buyback, Lease Termination and Restitution Payment programs, pursuant to the Class Action Settlement Program, as further detailed below;

(2) The provision of an Approved Emissions Modification for Class Members who do not wish to participate in the Buyback or Lease Termination programs, pursuant to the Class Action Settlement Program, as further detailed below;

(3) Payment of $2.7 billion into a Trust whose purpose is to support environmental programs throughout the country that will reduce NO_X in the atmosphere by an amount equal to or greater than the combined NO_X pollution caused by the cars that are the subject of the lawsuit; and

(4) The investment of $2 billion to create infrastructure for and promote public

awareness of zero emissions vehicles.

Class Members will be grouped into three different categories (Eligible Owners, Eligible Sellers, and Eligible Lessees) and compensated as follows:

(1) Eligible Owners will be offered the choice between (A) a Buyback and Owner Restitution, including substantial loan forgiveness if applicable, or (B) an Approved Emissions Modification and Owner Restitution.

(2) Eligible Lessees who retain an active lease of an Eligible Vehicle will be offered the choice between (A) a Lease Termination and Lessee Restitution or (B) an Approved Emissions Modification and Lessee Restitution.

(3) Eligible Lessees who return or have returned an Eligible Vehicle at the conclusion of the lease will be offered Lessee Restitution.

(4) Eligible Lessees who obtained ownership of their previously leased Eligible Vehicle after June 28, 2016 will be offered an Approved Emissions Modification and Lessee Restitution.

(5) Eligible Sellers will be offered Seller Restitution.

(6) Owners whose Eligible Vehicle was totaled and who consequently transferred title of their vehicle to an insurance company after the Opt-Out Deadline, but before the end of the Claim Period, will be offered Owner Restitution but not a Buyback.

The Buyback and Restitution Payment programs will be based on the September 2015 (prior to the disclosure of the existence of the Defeat Device) National Automobile Dealers Association ("NADA") Clean Trade In value of the Eligible Vehicle adjusted for options and mileage ("Vehicle Value"). The Vehicle Value will be fixed as of September 2015 such that the value of Eligible Vehicles will not depreciate throughout the entire settlement claim period. The restitution amounts for owners and lessees will be same regardless of whether they choose a Buyback/Lease Termination or an Approved Emissions Modification.

The following chart summarizes Class Member options and payments:

Category	Definition	Benefit Options	Restitution Payment
Eligible Owner (bought car on or before September 18, 2015)	Registered owner of an Eligible Vehicle at the time of Buyback or Approved Emissions Modification.	(1) Buyback Vehicle Value + Restitution Payment + Loan Forgiveness if applicable OR (if approved) (2) Emissions Modification Modification to your car to reduce emissions + Restitution Payment	20% of the Vehicle Value + $2,986.73 $5,100 minimum
Eligible Owner (bought car after September 18, 2015)	Registered owner of an Eligible Vehicle at the time of Buyback or Approved Emissions Modification.	(1) Buyback Vehicle Value + Restitution Payment OR (if approved) (2) Emissions Modification Modification to your car to reduce emissions + Restitution Payment	10% of the Vehicle Value + $1529 + a proportional share of any restitution not claimed by Eligible Sellers $2,550 minimum
Eligible Seller	Registered owner of an Eligible Vehicle on September 18, 2015, who transferred vehicle title after September 18, 2015, but before June 28, 2016.	Restitution Payment	10% of the Vehicle Value + $ 1,493.365 $2,550 minimum
Eligible Lessee (currently leases car)	Registered lessee of an Eligible Vehicle, with a lease issued by VW Credit, Inc., at the time of Early Lease Termination or Approved Emissions Modification.	(1) Lease Termination Early termination of the lease without penalty + Restitution Payment OR (if approved) (2) Emissions Modification Modification to your car to reduce emissions + Restitution Payment	10% of the Vehicle Value (adjusted for options but not mileage) + $1529
Eligible Lessee (formerly leased car)	Registered lessee of an Eligible Vehicle, with a lease issued by VW Credit, Inc., who returned the Eligible Vehicle at the end of the lease on or after September 18, 2015, or purchased the Eligible Vehicle after June 28, 2016.	Restitution Payment	10% of the Vehicle Value (adjusted for options but not mileage) + $1,529

Another extraordinary aspect of this resolution is its treatment of attorneys' fees. None of the settlement benefits for Class Members will be reduced to pay attorneys' fees or to reimburse

expenses of Class Counsel. Volkswagen will pay attorneys' fees and costs separately and in addition to the Settlement benefits to Class Members. Class Counsel have not yet conducted any substantive discussions regarding the payment of attorneys' fees with any defendants. Deferring the discussion of fees until after substantive settlement terms are agreed upon is a practice routinely approved by courts. *See In re NFL Players Concussion Injury Litig.*, 2016 WL 1552205, at *26 (3d Cir. Apr. 18, 2016), as amended (May 2, 2016). Class Members will have the opportunity to comment on or object to any fee petition under Fed. R. Civ. P. 23(h) prior to the award of attorneys' fees.

IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

A. The Class Action Settlement Process

Pursuant to Federal Rule of Civil Procedure 23(e), class actions "may be settled, voluntarily dismissed, or compromised only with the court's approval." As a matter of "express public policy," federal courts favor and encourage settlements, particularly in class actions, where the costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (same); *see also* 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") §11:41 (4th ed. 2002) (same, collecting cases).

The *Manual for Complex Litigation (Fourth)* (2004) (the "*Manual*") describes the contemporary three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of the notice of the settlement to class members, providing for, among other things, a period for potential objectors and dissenters to raise challenges to the settlement's reasonableness; and (3) a formal fairness and final settlement approval hearing. *Id.* at §21.63. The *Manual* characterizes the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentations from the settlement parties. *Id.* at § 21.632. The proposed Settlement Class Representatives request that the Court grant preliminary approval of

1 the Settlement and authorize the dissemination of notice of the Settlement to Class Members.
2 The Settlement Class Representatives further request that the Court appoint the undersigned Lead
3 Counsel and the PSC as Class Counsel and the 2.0-liter TDI owners/lessees listed in Exhibit 1 to
4 this Motion as the Settlement Class Representatives.

5 **B. The Standard For Preliminary Approval**

6 Rule 23 of the Federal Rules of Civil Procedure governs a district court's analysis of the
7 fairness of a settlement of a class action. *See* Fed. R. Civ. P. 23(e). To approve a class action
8 settlement, the Court must determine whether the settlement is "fundamentally fair, adequate and
9 reasonable." *In re Rambus Inc. Derivative Litig.*, No. C–06–3515–JF, 2009 WL 166689, at *2
10 (N.D. Cal. Jan. 20, 2009) (citing Fed. R. Civ. P. 23(e)); *see also Mego Financial Corp. Sec. Litig.*,
11 213 F.3d 454, 459 (9th Cir. 2000); *Officers for Justice v. Civil Service Comm'n,* 688 F.2d 615,
12 625 (9th Cir. 1982)). Preliminary approval of a proposed settlement is the first step in making
13 this determination.

14 If "the proposed settlement appears to be the product of serious, informed, non-collusive
15 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to
16 class representatives or segments of the class, and falls within the range of possible approval, then
17 the court should direct that the notice be given to the class members of a formal fairness hearing."
18 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *see also In re*
19 *Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18,
20 2013) (applying at preliminary approval a "presumption" of fairness to settlement that was "the
21 product of non-collusive, arms' length negotiations conducted by capable and experienced
22 counsel"). "The preliminary determination establishes an initial presumption of fairness." *In re*
23 *Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079–80 (citation omitted). "Although Rule 23
24 imposes strict procedural requirements on the approval of a class settlement, a district court's
25 only role in reviewing the substance of that settlement is to ensure that it is 'fair, adequate, and
26 free from collusion.'" *Lane v. Facebook, Inc.,* 696 F.3d 811, 819 (9th Cir. 2012), *cert. denied,*
27 134 S.Ct. 8 (2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)); *see*
28 *also In re Hewlett-Packard Co. S'holder Derivative Litig.*, No. 3:12-CV-06003-CRB, 2015 WL

1153864 at *5 (N.D. Cal. Mar. 13, 2015) (granting preliminary approval of third amended settlement in derivative action that "appears to represent a fair, reasonable, and adequate resolution" of the claims).

When class counsel is experienced and supports the settlement, and the agreement was reached after arm's-length negotiations, courts should give a presumption of fairness to the settlement. *See Nobles v. MBNA Corp.,* No. C 06-3723 CRB, 2009 WL 1854965, at *6 (N.D. Cal. June 29, 2009); *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981). Additionally, "[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

The Ninth Circuit has identified "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement" as factors for determining whether a settlement is, in the final analysis, fair, reasonable, and adequate. *See Hanlon*, 150 F.3d at 1026. "The relative degree of importance to be attached to any particular factor will depend on the unique circumstances of each case." *Officers for Justice*, 688 F.2d at 625.

To determine whether a proposed settlement is "within the range of possible approval," the Court also ensures it is "not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Officers for Justice*, 688 F.2d at 625; *see also Mego*, 213 F.3d at 458. Thus, to preliminarily assess the reasonableness of the parties' proposed settlement, the Court should review both the substance of the deal and the process used to arrive at the settlement. *See In re Tableware Antitrust Litig*., 484 F. Supp. 2d at 1080 ("preliminary approval . . . has both a procedural and substantive requirement").

This Settlement is well within the range of possible approval as a fair, reasonable, and adequate resolution between the parties, and should be preliminarily approved. All of the relevant

factors set forth by the Ninth Circuit for evaluating the fairness of a settlement at the final stage weigh in favor of preliminary approval now, and there can be no doubt that the Settlement was reached in a procedurally fair manner given Settlement Master Mueller's ongoing guidance and assistance. For these reasons, the Settlement merits preliminary approval.

C. The Settlement Is Substantively Fair Because It Provides Very Significant Benefits In Exchange For The Compromise Of Strong Claims

As noted in the summary of the Settlement terms above, the Settlement, and the related DOJ Consent Decree and FTC Order, compensate Class Members for the loss in market value of the Eligible Vehicles and for Volkswagen's misrepresentations about the environmental characteristics of the Eligible Vehicles; provide for the buyback and potential refit of the Eligible Vehicles to make them compliant with applicable environmental regulations; and result in the creation of a substantial fund for mitigation of the environmental harms caused by excess emissions from the Eligible Vehicles. This Settlement, rare among civil litigation resolutions, actually undoes harm, as well as compensating loss. The Settlement's significant benefits are provided in recognition of the strength of Plaintiffs' case on the merits and the likelihood that Plaintiffs would have been able to certify a litigation class, maintain certification through trial, and prevail. All PSC members, a uniquely experience group including preeminent class action litigators, consumer and environmental advocates, trial lawyers, and auto litigation veterans, support this Settlement, and it is highly uncertain whether the Class would be able to obtain and keep a better outcome through continued litigation, trial, and appeal. They certainly would not have been able to secure the commencement of the buyback, emissions modification, and remediation program as swiftly as it will take place under the Settlement. Moreover, while Class Counsel believe in the strength of this case, they recognize that there are always uncertainties in litigation, making compromise of claims in exchange for certain and timely provision to the Class of the significant benefits described herein an unquestionably reasonable outcome. *See Nobles*, 2009 U.S. Dist. LEXIS 59435, at *5 ("The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair.") (citing *Mego*, 213 F.3d at 458; *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *15 (N.D.

1 Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the
2 Settlement weighs heavily in favor of its approval compared to the inherent risk of continued
3 litigation, trial, and appeal, as well as the financial wherewithal of the defendant.")).

4 Indeed, should Class Counsel prosecute these claims against Volkswagen to conclusion,
5 that recovery would come years in the future and at far greater expense to the environment and
6 the Class. There is also a risk that a litigation Class would receive less or nothing at all, despite
7 the compelling merit of its claims, not only because of the risks of litigation, but also because of
8 the solvency risks such prolonged and expanding litigation would almost certainly impose upon
9 Volkswagen. A judgment that bankrupts Volkswagen would be far less satisfying than a
10 settlement that provides meaningful and certain monetary and restorative relief in the here and
11 now. *See, e.g.*, *UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007) (affirming approval of
12 settlement class and rejecting objections premised on prospect of plaintiffs complete victory on
13 disputed issue because "any such victory would run the risk of being a Pyrrhic one . . . we need
14 not embellish the point by raising the prospect of bankruptcy").

15 Moreover, in addition to the above, there is a risk that any class recovery obtained at trial
16 would be reduced through offsets. Restitution remedies for automotive defects based on
17 rescission or repurchase calculations are generally subject to offsets for the car owner's use of the
18 vehicle. For example, under California law, the Song-Beverly Consumer Warranty Act provides
19 for an offset calculated on the basis of the mileage driven. *See* Cal. Civ. Code § 1793.2(d)(2)(C);
20 *see also Robbins v. Hyundai Motor America, Inc.*, 2015 WL 304142 at *6 (C.D. Cal. Jan. 14,
21 2015); *Rupay v. Volkswagen Group of America Inc.*, 2012 WL 10634428 at *4 (C.D. Cal.
22 Nov. 15, 2012). State-law-required offsets could also apply to claims under the federal
23 Magnuson Moss Warranty Act ("MMWA"), because while the MMWA effectively creates a
24 federal cause of action to enforce state-law warranty claims, the MMWA applies state substantive
25 law instead of creating substantively different federal warranty standards. *Clemens v.*
26 *DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) ("claims under the Magnuson–Moss
27 Act stand or fall with . . . express and implied warranty claims under state law"); *Keegan v. Am.*
28 *Honda Motor Co.*, 838 F. Supp. 2d 929, 954 (C.D. Cal. 2012). Indeed, the MMWA itself defines

1 the term "refund" as "refunding the actual purchase price (less reasonable depreciation based on
2 actual use where permitted by rules of the Commission).
3 Further, California's Lemon Law specifically enumerates a method for calculating
4 depreciation on vehicles in § 1793.2(d)(2)(C), while the National Traffic and Motor Vehicle
5 Safety Act likewise notes that, following a safety recall, an available remedy to consumers is to
6 "refund[] the purchase price, less a reasonable allowance for depreciation." 49 U.S.C.
7 § 30120(a)(1)(A)(iii). Ultimately, any rescission or refund remedy requires that a plaintiff return
8 the product in a comparable condition to what the plaintiff received. And because a vehicle's
9 value depreciates significantly with use, courts require a reasonable reduction in the refund
10 amount, to account for the depreciation and value provided to the plaintiff. *See, e.g.*, *Kruger v.*
11 *Subaru of Am.*, 996 F. Supp. 451, 457 (E.D. Pa. 1998) ("Thus, because the car is unavailable and
12 because the plaintiffs used the car for eight months, thereby depreciating its value, I conclude that
13 the plaintiffs are not entitled to a full refund."); *Kruse v. Chevrolet Motor Div.*, Civil Action No.
14 96-1474, 1997 WL 408039, at *6 (E.D. Pa. July 15, 1997) ("Awarding damages equal to the full
15 purchase price does not take into account the natural depreciation of the vehicle from normal
16 usage."). Accordingly, the buyback calculation in the Settlement is both highly favorable to Class
17 Members, and supported by applicable law. The settlement provides an array of provisions to
18 compensate for the lost market value of the vehicles, and to restore their ongoing value and
19 utility.
20 Avoiding years of additional litigation in exchange for the certainty of this Settlement now
21 is also important because of the continued environmental damage being caused by the Eligible
22 Vehicles. The Settlement will get the Eligible Vehicles off the road through a buyback or fix,
23 reducing further environmental damage and air pollution. And the $2.7 billion allocated to NOx
24 reduction programs effectively will reverse the environmental damage caused by the Eligible
25 Vehicles' excess pollution.
26 Although the parties are unable to fully evaluate the reactions to the Settlement from Class
27 Members prior to dissemination of the notice of settlement, based on preliminary discussions with
28 Plaintiffs named in the Complaint as well as individuals who filed complaints consolidated in this

multidistrict litigation, the initial reaction has been overwhelmingly positive. Class Counsel are confident that other Class Members will have similarly positive reactions, especially given the real, immediate, and substantial relief the Settlement provides.

D. The Settlement Is The Product Of Good Faith, Informed, And Arm's-Length Negotiations, and It Is Procedurally Fair

Lead Counsel and the Class Counsel settlement working group engaged in settlement discussions with Volkswagen and government representatives from the EPA, CARB, and the FTC, under Settlement Master Mueller's guidance and supervision. Class Counsel also have analyzed huge volumes of discovery material that has provided them sufficient information to enter into a reasoned and well-informed settlement. *See, e.g.*, *Mego*, 213 F.3d at 459 (holding "significant investigation, discovery and research" supported "district court's conclusion that the Plaintiffs had sufficient information to make an informed decision about the Settlement").

Participation of government entities in the settlement process weighs highly in favor of granting preliminary approval. *See, e.g.*, *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) ("The participation of a government agency serves to protect the interests of the class members, particularly absentees, and approval by the agency is an important factor for the court's consideration.") (citation omitted); *Jones v. Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355, 360 (E.D.N.Y. 1982) ("That a government agency participated in successful compromise negotiations and endorsed their results is a factor weighing heavily in favor of settlement approval—at least where, as here, the agency is 'committed to the protection of the public interest.'") (citation omitted). So too does a settlement process involving protracted negotiations with the assistance of a court-appointed mediator. *See Pha v. Yang*, 2015 U.S. Dist. LEXIS 109074, at *13 (E.D. Cal. Aug. 17, 2015) (finding that the fact "the settlement was reached through an arms-length negotiation with the assistance of a mediator through a months-long process . . . weigh[ed] in favor of approval"); *Rosales v. El Rancho Farms*, No. 1:09-cv-00707-AWI-JLT, 2015 WL 446091, at *44 (E.D. Cal. July 21, 2015) ("Notably, the Ninth Circuit has determined the 'presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.'") (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th

Cir. 2011)); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *15-16 (N.D. Cal. Sept. 26, 2013) (same).

Here, settlement negotiations were conducted in good faith, and the Settlement was reached at arms-length with the Court-appointed Settlement Master over the course of months of efforts by the parties. It is understatement to say that the parties benefited from the assistance of Settlement Master Mueller, who played a crucial role in supervising the negotiations and in helping the parties bridge their differences.

Most settlement negotiations take place along two dimensions: plaintiff versus defendant. These negotiations had at least four. The negotiations culminating in the related settlements now before the Court transpired along multiple dimensions simultaneously, with three government entities, and the Class, approaching the resolution sometimes alone sometimes together in various combinations with different stances at different times, all to hammer out the best possible resolution from each parties' perspective. While chaos was prevented by the direction of the Settlement Master and by this Court's repeated directive to move with dispatch, collusion was impossible.

Finally, Plaintiffs continue to vigorously prosecute non-settled claims against Volkswagen and other defendants in this litigation, including Volkswagen's corporate affiliate Porsche, Volkswagen's supplier Bosch, and others. This continued prosecution shows that issues in this case remain contested, and that the Settlement submitted for preliminary approval resulted from vigorous arm's-length negotiations.

Taken together, the substantive quality of the Settlement and the procedurally fair manner in which it was reached weigh in favor of granting preliminary approval here.

V. THE COURT SHOULD CERTIFY THE CLASS

Plaintiffs respectfully request that the Court certify the Class defined in paragraph 2.16 of the Class Action Agreement. Certification of the Class will allow notice of the Settlement to be issued so that Class Members can be informed of the existence and terms of the Settlement, their right to be heard on its fairness, their right to opt out, and the date, time and place of the fairness hearing. *Manual*, at §§ 21.632, 21.633. Rule 23 governs the issue of class certification, whether

1 the proposed class is a litigated class or, as here, a settlement class. However, when
2 "[c]onfronted with a request for settlement-only class certification, a district court need not
3 inquire whether the case, if tried, would present intractable management problems . . . for the
4 proposal is that there will be no trial." *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997).

5 Class certification is appropriate where: "(1) the class is so numerous that joinder of all
6 members is impracticable; (2) there are questions of law and fact common to the class; (3) the
7 claims or defenses of the representative parties are typical of the claims or defenses of the class;
8 and (4) the representative parties will fairly and adequately protect the interests of the class."
9 Fed. R. Civ. P. 23(a). Certification of a class seeking monetary compensation also requires a
10 showing that "questions of law and fact common to class members predominate over any
11 questions affecting only individual members, and that a class action is superior to other available
12 methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As
13 demonstrated below, the Class readily satisfies each of these requirements, so certification is
14 warranted.

15 **A. The Class Meets The Requirements Of Rule 23(a)**

16 **1. The Class Is Sufficiently Numerous**

17 Rule 23(a)(1) is satisfied when "the class is so numerous that joinder of all class members
18 is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is generally satisfied when the class
19 exceeds forty members. *See, e.g.*, *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).
20 It is undisputed that 475,745 Eligible Vehicles were sold or leased in the U.S., and thus, that the
21 Class consists of hundreds of thousands of members. The large size of the Class and the
22 geographic dispersal of its members across the United States render joinder impracticable.
23 Therefore, numerosity is easily established.

24 **2. There Are Common Questions of Both Law and Fact**

25 "Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating
26 that members of the proposed class share common 'questions of law or fact.'" *Stockwell v. City*
27 *& County of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014). The "commonality
28 requirement has been 'construed permissively,' and its requirements deemed 'minimal.'" *Estrella*

1 *v. Freedom Fin'l Network,* No. C 09-03156 SI, 2010 WL 2231790, at *25 (N.D. Cal. June 2,
2 2010) (quoting *Hanlon*, 150 F.3d at 1020). Indeed, the Supreme Court has held that to satisfy
3 commonality, "'[e]ven a single [common] question' will do." *Wal-Mart Stores, Inc. v. Dukes*,
4 564 U.S. 338, 359 (2011). This is because "[w]hat matters to class certification . . . is not the
5 raising of common questions -- even in droves -- but, rather, the capacity of a classwide
6 proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* at 350
7 (emphasis in original) (quotation marks and citations omitted). Thus, the putative class' "claims
8 must depend upon a common contention . . . of such a nature that it is capable of classwide
9 resolution—which means that determination of its truth or falsity will resolve an issue that is
10 central to the validity of each one of the claims in one stroke." *Id.* at 349.

11 Here, the claims of the Class all derive directly from Volkswagen's fraudulent scheme to
12 mislead federal and state regulators into approving the Eligible Vehicles for sale or lease through
13 the use of a Defeat Device designed to bypass emission standards and mask the dangerously high
14 levels of pollutants being emitted during normal operating conditions, as well as Volkswagen'
15 concurrent false and misleading marketing campaign that misrepresented and omitted the true
16 nature of the Eligible Vehicles' "clean" diesel engine system. Volkswagen's common course of
17 conduct raises common questions of law and fact, the resolution of which will generate common
18 answers "apt to drive the resolution of the litigation" for the Class as a whole. *Dukes*, 564 U.S. at
19 350. And as Plaintiffs allege that their and the Class's "injuries derive from [D]efendants'
20 alleged 'unitary course of conduct,'" they have "'identified a unifying thread that warrants class
21 treatment.'" *Sykes v. Mel Harris & Assocs. LLC*, 285 F.R.D. 279, 290 (S.D.N.Y. 2012).

22 Even outside the settlement context, courts routinely find commonality where the class's
23 claims arise from a defendant's uniform course of conduct. *See, e.g.*, *Negrete v. Allianz Life Ins.*
24 *Co. of N. Am.*, 238 F.R.D. 482, 488 (C.D. Cal. 2006) ("The Court finds that the class members'
25 claims derive from a common core of salient facts, and share many common legal issues. These
26 factual and legal issues include the questions of whether Allianz entered into the alleged
27 conspiracy and whether its actions violated the RICO statute. The commonality requirement of
28 Rule 23(a)(2) is met."); *Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D. Cal. 2014) ("Here, Plaintiff

argues his RICO claim raises common questions as to 'Trump's scheme and common course of conduct, which ensnared Plaintiff[] and the other Class Members alike.' The Court agrees."); *Spalding v. City of Oakland*, No. C11-2867 TEH, 2012 WL 994644, at *8 (N.D. Cal. Mar. 23, 2012) (commonality found where plaintiffs "allege[] a common course of conduct that is amenable to classwide resolution"); *International Molders' & Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457 (N.D. Cal. 1983) ("commonality requirement is satisfied where it is alleged that the defendants have acted in a uniform manner with respect to the class"); *see also Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014) (finding that "where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question").[4] Accordingly, Rule 23's commonality requirement is satisfied here.

3. The Settlement Class Representatives' Claims Are Typical of Other Class Members' Claims

"Rule 23(a)(3) requires that 'the claims or defenses of the representative parties are typical of the claims or defenses of the class.'" *Parsons v. Ryan*, 754 F.3d at 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). "Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020). "The test of typicality is 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Parsons*, 754 F.3d at 685 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Accordingly, "[t]he purpose

[4] Similarly, courts routinely find commonality in cases where uniform misrepresentations and omissions are employed to deceive the public. *See Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("[C]ourts routinely find commonality in false advertising cases."); *Astiana v. Kashi Co.*, 291 F.R.D. 493, 501-02 (S.D. Cal. 2013) (same); *see also Guido v. L'Oreal, USA, Inc.*, 284 F.R.D. 468, 478 (C.D. Cal. 2012) (whether misrepresentations "are unlawful, deceptive, unfair, or misleading to reasonable consumers are the type of questions tailored to be answered in 'the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation'") (quoting *Dukes*, 131 S.Ct. at 2551).

of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *Hanon*, 976 F.2d at 508. Thus, where a plaintiff suffered a similar injury and other class members were injured by the same course of conduct, typicality is satisfied. *See Parsons*, 754 F.3d at 685.

Here, the same course of conduct that injured the Settlement Class Representatives also injured other Class Members. The Settlement Class Representatives, like other Class Members, were the victims of Volkswagen' fraudulent scheme because they purchased or leased an Eligible Vehicle, each of which contained an illegal Defeat Device and produced unlawful levels of NO_X emissions. The Settlement Class Representatives, like other Class Members, would not have purchased or leased their vehicles had Volkswagen disclosed to government regulators the illegal Defeat Devices and the true nature of the Eligible Vehicles' "clean" diesel engine systems, because without Volkswagen's wrongdoing, the Eligible Vehicles would not have been approved for sale or lease in the U.S. The Settlement Class Representatives and the other Class Members will similarly benefit from the relief provided by the Settlement. Accordingly, Rule 23's typicality requirement is satisfied here.

4. The Settlement Class Representatives and Class Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class

Finally, Rule 23(a)(4) requires "the representative parties [to] adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To determine whether the adequacy of representation requirement of Rule 23(a)(4) is satisfied, two questions must be asked '(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Clemens v. Hair Club for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944, at *6 (N.D. Cal. Apr. 14, 2016) (quoting *Staton*, 327 F.3d at 957). As discussed below, the answer to each of those questions is a resounding "yes."

a. The Interests of the Settlement Class Representatives Are Directly Aligned with those of the Absent Class Members and the Settlement Class Representatives Have Diligently Pursued the Action on Their Behalf

Plaintiffs do not have any interests antagonistic to the other Class Members and will continue to vigorously protect their interests. *See Clemens*, 2016 U.S. Dist. LEXIS 50573, at *6. The Settlement Class Representatives and Class Members are entirely aligned in their interest in proving that Volkswagen misled them and share the common goal of obtaining redress for their injuries.

The Settlement Class Representatives understand their duties as class representatives, have agreed to consider the interests of absent Class Members, and have actively participated in this litigation. For example, the Settlement Class Representatives have provided their counsel with factual information pertaining to their purchase or lease of an Eligible Vehicle to assist in drafting the Complaint. Furthermore, all representative Plaintiffs were clearly advised of their obligations as class representatives and demonstrated their understanding of those obligations by completing and returning detailed verified Plaintiff Fact Sheets during discovery in this litigation. Plaintiffs also have searched for, and provided, relevant documents and information to their counsel, and have assisted in preparing discovery responses and completing comprehensive fact sheets. Moreover, Plaintiffs have regularly communicated with their counsel regarding various issues pertaining to this case, and they will continue to do so until the Settlement is approved and its administration completed. All of this together is more than sufficient to meet the adequacy requirement of Rule 23(a)(4). *See Trosper v. Styker Corp.*, No. 13-CV-0607-LHK, 2014 WL 4145448, at *43 (N.D. Cal. Aug. 21, 2014) ("All that is necessary is a rudimentary understanding of the present action and . . . a demonstrated willingness to assist counsel in the prosecution of the litigation.").

b. Class Counsel Are Qualified To Serve as Settlement Class Counsel

Class Counsel have already demonstrated their qualifications to the Court. Lead Counsel and each member of the PSC participated in perhaps the most competitive application process in

an MDL ever, during which they described to the Court their qualifications, experience, and commitment to this litigation. The criteria the Court established and considered in appointing Class Counsel are substantially similar to the considerations set forth in Rule 23(g) governing the appointment of class counsel. *Compare* Dkt. 336 and 1084, *with Clemens*, 2016 U.S. Dist. LEXIS 50573, at *6. Class Counsel are highly qualified lawyers who have experience in successfully prosecuting high-stakes complex cases and consumer class actions. Further, Class Counsel, and their respective law firms, have already undertaken an enormous amount of work, effort and expense in this litigation and have demonstrated their willingness to devote whatever resources are necessary to see this case through to an historic and successful outcome. *See, e.g.*, May 24, 2016, Status Conference Hr'g Tr. 8:6-14 (Dkt. 1535) ("Finally, the Court must note that, while it has not and will not make a judgment on the proposed settlements until the appropriate time, it is grateful for the enormous effort of all parties, including the governmental agencies – their efforts to obtain a global resolution of the issues raised by these cases. I have been advised by the Settlement Master that all of you have devoted substantial efforts, weekends, nights, and days, and perhaps at sacrifice to your family."). Here, the Court need look no further than the significant benefits already obtained for the Class through Class Counsel's zealous and efficient prosecution of this action. Accordingly, the Court should find that Class Counsel are adequate.

B. The Requirements Of Rule 23(b)(3) Are Met

In addition to the requirements of Rule 23(a), the Court must find that the provisions of Rule 23(b) are satisfied. The Court should certify a Rule 23(b)(3) class when: (i) "questions of law or fact common to class members predominate over any questions affecting only individual members"; and (ii) a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This case satisfies both the predominance and superiority requirements.

1. Common Issues of Law and Fact Predominate

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual

1 issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, __U.S.__, 136 S. Ct. 1036 (2016) (quoting 2 W.
2 Rubenstein, *Newberg on Class Actions* §4:49 at 195-96 (5th ed. 2012)). "When 'one or more of
3 the central issues in the action are common to the class and can be said to predominate, the action
4 may be considered proper under Rule 23(b)(3) even though other important matters will have to
5 be tried separately, such as damages or some affirmative defenses peculiar to some individual
6 class members.'" *Id.* (quoting 7AA C. Wright, A. Miller, & M. Kane, Federal Practice &
7 Procedure §1778, at 123-24 (3d ed. 2005)). Instead, at its core, "[p]redominance is a question of
8 efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012). Thus, "[w]hen
9 common questions present a significant aspect of the case and they can be resolved for all
10 members of the class in a single adjudication, there is clear justification for handling the dispute
11 on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (internal
12 quotations and citations omitted). Accordingly, it is appropriate to certify a single nationwide
13 class of consumers from all fifty States here.

14 The Rule 23(b)(3) predominance inquiry in the context of the certification of a
15 nationwide settlement class involving various state consumer protection law claims was the
16 subject of an extensive *en banc* decision by the Third Circuit in *Sullivan v. DB Invs., Inc.*,
17 667 F.3d 273 (3d Cir. 2011), *cert denied sub nom.*, *Murray v. Sullivan*, 132 S. Ct. 1876 (2012).
18 In affirming certification a nationwide settlement class, the Third Circuit's predominance
19 inquiry was informed by "three guideposts": "first, that commonality is informed by the
20 defendant's conduct as to all class members and any resulting injuries common to all class
21 members; second, that variations in state law do not necessarily defeat predominance; and third,
22 that concerns regarding variations in state law largely dissipate when a court is considering the
23 certification of a settlement class." *Sullivan*, 667 F.3d at 297. Here, like in *Sullivan*, any
24 material variations in state law do not preclude a finding of predominance given the uniformity
25 of Volkswagen's conduct and the resulting injuries that are common to all Class Members.

26 Indeed, this Court has adopted the rationale in *Sullivan* that "state law variations are
27 largely 'irrelevant to certification of a settlement class.'" *Id.* at 304 (quoting *Sullivan*, 667 F.3d at
28 304) (citation omitted). *See Wakefield v. Wells Fargo & Co.*, No. C 12-05053 LB, 2014 WL

7240339, at *12-13 (N.D. Cal. Dec. 18, 2014); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944-SC, 2016 U.S. Dist. LEXIS 9944, at *208-09 (N.D. Cal. Jan. 6, 2016), *report and recommendation adopted*, 2016 U.S. Dist. LEXIS 9766 (N.D. Cal. Jan. 26, 2016). Moreover, this Court has agreed that in the settlement context, the Court need not "differentiate[e] within a class based on the strength or weakness of the theories of recovery." *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2015 WL 3396829, at *20 (N.D. Cal. May 26, 2015) (quoting *Sullivan*, 667 F.3d at 328); *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 WL 988992, at *54-56 (N.D. Cal. Mar. 9, 2014) (citing *Sullivan*, 667 F.3d at 304-07).

Here, questions of law or fact common to Class Members predominate over any questions affecting only individual members. Volkswagen's uniform scheme to mislead regulators and consumers by submitting false applications for COCs and EOs, failing to disclose the existence of the illegal Defeat Devices in the Eligible Vehicles, and misrepresenting the levels of NO_X emissions of the Eligible Vehicles are central to the claims asserted in the Complaint. Indeed, the evidence necessary to establish that Volkswagen engaged in a scheme to design, manufacture, market, sell, and lease the Eligible Vehicles with Defeat Devices is common to all Class Members, as is the evidence of the false and misleading statements that Volkswagen used to mass market the Eligible Vehicles.

The Ninth Circuit favors class treatment of fraud claims stemming from a "common course of conduct," like the scheme that is alleged by Plaintiffs here. *See In re First Alliance Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-1023.. And, even outside of the settlement context, predominance is readily met in cases asserting RICO and consumer claims arising from a single fraudulent scheme by a defendant that injured each plaintiff. *See Amchem Prods.*, 521 U.S. at 625; *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1173, 1176 (9th Cir. 2010) (consumer claims based on uniform omissions are readily certifiable where the claims are "susceptible to proof by generalized evidence," even if individualized issues remain); *Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-6282 AHM (CTx), 2009 WL 2711956, at *22-23 (C.D. Cal. Aug. 25, 2009) ("Common issues frequently predominate in RICO actions that allege injury as a result of a single fraudulent scheme."); *see*

also Klay v. Humana, Inc., 382 F.3d 1241, 1256, 1257 (11th Cir. 2004) (upholding class certification of RICO claim where "all of the defendants operate nationwide and allegedly conspired to underpay doctors across the nation, so the numerous factual issues relating to the conspiracy are common to all plaintiffs . . . [and the] "corporate policies [at issue] . . . constitute[d] the very heart of the plaintiffs' RICO claims"). Thus, Plaintiffs have satisfied the predominance requirement.

2. Class Treatment Is Superior in This Case

Finally, Rule 23(b)(3) requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This factor "requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. Under the Rule, "the Court evaluates whether a class action is a superior method of adjudicating plaintiff's claims by evaluating four factors: '(1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action.'" *Trosper*, 2014 U.S. Dist. LEXIS 117453, at *62 (quoting *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 469 (N.D. Cal. 2004)).

There can be little doubt that class treatment is superior to the litigation of hundreds or thousands of individual consumer actions here. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."). The damages sought by each class member here, while representing an important purchase to class members, are not so large as to weigh against certification of a class action. *See Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *32-33 (N.D. Cal. Sept. 5, 2008) (finding that class

members had a small interest in personally controlling the litigation even where the average amount of damages were $25,000-$30,000 per year of work for each class member); *see also Walker v. Life Ins. Co. of the Sw.*, No. CV 10-9198 JVS (RNBx), 2012 WL 7170602, at *49 (C.D. Cal. Nov. 9, 2012). The sheer number of separate trials that would otherwise be required also weighs in favor of certification. *Id.*

Moreover, all private federal actions seeking relief for the Class have already been transferred to this District for consolidated MDL pretrial proceedings.[5] Dkt. 950. That the Judicial Panel on Multidistrict Litigation consolidated all related consumer cases in an MDL before this Court is a clear indication that a single proceeding is preferable to a multiplicity of individual lawsuits. The government suits are here too, enabling this Court to approve and enforce all of the provisions of each of these settlements. The certification of the Settlement Class enables and completes this advantageous unified jurisdiction.

Additionally, the Class is defined by objective, transactional facts—the purchase or lease of an Eligible Vehicle—and there is no dispute that Class Members can easily be identified by reference to the books and records of the Volkswagen and their dealers. Accordingly, the Class is plainly ascertainable. *See Moreno v. Autozone, Inc.*, 251 F.R.D. 417, 421 (N.D. Cal. 2008) (Breyer, J.) ("A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.").

Because the class action device provides the superior means to effectively and efficiently resolve this controversy, and as the other requirements of Rule 23 are each satisfied, certification of the Class is appropriate.

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[5] Although several class actions are pending in various state courts, the existence of these actions does not defeat a finding of superiority. *See Cartwright v. Viking Indus.*, No. 2:07-CV-02159-FCD-EFB, 2009 WL 2982887, at *44-*50 (E.D. Cal. Sept. 14, 2009) (certifying CLRA, UCL, fraudulent concealment, unjust enrichment, and warranty claims despite a concurrent state court class action that certified warranty claims for class treatment); *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1069 (N.D. Cal. 2007) (recognizing that courts often certify concurrent FLSA and UCL class actions). Nor does the existence of actions filed by the DOJ or FTC preclude a finding of superiority here, as both of those actions are part of the MDL and the proposed Settlement was negotiated with the participation of those government entities.

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VI. THE PROPOSED NOTICE PROGRAM PROVIDES THE BEST PRACTICABLE NOTICE IN PLAIN LANGUAGE, BY DIRECT MAIL AND EXTENSIVE PULICATION

Upon certifying a Rule 23(b)(3) class, Rule 23(c)(2)(B) requires the Court to "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to object." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In addition, Rule 23(e)(1) requires that before a proposed settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." In class action settlements, it is common practice to provide a single notice that satisfies both of these notice standards. *Manual*, at § 21.633. Combined notice helps to avoid confusion that separate notifications of certification and settlement may produce. "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward and be heard.'" *Churchill Vill., L.L.C., v. GE*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.3d 1338, 1352 (9th Cir. 1980)).

The proposed notice program meets these standards. *See* Exhibit 2, Declaration of Shannon Wheatman on Adequacy of the Class Notice Program ("Wheatman Decl."). It consists of, among other things, a Short and Long Form Notice, in addition to a comprehensive Settlement Website (www.VWCourtSettlement.com), that are clear and complete, and that meet all the requirements of Rule 23.

The Long Form Notice is a 30-plus page document that includes a thorough series of questions and answers designed to explain the Settlement in clear terms in a well-organized and reader-friendly format. Among other things, it includes an overview of the litigation, an explanation of the benefits available under the Settlement, and detailed instructions on how to participate in or opt out of the Settlement. The proposed Long Form Notice is attached to the Class Action Agreement as Exhibit 3.

The Short Form Notice, though less comprehensive than the Long Form Notice, also conveys the basic structure of the Settlement and is designed to capture Class Members' attention in newspapers and periodicals with clear, concise, plain language. It directs readers to the Settlement Website (where the Long Form Notice is available) or a toll-free number for more information. The Short Form Notice is attached to the Class Action Agreement as Exhibit 2.

Together, these notices cover all of the elements outlined in Rule 23(c)(2)(B), specifically:

- A description of the nature of the case. *See* Long Form Notice Summary and Question 10;
- The Class definition. *See* Long Form Notice Question 9;
- A description of the class claims, potential outcomes, and the reasons for the Settlement. *See* Long Form Notice Summary and Questions 44-46;
- A statement concerning the Class Members' rights to recovery. *See* Long Form Notice Summary and Questions 1, 18-41;
- The names of representatives for Class Counsel who can answer Class Members' questions. *See* Long Form Notice Question 51;
- The process and procedure for objecting to the Settlement, and appearing at a final fairness hearing, with or without the aid of an attorney. *See* Long Form Notice at Questions 54-58;
- The process and procedure through which a Class Member may opt out of the Settlement. *See* Long Form Notice Summary and Question 48; and
- The fact that the final judgment in this case will release all claims against the Volkswagen and bind all Class Members. *See* Long Form Notice Summary and Question 47.

The proposed method of disseminating this notice is the best practicable method under the circumstances, and includes individual notice to the Class Members who can be identified through reasonable effort. In sum, the proposed notice distribution plan consists of various parts, including: (1) individual direct mail notice: (2) paid media; (3) earned media and outreach; and (4) a Settlement Website and toll-free phone number. Wheatman Decl. ¶¶ 18-42.

1 The principal method of reaching Class Members will be through individual direct mail
2 notice. This is the quintessential objectively defined and readily identifiable class. *See Manual*
3 *for Complex Litigation (Fourth)* (2004), § 21.222. A cover letter and copy of the Long Form
4 Notice can and will be sent to the vast majority of Class Members, who are readily identifiable
5 through Volkswagen's records and/or registration data, such as Polk data. All mailings will be
6 sent via First Class U.S. Mail, and all addresses will be checked against national databases prior
7 to being sent. Direct notice will also be mailed and/or emailed to Class Members when the EPA
8 and CARB approve or reject Volkswagen's proposed emissions modifications.

9 A robust media campaign focused on stimulating awareness and involvement will
10 supplement the direct mail notice. The Short Form Notice will appear as a two-color
11 advertisement in various newspapers, including the *The New York Times*, *The Wall Street*
12 *Journal*, *USA Today*, and other newspapers and magazines, as outlined in the Wheatman
13 Declaration and accompanying attachments. The paid media campaign will also include, among
14 other things, various methods of disseminating online banner advertisements, social media
15 advertising, and sponsored keyword advertisements on major search engines. An earned media
16 program—described further in the Wheatman Declaration—also will be implemented to amplify
17 the paid media and provide additional notice to Class Members. Finally, the Notice Program
18 includes a toll-free telephone number as well as a Settlement Website, which contains
19 background information on the case, the Long Form Notice, the Claim Form and other
20 information that Class Members may find useful and relevant to their claims decisions. An initial
21 launch of the website will coincide with the filing of the Class Action Agreement, and if the
22 Settlement is preliminarily approved, at that time, the website will be updated and enhanced to,
23 among other things, allow class members to register, receive Buyback and Approved Emissions
24 Modification offers from Volkswagen, and to file claims.

25 The Parties created this comprehensive proposed notice program—including both the
26 content and the distribution plan—with Kinsella Media, LLC ("KM"), an advertising and legal
27 notification firm in Washington, D.C. that specializes in the design and implementation of
28 notification in complex litigation and has been appointed as notice expert and notice administrator

1 in scores of major class actions. Subject to the Court's approval, the parties have selected KM to
2 serve as the Notice Administrator. The Parties are confident that the Notice Program meets the
3 applicable legal standards and will provide the best notice practicable under the circumstances.

4 **VII. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE**

5 The last step in the settlement approval process is the final approval hearing, at which the
6 Court may hear any evidence and argument necessary to evaluate the Settlement. At that hearing,
7 proponents of the Settlement may explain and describe its terms and conditions and offer
8 argument in support of settlement approval, and Class Members, or their counsel, may be heard in
9 support of or in opposition to the Settlement. Plaintiffs propose the following schedule for final
10 approval of the Settlement and implementation of the Settlement Program:

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Date	Event
June 28, 2016	Settlement Class Representatives file Motion for Preliminary Approval of Settlement
June 30, 2016	Status Conference with the Court
July 5, 2016	Volkswagen provides Class Action Fairness Act Notice to State Attorneys General
July 26, 2016	Preliminary Approval Hearing [Remainder of schedule assumes entry of Preliminary Approval Order on this date]
July 27, 2016	Class Notice Program begins
August 19, 2016	Class Notice Program ends
August 26, 2016	Motion for Final Approval filed
September 16, 2016	Objection and Opt-Out Deadline
September 16, 2016	End of Eligible Seller Identification Period
September 29, 2016	Deadline for State Attorneys General to file Comments/Objections to this Class Action Agreement
September 30, 2016	Reply Memorandum in Support of Final Approval filed

October 3, 2016 – October 7, 2016 (Specific date TBD by Court)	Final Approval Hearing. While the timing and outcome of every determination is at the Court's discretion, the Parties to this Class Action Agreement request and anticipate that the Court would enter the DOJ Consent Decree and FTC Consent Order at the same time as the Final Approval Order. The Buyback and Lease Termination program under this Class Action Agreement will begin expeditiously upon Final Approval and entry of the DOJ Consent Decree. To the extent available, the Approved Emissions Modification Option under this Class Action Agreement will begin at the same time.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the Settlement, provisionally certify the Class, conditionally appoint the undersigned as Settlement Class Counsel and the Plaintiffs listed in Exhibit 1 hereto as the Settlement Class Representatives, order dissemination of notice to Class Members; and set a date for the final approval hearing.

Dated: June 28, 2016

Respectfully submitted,

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Plaintiffs' Steering Committee

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, on June 28, 2016, service of this document was accomplished
3 pursuant to the Court's electronic filing procedures by filing this document through the ECF
4 system.

5

6 /s/ *Elizabeth J. Cabraser*_______
Elizabeth J. Cabraser

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Exhibit 1
Settlement Class Representatives

No.	Settlement Class Representative	State	Model Year	Make	Model
1	Hill, Jason	Alaska	2013	Volkswagen	Jetta TDI
2	Preciado, Ray	Arizona	2015	Volkswagen	Passat TDI
3	Tarrence, Susan	Arizona	2011	Audi	A3 TDI
4	Thornton, Steven R.	Arizona	2014	Volkswagen	Passat TDI
5	Argento, Anne Duncan	California	2013	Volkswagen	Jetta TDI
6	Beaven, Simon W.	California	2011	Audi	A3 TDI
7	Brodie, Juliet	California	2014	Volkswagen	Jetta TDI
8	Burt, Sarah	California	2011	Volkswagen	Golf TDI
9	Epstein, Aimee	California	2010	Volkswagen	Jetta SportWagen TDI
10	Farquar, George	California	2010	Volkswagen	Jetta TDI
11	Houle, Mark	California	2015	Volkswagen	Passat TDI
12	Kaplan, Rebecca	California	2012	Volkswagen	Golf TDI
13	Kosik-Westly, Helen	California	2011	Volkswagen	Golf TDI
14	Krein, Raymond	California	2014	Volkswagen	Jetta SportWagen TDI
15	Verner, Stephen	California	2013	Volkswagen	Golf TDI
16	Winternitz, Leo	California	2009	Volkswagen	Jetta SportWagen TDI
17	Doege, Marcus Alexander	Colorado	2012	Volkswagen	Jetta TDI
18	MacLise-Kane, Leslie	Connecticut	2013	Volkswagen	Jetta SportWagen TDI
19	Watson, Timothy	Connecticut	2015	Audi	A3 TDI
20	Bell, Farrah P.	Florida	2015	Audi	A3 TDI

Exhibit 1

No.	Settlement Class Representative	State	Model Year	Make	Model
21	Lawhon, Jerry	Florida	2013	Volkswagen	Passat TDI
22	Cruise, Michael R.	Hawaii	2012	Audi	A3 TDI
23	Dufurrena, John C.	Idaho	2013	Volkswagen	Jetta TDI
24	Bahr, Scott	Illinois	2015	Volkswagen	Golf TDI
25	Fry, Karl	Illinois	2012	Volkswagen	Jetta TDI
26	Olmos, Cesar	Indiana	2014	Volkswagen	Passat TDI
27	Schnathorst, Britney Lynne	Iowa	2014	Volkswagen	Passat TDI
28	Berg, Carla	Kansas	2014	Volkswagen	Passat TDI
29	Joy, Aaron	Kansas	2013	Volkswagen	Jetta TDI
30	White, Eric Davidson	Louisiana	2014	Volkswagen	Golf TDI
31	Warren, Floyd Beck	Louisiana	2015	Volkswagen	Passat TDI
32	Buchberger, Thomas J.	Maine	2012	Volkswagen	Jetta SportWagen TDI
33	Evans, Russell and Evans, Elizabeth	Maine	2014	Volkswagen	Jetta TDI
34	Rubin, Carmel	Maine	2012	Volkswagen	Jetta SportWagen TDI
35	Sullivan, Daniel	Maine	2014	Volkswagen	Passat TDI
36	Cure, Matthew	Maryland	2015	Volkswagen	Golf TDI
37	DeFiesta, Denise	Maryland	2013	Volkswagen	Passat TDI
38	Rovner, Mark	Maryland	2015	Volkswagen	Golf TDI
39	Steudel, Wolfgang	Massachusetts	2013 2015	Volkswagen Volkswagen	Golf TDI Jetta TDI
40	Mahle, Anne and	Minnesota	2010	Volkswagen	Jetta SportWagen TDI

No.	Settlement Class Representative	State	Model Year	Make	Model
	McCarthy, David		2015	Volkswagen	Golf TDI
41	Moen, Scott	Minnesota	2013 2010	Volkswagen Volkswagen	Golf TDI Jetta TDI
42	Schuette, Ryan Joseph	Minnesota	2013	Volkswagen	Passat TDI
43	Walawender, Megan	Missouri	2014	Volkswagen	Passat TDI
44	Morrey, Joseph	Missouri	2015	Volkswagen	Passat TDI
45	Lorenz, Michael	Montana	2012	Volkswagen	Jetta TDI
46	Stirek, Nancy L.	Nebraska	2011	Volkswagen	Jetta SportWagen TDI
47	Perlmutter, Rebecca	Nevada	2012 2015	Volkswagen Volkswagen	Jetta TDI Golf SportWagen TDI
48	Minott, Addison	New Hampshire	2009	Volkswagen	Jetta SportWagen TDI
49	Grogan, Richard	New Hampshire	2015	Volkswagen	Golf TDI
50	Bandics, Alan	New Jersey	2013	Volkswagen	Passat TDI
51	Farmer, Melani Buchanan	New Mexico	2012	Volkswagen	Jetta TDI
52	Bedard, Kevin and Bedard, Elizabeth	New York	2015	Audi	A3 TDI
53	Kirtland, Cynthia R.	New York	2014	Volkswagen	Jetta SportWagen TDI
54	Krimmelbein, Michael Charles	North Carolina	2015	Volkswagen	Passat TDI
55	Harlan, Will	North Carolina North Carolina	2011 2014	Volkswagen Volkswagen	Jetta TDI Jetta TDI
56	Greenfield, Heather	Oklahoma	2010	Volkswagen	Jetta TDI
57	Ayala, Thomas W.	Oregon	2014	Volkswagen	Passat TDI
58	Yussim, Herbert	Oregon	2015	Volkswagen	Passat TDI

No.	Settlement Class Representative	State	Model Year	Make	Model
59	Bond, Nicholas	Oregon	2013	Volkswagen	Jetta SportWagen TDI
60	Bialecki, Brian J.	Pennsylvania	2014 2012	Volkswagen Volkswagen	Passat TDI Jetta TDI
61	Mehls, Katherine	Rhode Island	2015	Volkswagen	Golf SportWagen TDI
62	Powers, Whitney	South Carolina	2011	Volkswagen	Jetta SportWagen TDI
63	McNeal, Roy	Texas	2014	Volkswagen	Passat TDI
64	Alters, Brett	Utah	2012	Volkswagen	Golf TDI
65	King, Kelly R.	Utah	2010	Volkswagen	Jetta TDI
66	Otto, Rachel	Utah	2015	Volkswagen	Golf SportWagen TDI
67	Wilson, William Andrew	Utah	2013	Volkswagen	Passat TDI
68	Ebenstein, David	Vermont	2015	Volkswagen	Golf TDI
69	Schumacher, Mark	Virginia	2012	Volkswagen	Passat TDI
70	Dial, Chad	Washington	2014	Volkswagen	Passat TDI
71	Herr, Joseph	Washington	2015	Volkswagen	Passat TDI
72	Mallery, Kurt	Washington	2010	Volkswagen	Golf TDI
73	Moore, Marion B.	West Virginia	2014	Volkswagen	Jetta TDI
74	Swenson, Laura	Wisconsin	2014	Volkswagen	Jetta SportWagen TDI
75	Mills, Brian Nicholas	Wyoming	2015	Volkswagen	Passat TDI

Exhibit 2
Declaration of Shannon Wheatman

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Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION

This Documents Relates to:

ALL CONSUMER AND RESELLER ACTIONS

MDL No. 2672 CRB (JSC)

DECLARATION OF SHANNON R. WHEATMAN, PH.D. ON ADEQUACY OF THE CLASS NOTICE PROGRAM

Hearing: July 26, 2016
Time: 8:00 a.m.
Courtroom: 6, 17th floor

The Honorable Charles R. Breyer

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am president of Kinsella Media, LLC ("KM"), an advertising and legal notification firm in Washington, D.C. specializing in the design and implementation of notification programs to reach unidentified putative class members, primarily in consumer and antitrust class actions, and claimants in bankruptcy and mass tort litigation. My business address is 2001 Pennsylvania Avenue NW, Suite 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

2. KM was retained to design and implement the Notice Program in this litigation.

3. This declaration will describe my experience in designing and implementing notices and notice plans, as well as my credentials to opine on the overall adequacy of the notice effort. It will also describe the Notices and the Class Notice Program proposed here for *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, including how they were developed and why I believe they will be effective.

4. This declaration is based upon my personal knowledge and upon information provided by Class Counsel, Defense Counsel, and my associates and staff. The information is of a type reasonably relied upon in the fields of advertising, media, and communications.

RELEVANT EXPERIENCE

5. KM has developed and directed some of the largest and most complex national notification programs in the country. The scope of the firm's work includes notification programs in bankruptcy, antitrust, consumer fraud, mass tort, and product liability litigation. Specific cases have involved, among others, asbestos, breast implants, home siding and roofing products, infant formula, pharmaceuticals, polybutylene plumbing, tobacco, and Holocaust claims. The firm has developed or consulted on over 900 notification programs and has placed over $380 million in media notice.

6. I have served as a qualified class action notice expert in many major class actions. State and federal courts have accepted my analyses and expert testimony on whether information is effectively communicated to people. My curriculum vitae is attached as **Attachment A**.

7. I have testified in court as an expert in *State v. Farmers Group Inc.*, No. D-1-GV-02-002501 (D. Ct. Tex., Travis County); *Scharfstein v. BP West Coast Products, LLC*, No. 1112-17046 (Cir. Ct. Ore.); *Spillman v. RPM Pizza, Inc.*, No. 10-349 (M.D. La.); *PRC Holdings, LLC v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*, No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1 (Cir. Ct. Ark). I have been deposed as an expert in *Hale v. CNX Gas Company, LLC*, No. 10-CV-59 (W.D. Va.) and *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

8. I have been involved in some of the largest and most complex national notification programs in the country, including: *In re: Transpacific Passenger Air Transportation Antitrust Litigation,* MDL No. 1913 (N.D. Cal.) (involving millions of international airline passengers); *In re Dynamic Random Memory Antitrust Litig.,* MDL No. 1486 (N.D. Cal.) (involving tens of millions of consumers); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect purchasers); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010,* MDL No. 2179 (E.D. La.); *Kramer v. B2Mobile, LLC*, No. 10-cv-02722 (N.D. Cal.) (text messaging case involving tens of millions of consumers); *In re Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No. 11-MD-02222 (S.D. Fla.) (consumer fraud settlement involving millions of infant formula purchasers); *Fogel v. Farmers Group, Inc.*, No. BC300142 (Cal. Super. Ct., LA County) ($455 million settlement involving tens of millions of insureds); *In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182 (E.D. La.) (settlement obtained for Hurricane Katrina and Rita survivors); *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers); *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.) (defective product settlement involving high efficiency furnaces); and many others.

9. Courts have admitted my expert testimony on quantitative and qualitative evaluations of the effectiveness of notice programs, and several courts have commented favorably, on the record, regarding the effectiveness of notice plans I have done. Selected judicial comments are included in the attached curriculum vitae.

10. My qualifications include expertise in the form and content of notice. For example, while serving with the Federal Judicial Center ("FJC"), I played an integral part in the development of the illustrative, "model" forms of notice designed to satisfy the plain language requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my doctoral dissertation, *The Effects of Plain Language Drafting on Layperson's Comprehension of Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and attorneys, both in state and federal courts, the FJC posted the notices at www.fjc.gov.

11. I have authored and co-authored articles on notice and due process. I believe notice and due process depend upon clear communication with the people affected. *See, e.g.,* Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice,* in WORLD CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE CLASS ACTIONS AROUND THE GLOBE 673-686 (Paul Karlsgodt ed., 2012); Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration,* in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012); Shannon R. Wheatman & Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

12. The proposed Class Notice Program was jointly developed with Katherine Kinsella, the founder and former president of KM, and a court-recognized notice expert with 22 years of experience in the design and execution of notice programs in class actions and bankruptcies. Her curriculum vitae is attached as **Attachment B**.

NOTICE PROGRAM OVERVIEW

13. The proposed Class Notice Program was designed to reach the greatest practicable number of Class Members and ensure that they will be exposed to, see, review, and understand the Notice.

14. Although each case is unique, the methods and tools used in developing the Class Notice Program for the Class Settlement have been employed in many other court-approved notice programs.

15. I have been involved in drafting the various forms of Notice described below. Each form is noticeable and written in plain language.

16. In developing the Class Notice Program, KM determined that the most practicable way to reach Class Members is through the use of direct notice, paid and earned media, and an informational website.

17. As detailed below, in my opinion, the Class Notice Program represents the best notice practicable under the circumstances.

NOTICE PROGRAM SUMMARY

Direct Mail Notice

18. Based on information provided by counsel, a comprehensive list of potential Class Members can be created. It is, therefore, reasonable to implement an individual direct mail notification effort to reach Class Members using this list.

19. Direct mail notice consisting of a personalized cover letter and Detailed (or Long Form) Notice will be the principal method of reaching Class Members and providing them with opportunities to see, read, and understand their rights, and act if they so choose. This Direct Mail Notice will be distributed via first-class mail to:

a. All readily identifiable Class Members.

b. Anyone who calls the toll-free information line or writes the Notice Administrator to request the Long Form Notice.

20. The Long Form Notice will also be available on the Settlement Website as a PDF file.

21. Prior to mailing, all addresses on the Class Member list will be checked against the National Change of Address ("NCOA") database, which is maintained by the United States Postal Service ("USPS") and contains records of all permanent changes of addresses for businesses and individuals received by the USPS for the last four years.

22. Direct Mail Notices that are returned as non-deliverable will be traced and re-mailed as appropriate. In the case of Notices returned as non-deliverable with an expired automatic forwarding order, the Notices will be re-mailed to any address indicated by the USPS

in the expired automatic forwarding order. Notices returned as non-deliverable, but for which a new address is not indicated by the USPS, will be further searched through LexisNexis or a similar vendor to obtain a more current address. LexisNexis uses a variety of third-party sources to compare latest addresses for U.S. businesses and returns updated addresses for them. If any such address is found, the Notice will be re-mailed.

Paid Media

23. To supplement the Direct Mail Notice, KM recommends a paid media program that includes national newspapers, local newspapers, consumer magazines, trade magazines, and digital media.

24. The Short Form Notice will appear as a two-color advertisement in the following national newspapers:

a. In the Sunday edition of *The New York Times*, which has an estimated circulation of 2,579,166.

b. In the daily edition of *The Wall Street Journal*, which has an estimated circulation of 1,321,827.

c. In the daily edition of *USA Today*, which has an estimated circulation of 1,100,000.

25. The Short Form Notice will also appear as a two-color advertisement in local daily newspapers as follows:

a. In both the Sunday and daily editions of 19 newspapers that cover markets with 5,000 or more Eligible Vehicles, and

b. In the Sunday edition of 26 newspapers that cover markets with 2,000 to 4,999 Eligible Vehicles.

26. A complete list of the newspapers and circulation information is attached as **Attachment C**.

27. The Class Notice Program includes digital advertising to provide Class Members with additional notice opportunities beyond the print placements. Internet advertising delivers an

immediate message and allows the viewer of an advertisement to instantly click through to a website for further information.

28. Targeted Internet advertising may include:

a. Third-Party Targeting: Banner advertisements will be delivered to websites using IHS Automotive (Polk)[1] data to Eligible Owners and Eligible Lessees.

29. To target individuals who are researching or have an interest in automobiles, banner advertisements will be placed on automotive websites that provide detailed vehicle information, such as pricing and reviews, to consumers. Banner advertisements will appear, on a rotating basis, on the National Automobile Dealers Association (www.nada.org), *Hemmings Motor News* (www.hemmings.com), and *Kelley Blue Book* (www.kbb.com) websites. Banner ads and high impact units[2] will also be placed on websites associated with the following consumer magazines: *Automobile, Car and Driver, Motor Trend*, and *Road & Track.*

30. To specifically reach fleet owners, banner advertisements will appear on the National Association of Fleet Administrators website (www.nafa.org). Banner ads and high impact units will also be placed on websites associated with the following the following trade publications: *Automotive Fleet*, *Automotive News*, *Auto Rental News*, *FLEETSolutions*.

31. Social Media advertising will include targeted advertising on Facebook, Instagram, and Twitter.

32. KM will place ads on the Google Display Network to reach potential Class Members. The Google Display Network provides banner and/or video ad placement on a variety of websites, blogs, and other niche sites in Google's network to reach the broad and diverse interests of potential Class Members.

33. KM will implement sponsored keywords and phrases with all major search engines, including: Google AdWords, Bing Microsoft Advertising, and their search partners.

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[1] IHS Automotive (Polk) collects and analyzes data related to vehicle registration and title information, new vehicle transactions from major auto manufacturers, and vehicle financing data.

[2] High Impact Units are banner ad units that drive higher response rates than standard display ads because of their larger size and interactive features.

When a user searches for one of the specified search terms or phrases, sponsored links will appear on the results page.

Earned Media

34. An earned media program will also be implemented to amplify the paid media and to provide additional notice to Class Members. A multimedia news release (also known as a "campaign hero microsite") will be distributed on PR Newswire's US1 National Circuit, reaching approximately 5,000 media outlets and 5,400 websites. The release will blend text, audio, video, photos, related documents, and social media.

VW Class Updates

35. Updates will be provided to all identifiable Eligible Owners and Eligible Lessees, by mail or email, when and if an emissions modification proposed by Volkswagen is approved by EPA and CARB. VW Class Updates will also be sent to affiliated Volkswagen dealerships. The availability of any Approved Emissions Modification will also be disclosed on the Settlement Website.

36. When and if the proposed emissions modification(s) are rejected, or no emissions modification is proposed, a VW Class Update will be mailed or emailed to all identifiable Eligible Owners and Eligible Lessees to inform them.

Other

37. Volkswagen will establish a website at www.VWCourtSettlement.com to enable Class Members to get information on the Class Settlement, including the Long Form Notice and the Settlement Agreement.

38. Volkswagen will establish a toll-free phone number to allow Class Members to call and request that a Long Form Notice be mailed to them or listen to answers to frequently asked questions.

39. The Notice Administrator will establish a post office box to allow Class Members to contact Class Counsel by mail with any specific requests or questions.

NOTICE FORM AND CONTENT

40. The Notices effectively communicate the require information about the Class Settlement.

41. The Long Form Notice provides substantial information, including background on the issues in the case and all specific instructions Class Members need to follow to properly exercise their rights. No important or required information is missing or omitted. It is designed to encourage readership and understanding, in a well-organized and reader-friendly format.

42. The Short Form Notice is designed to capture Class Members' attention with concise, plain language. It directs readers to the case website or toll-free number for more information.

CONCLUSION

43. It is my opinion that the Class Notice Program and content of the Notices are adequate and reasonable under the circumstances and provide the best notice practicable. The Class Notice Program is consistent with the standards employed by KM in notification programs designed to reach class members. The Notice Program, as designed, is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 27th day of June 2016.

Shannon R. Wheatman, Ph.D.

Attachment A
to the Declaration of
Shannon Wheatman

Shannon R. Wheatman, Ph.D.

President
Kinsella Media, LLC
2001 Pennsylvania Avenue NW, Suite 300
Washington, DC 20006
2010 – Present

Dr. Wheatman specializes in designing, developing, analyzing, and implementing large-scale legal notification plans. She is a court-recognized expert who provides testimony on the best notice practicable. Dr. Wheatman began her class action career in 2000 at the Federal Judicial Center where she was instrumental in the development of model notices to satisfy the plain language amendment to Rule 23. Her plain language expertise was advanced by her education, including her doctoral dissertation on plain language drafting of class action notice and her master's thesis on comprehension of jury instructions. Dr. Wheatman has been involved in over 350 class actions. Her selected case experience includes:

Antitrust

Allen v. Dairy Farmers of America, Inc., No. 5:09-CV-00230-CR (D. Vt.).

Blessing v. Sirius XM Radio, Inc., No. 09-CV-10035 HB (S.D.N.Y.).

Brookshire Bros. v. Chiquita, No. 05-CIV-21962 (S.D. Fla.).

Cipro Cases I and II, No. 4154 and No. 4220 (Super. Ct. Cal.).

In re Automotive Parts Antitrust Litigation, MDL No. 2311 (E.D. Mich.).

In re Dynamic Random Memory (DRAM) Antitrust Litig., MDL No. 1486 (N.D. Cal.).

In re Flonase Antitrust Litig., No. 08-CV-3301 (E.D. Pa.).

In re Metoprolol Succinate End-Payor Antitrust Litig., No. 06-CV-71 (D. De.).

In re NYC Bus Tour Antitrust Litig., No. 13-CV-0711 (S.D. N.Y.).

In re Online DVD Rental Antitrust Litig., MDL No. 2029 (N.D. Cal.).

In re TFT-LCD (Flat Panel) Antitrust Litig., MDL No. 1827 (N.D. Cal.).

In re Transpacific Passenger Air Trans. Antitrust Litig., MDL No. 1913 (N.D. Cal.)

Roos v. Honeywell Int'l, Inc., No. CGC 04-0436205 (Super. Ct. Cal.).

Sweetwater Valley Farm, Inc. v. Dean Foods, No. 2:07-CV-208 (E.D. Tenn.).

The Shane Grp., Inc., v. Blue Cross Blue Shield of Michigan, No. 2:10-CV-14360 (D. Minn.).

Consumer and Product Liability

Abbott v. Lennox Industries, Inc., No.16-2011-CA-010656 (4th Jud. Cir. Ct., Dade Cty. Fla).

Beringer v. Certegy Check Servs., Inc., No. 8:07-CV-1434-T-23TGW (M.D. Fla.) (data breach).

Chaudhri v. Osram Sylvania, Inc., No. 2:11-CV-05504 (D.N.J.) (false advertising).

CSS, Inc. v. FiberNet, L.L.C., No. 07-C-401 (Cir. Ct. W. Va.) (telecommunications).

Donovan v. Philip Morris USA, Inc., No. 06-12234 NG (D. Mass.) (medical monitoring).

FIA Card Servs., N.A. v. Camastro, No. 09-C-233 (Cir. Ct. W.Va.) (credit card arbitration).

George v. Uponor Corp., No. 12-249 (D. Minn.) (defective product).

Glazer v. Whirlpool Corp., No. 1:08-WP-65001 (N.D. Ohio)(defective product).

Grays Harbor v. Carrier Corp., No. 05-CIV-21962 (W.D. Wash.) (defective product).

In re Building Materials Corp. of America Asphalt Roofing Shingle Prods. Liab. Litig., No. 8:11- 02000 (D.S.C.) (roofing shingles).

In re Checking Account Overdraft Litig., MDL No. 2036 (S.D. Fla.) (JP Morgan, U.S. Bank, BOA settlements; overdraft fees).

In re Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.) (false advertising).

In re M3Power Razor System Mktg. & Sales Practs. Litig., MDL No. 1704 (D. Mass.) (false advertising).

In re Netflix Privacy Litig., No. 5:11-CV-00379 (N.D. Cal.) (privacy).

In re Pharm. Industry Average Wholesale Price Litig., MDL No. 1456 (D. Mass.) (pharmaceutical).

In re SCBA Liquidation, Inc., f/k/a Second Chance Body Armor, Inc., No. 04-12515 (Bankr. W.D. Mich.) (defective product).

In re Sony Gaming Networks & Customer Data Security Breach Litig., No. 11-MD-2258 (S.D. Cal.) (data breach).

In re Target Corp. Customer Data Security Breach Litig., MDL No. 14-2522 (D. Minn) (data breach).

In re Toyota Motor Corp. Unintended Acceleration Mktg, Sales Practs, & Prods. Litig., No. 8:10ML2151 (C.D. Cal.) (unintended acceleration).

In re Vioxx Products Liab. Litig., No. 05-MD-01657 (E.D. La) (pharmaceutical).

In re Wachovia Corp. "Pick-a-Payment" Mortgage Mktg & Sales Practs. Litig., No. M:09-CV-2015 (N.D. Cal.) (negative amortization).

In re Wirsbo Non-F1807 Yellow Brass Fittings, No. 2:08-CV-1223 (D. Nev.) (defective product).

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.) (defective product).

Kramer v. B2Mobile, LLC, No. 10-CV-02722 (N.D. Cal.) (TCPA).

Lee v. Carter Reed Co., L.L.C., No. UNN-L-39690-04 (N.J. Super. Ct.) (false advertising).

Mirakay v. Dakota Growers Pasta Co., Inc., No. 13-CV-4229 (D.N.J.) (false advertising).

Palace v. DaimlerChrysler, No. 01-CH-13168 (Cir. Ct. Ill.) (defective product).

Rowe v. UniCare Life & Health Ins. Co., No. 09-CV-02286 (N.D. Ill.) (data breach).

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.) (robo-call).

Trammell v. Barbara's Bakery, Inc., No. 3:12-CV-02664 (N.D. Cal.) (false advertising).

Wolph v. Acer America Corp., No. 09-CV-01314 (N.D. Cal.) (false advertising).

Environmental/Property

Allen v. Monsanto Co., No. 041465 and *Carter v. Monsanto Co.*, No. 00-C-300 (Cir. Ct. W. Va.) (dioxin release).

Angel v. U.S. Tire Recovery, No. 06-C-855 (Cir. Ct. W.Va.) (tire fire).

Cather v. Seneca-Upshur Petroleum Inc., No. 1:09-CV-00139 (N.D. W.Va.) (oil & gas rights).

Ed Broome, Inc. v. XTO Energy, Inc., No. 1:09-CV-147 (N.D. W.Va.) (oil & gas rights).

In re Katrina Canal Breaches Litig., No. 05-4182 (E.D. La.) (Hurricanes Katrina and Rita).

In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, MDL No. 2179 (E.D. La.) (BP oil spill).

Jones v. Dominion Transmission Inc., No. 2.06-CV-00671 (S.D. W.Va.) (oil & gas rights).

Thomas v. A. Wilbert & Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish) (vinyl chloride water contamination).

Government

Cobell v. Salazar, No. 1:96-CV-01285 (D. D.C.), Depts. of Interior and Treasury.

Countrywide Mortgage Settlement, Department of Justice.

Iovate Settlement, Federal Trade Commission.

National Mortgage Settlement, Attorneys General.

Walgreens Settlement, Federal Trade Commission.

Insurance

Beasley v. Hartford Ins. Co. of the Midwest, No. CV-2005-58-1 (Cir. Ct. Ark.) (homeowners insurance).

Bond v. Am. Family Ins. Co., No. CV-06-01249 (D. Ariz) (property insurance).

Burgess v. Farmers Ins. Co., No. 2001-292 (Dist. Ct. Okla.) (homeowners insurance).

Campbell v. First Am. Title Ins. Co., No. 2:08-CV-311-GZS (D. Me.) (title insurance).

DesPortes v. ERJ Ins. Co., No. SU2004-CV-3564 (Ga. Super. Ct.) (credit premium insurance).

Fogel v. Farmers Grp., Inc., No. BC300142 (Super. Ct. Cal.)(management exchange fees).

Guidry v. Am. Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.) (cancer insurance).

Gunderson v. F.A. Richard & Assocs., Inc., No. 2004-2417-D. (14th Jud. D. Ct. La.) (PPO).

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.) (automobile insurance).

McFadden v. Progressive Preferred, No. 09-CV-002886 (Ct. C.P. Ohio) (UM/UIM).

Orrill v. Louisiana Citizens Fair Plan, No. 05-11720 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (4th Jud. Ct. N. Mex.) (UM/UIM).

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.) (long term care insurance).

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.) (automotive premiums).

Soto v. Progressive Mountain Ins. Co., No. 2002-CV-47 (Dist. Ct. Mont.) (personal injury insurance).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark) (bodily injury claims).

Securities

In re Municipal Derivatives Antitrust Litig., MDL No. 1950 (S.D.N.Y.).

In re Mutual Funds Inv. Litig., MDL No. 1586 (D. Md.) (Allianz Sub-Track).

Canada

Bechard v. Province of Ontario, No. CV-10-417343 (Ont. S.C.J.) (personal injury).

Clarke v. Province of Ontario, No. CV-10-411911 (Ont. S.C.J.) (personal injury).

Dolmage v. Province of Ontario, No. CV-09-376927CP00 (Ont. S.C.J.) (personal injury).

Donnelly v. United Technologies Corp., No. 06-CV-320045 CP (Ont. S.C.J.) (defective product).

Hall v. Gillette Canada Co., No. 47521CP (Ont. S.C.J.) (false advertising).

Wener v. United Technologies Corp., 2008 QCCS 6605 (Québec) (defective product).

Articles and Presentations

Shannon Wheatman & Alicia Gehring, *Mixed Media: A Smarter Approach To Class Action Notice*, Law360.com (June 11, 2015).

Shannon Wheatman, Speaker, *Balancing Due Process and Claims: A Conversation on Strategies to Safeguard Your Settlement*, Plaintiffs' Forum, Rancho Palos Verdes, CA (Apr. 2015).

Joshua Davis, Shannon Wheatman & Cristen Stephansky, *Writing Better Jury Instructions: Antitrust as an Example*, Paper presented at 15th Annual Loyola Antitrust Colloquium, Chicago, IL (Apr. 2015).

Shannon R. Wheatman, Speaker, *Can Competition Concepts be Made Comprehensible to Juries (and Judges)*, American Antitrust Institute's Business Behavior & Competition Policy in the Courtroom: Current Challenges for Judges, Stanford, CA (Aug. 2014).

Shannon R. Wheatman, Webinar Speaker, *Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates, and More*, Strafford Publications (Feb. 2014).

Shannon R. Wheatman, *Cutting Through the Clutter: Eight Tips for Creatively Engaging Class Members and Increasing Response*, CLASS ACTION LITIGATION REPORT, 15 CLASS 88 (Jan. 24, 2014).

Shannon Wheatman & Michelle Ghiselli, *Privacy Policies: How To Communicate Effectively with Consumers*, International Association of Privacy Professionals (2014).

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Shannon R. Wheatman, *Ensuring Procedural Fairness Through Effective Notice, in* NATIONAL CONFERENCE ON CLASS ACTIONS: RECENT DEVELOPMENTS IN QUÉBEC, IN CANADA AND IN THE UNITED STATES 83-99 (Yvon Blais ed., 2013).

Shannon R. Wheatman, Speaker, *Class Action Developments and Settlements*, 18th Annual Consumer Financial Services Institute, New York, New York (Apr. 2013).

Shannon R. Wheatman, Speaker, *Recent Trends in Class Actions in the United States*, National Conference on Class Actions: Recent Developments in Québec, in Canada and in the United States, Montreal, Canada (Mar. 2013).

Shannon R. Wheatman, Speaker, *Report on Model Jury Instructions in Civil Antitrust Cases, Presentation*, American Antitrust Institute's 6th Annual Private Antitrust Enforcement Conference, Washington, DC (Dec. 2012).

Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, *in* WORLD CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE ACTIONS AROUND THE GLOBE 673-686 (Paul Karlsgodt ed., 2012).

Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, *in* PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338–348 (Albert A. Foer & Randy M. Stutz eds., 2012).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notice Requirements: Challenges for Plaintiffs and Defendants*, Strafford Publications (July 2012).

Shannon R. Wheatman, Webinar Speaker, *How to Craft Plain Language Privacy Notices*, Int'l Assoc. of Privacy Professionals (Oct. 2011).

Shannon R. Wheatman, Speaker, *Improving Take-Up Rates in Class Actions*, The Canadian Institute's 12th Annual National Forum on Class Actions, Ontario, Canada (Sept. 2011).

Shannon R. Wheatman & Terri R. LeClercq, *Majority of Publication Class Action Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011).

Shannon R. Wheatman & Terri R. LeClercq, *Majority of Publication Class Action Notices Fail to Satisfy Rule 23 Requirements*, CLASS ACTION LITIGATION REPORT, 12 CLASS 560, (June 24, 2011).

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Shannon R. Wheatman, Speaker, *Majority of Publication Class Action Notices Fail to Satisfy Plain Language Requirements*, Clarity International Conference, Lisbon, Portugal (Oct. 2010).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notification With Electronic Media: Emerging Legal Issues*, Stratford Publications (Sept. 2010).

Shannon R. Wheatman & Thomas E. Willging, *Does Attorney Choice of Forum in Class Action Litigation Really Make a Difference?* 17 CLASS ACTIONS & DERIVATIVES SUITS 1 (2007).

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Thomas E. Willging & Shannon R. Wheatman, *Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make?* NOTRE DAME L. REV., 81 (2), 101, 161 (2006).

Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*. GEO. J. LEGAL ETHICS, 18 (4), 1359-1382 (2005).

Thomas E. Willging & Shannon R. Wheatman, *An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation*. FEDERAL JUDICIAL CENTER (2005).

Elizabeth C. Wiggins & Shannon R. Wheatman, *So what's a concerned psychologist to do? Translating the research on interrogations, confessions, and entrapment into policy*, *in* INTERROGATIONS, CONFESSIONS AND ENTRAPMENT 265–280 (G. Daniel Lassiter ed., 2004).

Thomas E. Willging & Shannon R. Wheatman, *Attorneys' Experiences and Perceptions of Class Action Litigation in Federal and State Courts. A Report to the Advisory Committee on Civil Rules Regarding a Case Based Survey*. FEDERAL JUDICIAL CENTER (2003).

Shannon R. Wheatman, *Survey of Bankruptcy Judges on Effectiveness of Case-Weights*. FEDERAL JUDICIAL CENTER (2003).

Elizabeth C. Wiggins & Shannon R. Wheatman, *Judicial Evaluation of Bankruptcy Judges*. FEDERAL JUDICIAL CENTER (2003).

Robert Niemic, Thomas Willging, & Shannon Wheatman, *Effects of Amchem/Ortiz on Filing of Federal Class Actions: Report to the Advisory Committee on Civil Rules*. FEDERAL JUDICIAL CENTER (2002).

Shannon Wheatman, Robert Niemic & Thomas Willging, *Report to the Advisory Committee on Civil Rules: Class Action Notices*. FEDERAL JUDICIAL CENTER (2002).

Elizabeth C. Wiggins & Shannon R. Wheatman, *Implementation of Selected Amendments to Federal Rule of Civil Procedure 26 by United States Bankruptcy Courts*. FEDERAL JUDICIAL CENTER (2001).

Shannon R. Wheatman & David R. Shaffer, *On finding for defendants who plead insanity: The crucial impact of dispositional instructions and opportunity to deliberate*. LAW & HUM. BEH., 25(2), 165, 181 (2001).

Shannon R. Wheatman, *Distance Learning in the Courts*. FEDERAL JUDICIAL CENTER (2000).

David R. Shaffer & Shannon R. Wheatman, *Does personality influence the effectiveness of judicial instructions?* PSYCHOL. PUB. POL'Y & L., 6, 655, 676 (2000).

Court Testimony

State v. Farmer Group Inc., No. D-1-GV-02-002501(D. Ct. Tex., Travis County).

Scharfstein v. BP West Coast Products, LLC, No. 1112-17046 (Cir. Ct. Ore.).

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.)

PRC Holdings LLC v. East Resources, Inc., No. 06-C-81 (Cir. Ct. W. Va.).

Guidry v. Am. Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark).

Beasley v. The Reliable Life Ins. Co., No. CV-2005-58-1 (Cir. Ct. Ark).

Depositions

Hale v. CNX Gas Co., LLC, No. 10-CV-59 (W.D. Va.).

Thomas v. A. Wilbert Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

Judicial Comments

In re Transpacific Passenger Air Trans. Antitrust Litig., MDL No. 1913 (N.D. Cal.)
In overruling an objection that direct notice should have been done, the Court found "[T]he notice program, which the Court already approved, reached 80.3% of the potential class members in the United States an average of 2.6 times and "at least 70%" of members of the Settlement Classes living in Japan. See Mot. for Final Approval at 4; Wheatman Decl. ¶¶ 8, 18. The notice also included paid media in 13 other countries. Id.; ¶ 25. There were 700,961 unique visits to the website, toll-free numbers in 15 countries received over 2,693 calls, and 1,015 packages were mailed to potential class members. Id. ¶¶ 6, 9, 10. It was therefore adequate." – Hon. Charles R. Breyer (2015)

In re Target Corp. Customer Data Security Breach Litig., MDL No. 14-2522 (D. Minn)
"The parties accomplished notice here through direct notice, paid and earned media, and an informational website… [T]he notice program reached 83% of potential class members. The notice here comports with Rule 23(e)… Class notice reached more than 80 million people, with direct notice sent to 61 million consumers… [The] infinitesimally small amount of opposition weighs in favor of approving the settlement." – Hon. Paul A. Magnuson (2015)

In re Sony Gaming Networks & Customer Data Security Breach Litig., No. 11-MD-2258 (S.D. Cal.)
"The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said notice fully satisfied requirements of Rule 23 of the Federal Rules of Civil Procedure and due process."– Hon. Anthony J. Battaglia (2015)

The Shane Grp., Inc., v. Blue Cross Blue Shield of Michigan, No. 2:10-CV-14360 (D. Minn.)
"The notice to Settlement Class Members consisted of postcard notices to millions of potential class members, as well as advertisements in newspapers and newspaper supplements, in People magazine, and on the Internet… The Court finds that this notice…was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and . . . fully complied with due process principles and Federal Rule of Civil Procedure 23." – Hon. Denise Page Hood (2015)

Mirakay v. Dakota Growers Pasta Co., Inc., No. 13-CV-4229 (D. N.J.)
"Having heard the objections made, the Court is unimpressed with the Objectors argument that there was somehow insufficient notice . . . This notice program has fully informed members of their rights and benefits under the settlement, and all required information has been fully and clearly presented to class members. Accordingly, this widespread and comprehensive campaign provides sufficient notice under the circumstances, satisfying both due process and Rule 23 and the settlement is therefore approved by this Court. " – Hon. Joel A. Pisano (2014)

In re Dynamic Random Memory Antitrust Litig., MDL No. 1486 (N.D. Cal.)
"The Court confirms its prior findings that the Notices given pursuant to the Preliminary Approval Order were the best notice practicable under the circumstances. The Court further confirms its prior findings that said notices provided due, adequate, and sufficient notice of these proceedings and of the matters set forth herein, including the proposed settlements set forth in the Settlement Agreements, and that said notice fully satisfied the requirements of due process, the Federal Rules of Civil Procedure, and all applicable state laws." – Hon. Phyllis J. Hamilton (2014)

Trammell v. Barbara's Bakery, Inc., No. 12-CV-02664 (N.D. Cal.)
"The Class Notice, the Summary Settlement Notice, the website, the toll-free telephone number, all other notices in the Settlement Agreement, the Declaration of the Notice Administrator, and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement, and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. §1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices." – Hon. Charles R. Breyer (2013)

Spillman v. Dominos Pizza, LLC., No. 10-349 (M.D. La.)
"At the fairness hearing notice expert Wheatman gave extensive testimony about the design and drafting of the notice plan and its implementation, the primary goal of which was to satisfy due process under the applicable legal standards...Wheatman, who has extensive experience developing plain-language jury instructions, class action notices and rules of procedure, testified that the notice was composed at a ninth grade reading level because many adults read below a high school level." – Hon. Stephen C. Riedlinger (2013)

In re Metoprolol Succinate End-Payor Antitrust Litig., No. 06-CV-71 (D. Del.)
"In accordance with the Preliminary Approval Order, notice of the proposed Settlement and Plan of Allocation has been provided to the Class in the manner directed by the Court. See Wheatman Dec. Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process of law and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all persons and entities entitled thereto." – Hon. Mary Pat Thynge (2013)

PRC Holdings, LLC v. East Resources, Inc., No. 06-CV-81(E) (W.Va. Cir. Ct., Roane County)
"Notice was uniquely effective in this action because East's records of their leases allowed the Claims Administrator to provide individual notice by mail to most Class Members." - Hon. Thomas C. Evans, III (2012)

Kramer v. B2Mobile, LLC, No. 10-CV-02722 (N.D. Cal.)
"The Court approved Notice Plan to the Settlement Classes . . . was the best notice practicable under the circumstances, including comprehensive nationwide newspaper and magazine publication, website publication, and extensive online advertising. The Notice Plan has been successfully implemented and satisfies the requirements of Federal Rule of Civil Procedure 23 and Due Process." - Hon. Claudia A. Wilken (2012)

Cather v. Seneca-Upshur Petroleum, Inc., No. 1:09-CV-00139 (N.D. W. Va.)
"The Court finds that Class Members have been accorded the best notice as is practical under the circumstances, and have had the opportunity to receive and/or access information relating to this Settlement by reading the comprehensive written notice mailed to them . . . or by reading the published Notice in the local newspapers . . . The Court further finds that the Notice provided to the members of the Settlement Class had been effective and has afforded such class members a reasonable opportunity to be heard at the Final Fairness Hearing and to opt-out of the subject settlement should anyone so desire." – Hon. Irene M. Keeley (2012)

In re Checking Account Overdraft Fee Litig., No. 1:09-MD-2036 (S.D. Fla.) (JP Morgan Settlement)
"The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Chase was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so." - Hon. James Lawrence King (2012)

In re Netflix Privacy Litig., No. 5:11-CV-00379 (N.D. Cal.)
"The Notice Plan and the intent of the forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B through E to the Wheatman Declaration are approved pursuant to subsections (c)(2)(B) and (ed) of Federal Rule of Civil Procedure 23." - Hon. Edward J. Davila (2012)

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (N.M. 4th Jud. Dist. Ct.)
"Notice of the Settlement Class was constitutionally adequate, both in terms of it substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . [T]he Notice also contained a clear and concise Claim Form, and a described a clear deadline and procedure for filing of Claims. Notice was directly mailed to all Class Members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class Members. The Court finds that such notice constitutes the best notice practicable." – Hon. Eugenio Mathis (2012)

Blessing v. Sirius XM Radio Inc., No 09-CV-10035 HB (S.D.N.Y.)
"The Court finds that the distribution of the Notice and the publication of the Publication Notice . . . constituted the best notice reasonably practicable under the circumstances . . . was reasonably calculated . . . constituted due, adequate, and sufficient notice to all Class members who could be identified with reasonable efforts; and . . . satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, R 23.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, and all other applicable law and rules." - Honorable Harold Baer, Jr. (2011)

Fogel v. Farmers Grp., Inc., No. BC300142 (Super. Ct. Cal.)
"The Court further finds and confirms that the Individual Notice (including the Proof of Claim), the Summary Notice, the reminder postcard, and the notice methodology: (a) constituted the best practicable notice . . . ; (b) constituted noticed that was reasonably calculated under the circumstances to apprise potential Class Members . . .; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice, and (d) met all applicable requirements of California law . . . ." - Hon. Laura Evans (2011)

In re Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.)
"The Court finds that the Class Notice provided to Class Members, in the form and manner of distribution described above, constitutes the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rules of Civil Procedure, Rule 23, the requirements of due process, and any other applicable law. The declarations filed with the Court demonstrate that the Parties have

fully complied with the Court's Preliminary Approval Order (as amended by Order dated April 1, 201 1) and that the best notice practicable under the circumstances was in fact given to Class Members." - Hon. James I. Cohn (2011)

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.)
"Notice has been provided to the Settlement Class of the pendency of the Actions, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that said notice and the related Notice Plan provided for the best notice practicable under the circumstances to all Persons entitled to such notice and fully satisfied the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and the requirements of due process." - Hon. Claudia Wilken (2011)

Rowe v. UniCare Life and Health Ins. Co., No. 09-CV-02286 (N.D.Ill.)
"The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process." – Hon. William J. Hibbler (2011)

Thomas v. A. Wilbert & Sons, LLC, No. 55,127 (La. 18th Jud. Dist. Ct., Iberville Parish)
"[N]otices complied with all requirements of the federal and state constitutions, including the due process clauses, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Thomas Subclass." – Hon. Jerome M. Winsberg (2011)

In re M3Power Razor System Mktg. & Sales Pract. Litig., MDL No. 1704 (D. Mass)
"The form, content, and method of dissemination of the notice given to the Settlement Class was adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Amended Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process." - Hon. Douglas P. Woodlock (2011)

Soto v. Progressive Mountain Ins. Co., No. 2002-CV-47 (Dist. Ct. Colo.)
"Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . Finally, the Notice also contained a clear and concise Claim Form, and described a clear

deadline and procedure for filing of claims. . . . Notice reached a large majority of the Class Members. The Court finds that such notice constitutes the best notice practicable." - Hon. J. Steven Patrick (2010)

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish)
"This notice methodology . . . constitutes reasonable and best practicable notice . . . constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and . . . meets the requirements of the United States Constitution, Louisiana law, the Federal Rules of Civil Procedure and any other applicable rules of the Court . . ." - Hon. Sidney H. Cates, IV (2010)

In re Katrina Canal Breaches, No. 05-4182 (E.D. La.)
"The notice here was crafted by Shannon Wheatman, Ph.D., whose affidavit was received as evidence. . . The entire notice was drafted in plain, comprehensible language . . . The Court finds this notice adequately reached the potential class." - Hon. Stanwood R. DuVal, Jr. (2009)

Jones v. Dominion Transmission Inc., No. 2.06-CV-00671 (S.D. W. Va.)
"The Parties' notice expert Shannon R. Wheatman, Ph.D. . . testified that in this case . . . that the mailed notices reached approximately 95.4 percent of the potential class . . . I HOLD that personal jurisdiction exists over the Class Members because notice was reasonable and afforded the Settlement Class an opportunity to be heard and to opt out." - Hon. Joseph R. Goodwin (2009)

Guidry v. Am. Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.)
"The facts show that the notice plan . . . as adequate to design and implementation . . . Dr. Shannon R. Wheatman, a notice expert, also testified at the fairness hearing as to the sufficiency of the notice plan. Dr. Wheatman testified that the notice form, content, and dissemination was adequate and reasonable, and was the best notice practicable." - Hon. G. Michael Canaday (2008)

Webb v. Liberty Mutual Ins. Co., (March 3, 2008) No. CV-2007-418-3 (Cir. Ct. Ark)
"Ms. Wheatman's presentation today was very concise and straight to the point . . . that's the way the notices were . . . So, I appreciate that . . . Having admitted and reviewed the Affidavit of Shannon Wheatman and her testimony concerning the success of the notice campaign, including the fact that written notice reached 92.5% of the potential Class members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class members who had an earlier opportunity to request exclusion but failed to do so . . . The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members." - Hon. Kirk D. Johnson (2008)

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.)
"Dr. Wheatman's affidavit was very informative, and very educational, and very complete and thorough about the process that was undertaken here. . . So I have reviewed all of these documents and the affidavit of Dr. Wheatman and based upon the information that is provided . . . and the significant number of persons who are contacted here, 90 percent, the Court will issue the order." - Hon. Mike Salvagni (2008)

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.)
"The Class Notice and the notice methodology implemented pursuant to the Settlement Agreement, as described in part in the Declarations of . . . Shannon Wheatman . . . constituted the best practicable notice. . . was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law." - Hon. Philip S. Gutierrez (2008)

Gray's Harbor v. Carrier Corp., No. 05-05437(W.D. Wash.)
"The Court finds that this notice was the best notice practicable under the circumstances, that it provided due and adequate notice of the proceedings and of the matters set forth therein, and that it fully satisfied all applicable requirements of law and due process." - Hon. Ronald B. Leighton (2008)

Beringer v. Certegy Check Servs., Inc., No. 8.07-CV-1434-T-23TGW (M.D. Fla.)
"The proposed form of notice and plan for publishing are reasonable and designed to advise members of the Settlement class of their rights . . . A nationally recognized notice specialist, Hilsoft Notifications, has developed the comprehensive Notice Plan. Here, Notice is reasonably calculated to reach the maximum number of potential Settlement Class Members and, thus, qualifies as the best notice practicable. The Notice Plan here is designed to reach the maximum number of Class Members, and it is Plaintiffs' goal to reach at least 80% of the Class—an extraordinary result in consumer class action litigation." - Hon. Steven D. Merryday (2008)

Palace v. DaimlerChrysler Corp., No. 01-CH-13168 (Cir. Ct. Ill.)
"The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process . . ." –Hon. Mary Anne Mason (2008)

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.)
"Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated . . . Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable . . . The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process." - Hon. Carol Crafton Anthony (2007)

Beasley v. The Reliable Life Ins. Co., No. CV-2005-58-1 (Cir. Ct. Ark)
"[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process . . . So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter." - Hon. Joe Griffin (2007)

Education and Experience

Education

Ph.D., Social Psychology, 2001; The University of Georgia, Athens, GA
Dissertation Title: *The effects of plain language drafting on layperson's comprehension of class action notices*.

M.S., Social Psychology, 1999; The University of Georgia, Athens, GA
Thesis Title: *Effects of verdict choice, dispositional instructions, opportunity to deliberate, and locus of control on juror decisions in an insanity case*.

M.L.S., Legal Studies, 1996; The University of Nebraska-Lincoln, Lincoln, NE

B.A., Psychology, 1993; Millersville University of Pennsylvania, Millersville, PA
Honor's Thesis Title: *The effects of inadmissible evidence and judicial admonishment in individual versus group decisions in a mock jury simulation*.

Related Experience

Hilsoft Notifications
Souderton, PA
2004-2009

Dr. Wheatman was the Vice President (2006-2009) and Notice Director (2004-2009) at Hilsoft Notifications, a legal notification firm.

Federal Judicial Center
Washington, DC
2000-2004

Dr. Wheatman was a Research Associate at the Federal Judicial Center. The Federal Judicial Center is the education and research agency for the Federal Courts. The Research Division performs empirical and explanatory research on federal judicial processes and court management. Dr. Wheatman worked with the Civil Rules Advisory Committee on a number of class action studies and with the Bankruptcy Administration Committee on judicial evaluations.

Supplementary Background

Dr. Wheatman has a strong statistical background, having completed nine graduate level courses as well as teaching undergraduate statistics at the University of Georgia.

Attachment B to the Declaration of Shannon Wheatman

Katherine M. Kinsella

FOUNDER AND FORMER PRESIDENT

A nationally recognized specialist in notification programs in mass tort, consumer, and product liability class actions and bankruptcies, Kinsella has developed and directed some of the largest and most complex national notification programs in the country. The scope of the firm's work includes notification programs in antitrust, bankruptcy, consumer fraud, mass tort and product liability litigation. Specific cases have involved, among others, asbestos, breast implants, home siding and roofing products, infant formula, pharmaceuticals, polybutylene plumbing, tobacco and Holocaust claims. The firm has developed or consulted on over 800 notification programs, placing over $350 million in media notice. Selected cases include:

ANTITRUST

Big Valley Milling, Inc. v. Archer Daniels Midland Co., No. 65-C2-96-000215 (Minn. Dist. Ct. Renville County) (lysine).

Carlson v. Abbott Laboratories, No. 94-CV-002608 (Wis. Cir. Ct. Milwaukee County) (infant formula).

Comes v. Microsoft Corp., No. CL8231 (Iowa Dist. Ct. Polk County) (software).

Connecticut v. Mylan Laboratories, Inc., No. 99-276, MDL No. 1290 (D.D.C.) (pharmaceutical).

Conroy v. 3M Corp., No. C-00-2810 CW (N.D. Cal.) (invisible tape).

Copper Antitrust Litig., MDL 1303 (W.D. Wis.) (physical copper).

Cox v. Microsoft Corp., No. 105193/00 (N.Y. Sup. Ct. N.Y. County) (software).

D.C. 37 Health & Security Plan v. Medi-Span, No. 07-cv-10988 (D. Mass.); *New England Carpenters Health Benefits Fund v. First DataBank, Inc.,* No. 1:05-CV-11148 (D. Mass.) (pharmaceutical).

Ferrell v. Wyeth-Ayerst Laboratories, Ltd., No. C-1-01-447 (S.D. Ohio).

Giral v. Hoffman-LaRoche Ltd., C.A. No. 98 CA 7467 (W. Va. Cir. Ct., Kanawha County)(vitamins).

Glaberson v. Comcast Corp., No. 03-6604 (E.D. Pa.) (cable).

In re Buspirone Antitrust Litig., MDL No. 1413 (S.D.N.Y.) (pharmaceutical).

In re Cardizem Antitrust Litig., 200 F.R.D. 326 (E.D. Mich.) (pharmaceutical).

In re Compact Disc Minimum Price Antitrust Litig., MDL No. 1361 (D. Me.) (compact discs).

In re Ins. Brokerage Antitrust Litig., MDL No. 1663 Civil No. 04-5184 (D.N.J.) (insurance).

In re Int'l Air Transportation Surcharge Antitrust Litig., No. M 06-1793, MDL No. 1793 (N.D. Cal.) (airline fuel surcharges).

In re Monosodium Glutamate Antitrust Litig., D-0202-CV-0200306168, D-202-CV-200306168 (N.M. Dist. Ct., Bernalillo County) (MSG).

In re Motorsports Merch. Antitrust Litig., No. 1:97-CV-2314-TWT (N.D. Ga.) (merchandise).

In re Nasdaq Market-Makers Antitrust Litig., MDL No. 1023 (S.D.N.Y.) (securities).

In re Pharm. Industry Average Wholesale Price Litig., No. CA:01-CV-12257, MDL No. 1456 (D. Mass.) (pharmaceutical).

In re Toys "R" Us Antitrust Litig., No. CV-97-5750, MDL No. 1211, (E.D.N.Y.) (toys and other products).

In re Western States Wholesale Natural Gas Antitrust Litig., No. CV-03-1431, MDL No. 1566, (D. Nev) (natural gas).

Kelley Supply, Inc. v. Eastman Chem. Co., No. 99CV001528 (Wis. Cir. Ct., Dane County) (Sorbates).

Ohio v. Bristol-Myers Squibb, Co., No. 1:02-cv-01080 (D.D.C.) (pharmaceutical).

Raz v. Archer Daniels Midland Co., Inc., No. 96-CV-009729 (Wis. Cir. Ct. Milwaukee County) (citric acid).

CONSUMER AND PRODUCT LIABILITY

Azizian v. Federated Department Stores, Inc., No. 4:03 CV-03359 (N.D. Cal.) (cosmetics).

Baird v. Thomson Consumer Elecs., No. 00-L-000761 (Ill. Cir. Ct., Madison County) (television).

Bonilla v. Trebol Motors Corp., No. 92-1795 (D.P.R.) (automobiles).

Burch v. Am. Home Prods. Corp., No. 97-C-204 (1-11) (W. Va. Cir. Ct., Brooke County) (Fen Phen).

Cosby v. Masonite Corp., No. CV-97-3408 (Ala. Cir. Ct. Mobile County) (siding product); *Quin v. Masonite Corp.,* No. CV-97-3313 (Ala. Cir. Ct. Mobile County) (roofing product).

Cox v. Shell Oil Co., No. 18,844 (Tenn. Ch. Ct. Obion County) (polybutylene pipe).

Daniel v. AON Corp., No. 99 CH 11893 (Ill. Cir. Ct. Cook County) (insurance).

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Florida v. Nine West Grp., Inc., No. 00 CIV 1707 (S.D.N.Y.) (shoes).

Foothill/De Anza Cmty. College Dist. v. Northwest Pipe Co., No. 00-20749-JF (N.D. Cal.) (fire sprinklers).

Galanti v. The Goodyear Tire & Rubber Co., No. 03-209 (D.N.J.) (radiant heating).

Garza v. Sporting Goods Props., Inc., No. SA 93-CA-1082 (W.D. Tex.) (gun ammunition).

Gov't Employees Hosp. Ass'n v. Serono Int'l, No. 5-11935 (D. Mass.), and *Francis v. Serono Laboratories, Inc.,* No. 6-10613 (D. Mass.).

Hoorman v. GlaxoSmithKline, No. 04-L-715 (Ill. Cir. Ct., Madison Cty.) (Paxil pharmaceutical*).*

In re Louisiana Pacific Corp. Inner Seal OSB Trade Practices Litig., MDL No. 1114 (N.D. Cal.) (oriented strand board).

In re Tri-State Crematory Litig, MDL 1467 (N.D. Ga.) (improper burial).

Lebrilla v. Farmers Grp. Inc., No. 00-CC-07185 (Cal. Super. Ct., Orange County) (auto insurance).

Lovelis v. Titflex, No. 04-211 (Ark. Cir. Ct., Clark County) (gas transmission pipe).

Naef v. Masonite Corp., No. CV-94-4033 (Ala. Cir. Ct. Mobile County) (hardboard siding product).

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Richison v. Weyerhaeuser Co. Ltd., No. 05532 (Cal. Super. Ct. San Joaquin County) (roofing product).

Ruff v. Parex, Inc., No. 96-CvS 0059 (N.C. Super. Ct. Hanover County) (synthetic stucco product).

Shah v. Re-Con Building Prods., Inc., No. C99-02919 (Cal. Super. Ct. Contra Costa County) (roofing product).

Shields v. Bridgestone/Firestone, Inc., Bridgestone Corp., No. E-167.637 (D. Tex.) (tires).

Smith v. Behr Process Corp., No. 98-2-00635 (Wash. Super. Ct., Gray Harbor County) (stain product).

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Woosley v. California, No. CA 000499 (Cal. Super. Ct., Los Angeles County) (automobiles).

MASS TORT

Ahearn v. Fibreboard Corp., No. 6:93cv526 (E.D. Tex); *Continental Casualty Co. v. Rudd*, No. 6:94cv458 (E.D. Tex) (asbestos injury).

Backstrom v. The Methodist Hosp., No. H.-94-1877 (S.D. Tex.) (TMJ injury).

Engle v. RJ Reynolds Tobacco Co., No. 94-08273 (Fla. Cir. Ct. Dade County) (tobacco injury).

Georgine v. Amchem, Inc., No. 93-CV-0215 (E.D. Pa.) (asbestos).

BANKRUPTCIES

In re Armstrong World Indus., Inc., No. 00-4471 (Bankr. D. Del.) (asbestos).

In re Dow Corning, No. 95-20512 (Bankr. E.D. Mich.) (breast implants).

In re Johns-Manville Corp., 68 B.R. 618, 626 (Bankr. S.D.N.Y.) (asbestos).

In re Kaiser Aluminum Corp., No. 02-10429 (JFK) (Bankr. D. Del) (asbestos).

In re Owens Corning, No. 00-03837 (Bankr. D. Del.) (asbestos).

In re Raytech Corp., No. 5-89-00293 (Bankr. D. Conn.) (asbestos).

In re The Celotex Corp., Nos. 90-10016-8B1 and 90-10017-8B1 (Bankr. M.D. Fla.) (asbestos).

In re U.S. Brass Corp., No.94-40823S (Bankr. E.D. Tex.) (polybutylene).

In re USG Corp., Nos. 01-2094 - 01-2104 (Bankr. D. Del.) (asbestos).

In re W.R. Grace & Co., No. 01-01139 (Bankr. D. Del.) (asbestos).

INSURANCE

McNeil v. American General Life and Accident Ins. Co., No. 8-99-1157 (M.D. Tenn.) (insurance).

Nealy v. Woodmen of the World Life Ins. Co., No. 3:93 CV-536 (S.D. Miss.) (insurance).

HOLOCAUST VICTIMS REPARATIONS

In re Holocaust Victim Assets Litig., Nos. CV 96-4849, CV-5161 and CV 97-461 (E.D.N.Y.) (Holocaust).

The International Commission on Holocaust Era Insurance Claims Outreach.

PENSION BENEFITS

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Forbush v. J.C. Penney Co., Inc., Nos. 3:90-2719 and 3:92-0109 (N.D. Tex.).

INTERNATIONAL

Ahearn v. Fiberboard Corp., No. 6:93cv526 (E.D. Tex) and *Continental Casualty Co. v. Rudd,* No. 6:94cv458 (E.D. Tex.) (asbestos) (1993).

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In re The Celotex Corp., Chapter 11, Nos. 90-10016-8B1 and 90-10017-8B1(Bankr. M.D. Fla.) (asbestos) (1996).

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In re W.R. Grace & Co., Chapter 11, No. 01-01139 (Bankr. D. Del.) (asbestos) (2001).

In re Western Union Money Transfer Litig., No. 01 0335 (E.D.N.Y.) (wire transactions) (2004).

International Committee on Holocaust Era Insurance Claims (Holocaust) (1999).

PRODUCT RECALL

Central Sprinkler Voluntary Omega Sprinkler Replacement Program (sprinkler heads).

Hart v. Central Sprinkler Corp., No. BC17627 (Cal. Super. Ct. Los Angeles County) & *County of Santa Clara v. Central Sprinkler Corp.,* No. CV 17710119 (Cal. Super. Ct. Santa Clara County) (sprinkler heads).

TELECOM

Bidner, et al. v. LCI Int'l Telecom Corp d/b/a Qwest Communications. No CO-00-242 (Minn. Dist. Ct., Sibley County).

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Cundiff v. Verizon California, Inc., No. 237806 (Cal. Super Ct., Los Angeles County) (rotary dial service).

Kushner v. AT&T Corp., No. GIC 795315 (Cal. Super. Ct., San Diego County) (fees).

Risha Enterprise v. Verizon New Jersey, No. MID-L-8946-02 (N.J. Super. Ct.) (tariff rate).

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State of Louisiana v. Sprint Communications Co., L.P., No. 26,334 (Jud. Dis. Ct., Parish of West Baton Rouge) and *Louisiana v. WilTel, Inc.,* No. 26,304 (Jud. Dis. Ct., Parish of West Baton Rouge)(fiber optics right of way).

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OTHER

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In re National Football League Players' Concussion Injury Litig., No. 2:12-md-02323 (E.D. Pa.) (concussion injuries).

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ABA National Class Actions Institute (November 7, 2008), "'I Court Have Sworn It was CAFA, Not *Kafka!'* The Metamorphosis of Ethically Prosecuting, Defending, and Settling Multi-State, Class-Action Cases."

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COURT TESTIMONY & DEPOSITIONS

Testimony

Ahearn v. Fibreboard Corp., No. 6:93 cv526 (E.D. Tex.); *Continental Casualty Co. v. Rudd*, No. 6:94-cv-458 (E.D. Tex.) (asbestos).

Colgan v. Leatherman Tool Grp., Inc., No. BC247889; *Wilson v. Leatherman Tool Grp., Inc.,* No. BC278713 (Cal. Super. Ct. Los Angeles County) (product representation).

Cox v. Shell Oil Co., No. 95-CV-2 (Tenn. Ch. Ct. Obion County) (polybutylene plumbing).

In re Swan Transportation Co., No. 01-11690 (Bankr. D. Del.) (asbestos).

In re USG Corp., Nos. 01-2094 - 01-2104 (Bankr. D. Del.) (asbestos).

In re Specialty Prods. Holding Corp., No. 10-11780 (Bankr. D. Del.) (asbestos).

In re Garlock Sealing Technologies LLC, No. 10-31607 (Bankr. W.D.N.C.) (asbestos).

Depositions

Ardoin v. Stine Lumber Co., No. 2001-004808, (La. 14th Jud. Dist. Ct. Calcasieu Parish) (pressure-treated wood).

Donovan v. Philip Morris USA, Inc., No. 06-CA-12234 (D. Mass.) (tobacco).

Engle v. RJ Reynolds Tobacco Co., No. 94-08273 (Fla. Cir. Ct. Dade County) (tobacco).

Georgine v. Amchem, 158 F.R.D. 314, 326 (E.D. Pa.) (asbestos).

Gross v. Chrysler Corp., No. 061170 (Md. Cir. Ct. Montgomery County) (ad positioning).

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In re Bluetooth Headset Prods. Liab. Litig., No. 2:07-1822 (C.D. Cal.) (Bluetooth headset).

In re Conagra Peanut Butter Prods. Liab. Litig., No. 1:07 -1845 (N.D. Ga.) (food contamination).

In re Dow Corning, No. 95-20512 (Bankr. E.D. Mich.).

In re Nasdaq Market-Makers Antitrust Litig., MDL No. 1023 (S.D.N.Y.) (securities).

In re Pharm. Industry Average Wholesale Price Litig., No. 01-CV-12257, MDL No. 1456 (D. Mass.) (GlaxoSmithKline Settlement).

In re W.R. Grace & Co., No. 01-01139 (Bankr. D. Del.) (asbestos).

In re USG Corp., Nos. 01-2094 - 01-2104 (Bankr. D. Del.) (asbestos).

In re Vioxx Litig., No. 619 (N.J. Super. Ct. Law Div.) (pharmaceutical).

Schwab v. Philip Morris USA Inc., No. 04-CV-1945 (E.D.N.Y) (RICO tobacco).

Solo v. Bausch & Lomb, Inc., MDL 1785 (D.S.C.) (product messaging).

Vassilatos v. Del Monte Fresh Produce Co., No. 50 2004CA 004066 (Fla. Cir. Ct. Palm Beach County);

Conroy v. Fresh Del Monte Produce, Inc., No. JCCP 4446 (Cal. Super. Ct. Alameda County) (pineapples).

JUDICIAL COMMENTS

Ahearn v. Fibreboard Corp., No. 6:93 cv526 (E.D. Tex.); *Continental Casualty Co. v. Rudd*, No. 6:94cv458 (E.D. Tex.).
In approving the notice plan for implementation in the Ahearn and Rudd class actions in 1994, Judge Parker stated, "I have reviewed the plan of dissemination, and I have compared them to my knowledge at least of similar cases, the notices that Judge Weinstein has worked with [Agent Orange] and Judge Pointer [Silicon Gel Breast Implants], and it appears to be clearly superior." - Chief Judge Robert M. Parker (1994)

Azizian v. Federated Department Stores, Inc., No. 3:03 CV-03359 (N.D. Cal.).
"The notice was reasonable and the best notice practicable under the circumstances; was due, adequate and sufficient notice to all class members; and complied fully with the laws of the United States and of the Federal Rules for Civil Procedure, due process and any other applicable rules of court." - Hon. Sandra Brown Armstrong (2004)

Cobell v. Salazar, No. 1:96CV01285 (D.D.C.)
"I have never seen, and I handled the largest price-fixing case in the history of the United States, the In re: Vitamins case, notice to the extent sent out in this case, ... I allowed them to provide notice in every possible way, including personally going out and visiting all of the affected tribal areas. It is just not a letter from Washington. It is a tremendous effort that was undergone, both by the plaintiffs principally and some by the government, to not only give notice but to explain what happened . . . .

There is just no question that this was covered in all of the local papers constantly. It was covered in all of the local advertising outlets. It was hard to miss. As a side note, I go to Montana two or three times a year, and you could not miss.... I have already found that there is extensive and extraordinary notice here. We even had a notice expert retained in how to do it properly." - Hon. Thomas F. Hogan (June 2011)

"Notice met and in many cases exceeded the requirements of F.R.C.P. 23(c)(2) for classes certified under F.R.C.P. 23(b)(1), (b)(2) and (b)(3). The best notice practicable has been provided class members, including individual notice where members could be identified through reasonable effort. The contents of that notice are stated in plain, easily understood language and satisfy all requirements of F.R.C.P. 23(c)(2)(B)." - Hon. Thomas F. Hogan (July 2011)

Collins v. Pension Benefit Guarantee Corp., No. 88-3406 (D.D.C.).
"The notice provided was the best notice practicable under the circumstances. Indeed, the record shows that the notice given was consistent with the highest standards of compliance with Rule 23(e)." – Hon. Richard Roberts (1996)

Cox v. Microsoft Corp., No. 105193/00 (N.Y. Sup. Ct. N.Y. County).
"The court finds that the combination of individual mailing, e-mail, website and publication notice in this action is the most effective and best notice practicable under all the circumstances, constitutes due, adequate and reasonable notice to all Class members and otherwise satisfies the requirements of CPLR 904, 908 and other applicable rules. The Settlement meets the due process requirement for class actions by providing Class members an opportunity either to be heard and participate in the litigation or to remove themselves from the Class." - Hon. Karla Moskowitz (2006)

Cox v. Shell Oil Co., No. 95-CV-2 (Tenn. Ch. Ct. Obion County)
In the order approving the settlement of the polybutylene pipe class action, Chancellor Maloan stated, "The Court finds the notice program is excellent. As specified in the findings below, the evidence supports the conclusion that the notice program is one of the most comprehensive class notice campaigns ever undertaken." – Hon. W. Michael Maloan (1995)

Dick v. Sprint, No. 12-cv-00443 (W.D. Ky.)
"In sum, the notice in the case at bar is adequate under Fed. R. Civ. P. 23 and the standards of due process. It was directed in reasonable manner to all prospective class members who would be bound by the Settlement Agreement. Moreover, it fairly apprised the prospective class members of the terms of the proposed Settlement Agreement and their options with respect to their decision whether to join the class." - Hon. Thomas B. Russell (2014)

Foothill/De Anza Cmty. College District v. Northwest Pipe Co., No. CV-00-20749 (N.D. Cal.)
"The Court finds that the settling parties undertook a thorough and extensive notice campaign designed by Kinsella/Novak Communications, Ltd., a nationally-recognized expert in this specialized field. The Court finds and concludes that the Notice Program as designed and implemented provides

the best practicable notice to the Class, and satisfied requirements of due process." - Hon. Jeremy Fogel (2004)

Galanti v. The Goodyear Tire & Rubber Co., No. 03-209 (D.N.J.)
"The published notice, direct notice and Internet posting constituted the best practicable notice of the Fairness Hearing, the proposed Amended Agreement, Class Counsels' application for fees, expenses and costs, and other matters set forth in the Class Notice and the Summary Notice. The notice constituted valid, due and sufficient notice to all members of the Settlement Classes, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New Jersey and any other applicable law."- Hon. Stanley R. Chesler (2004)

Georgine v. Amchem, 158 F.R.D. 314, 326 (E.D. Pa.).
Judge Reed explained that the notice program developed by Kinsella "goes beyond that provided in [previous cases]" and "the efforts here are more than adequate to meet the requirements of Rule 23(c)(2)." – Hon. Lowell A. Reed, Jr. (1993)

Higgins v. Archer-Daniels Midland Co., Second Judicial District Court, County of Bernalillo C-202-CV-200306168 (N.M. 2d Jud. Dist. Bernalillo County)
"The Court finds that the form and method of notice given to the Settlement Class, including both mailed notice to persons and firms for whom such notice was practical and extensive notice by publication through multiple national and specialized publications, complied with the requirements of Rule 1-023 NMRA 2006, satisfied the requirements of due process, was the best notice practicable under the circumstances, and constituted due and sufficient notice of the Settlement Agreements and their Final Approval Hearing, and other matters referred to in the Notice. The notice given to the Settlement Class was reasonably calculated under the circumstances to inform them of the pendency of the actions involved in this case, of all material elements of the proposed Settlements, and of their opportunity to exclude themselves from, object to, or comment on the Settlements and to appear at the Final Approval Hearing." - Hon. William F. Lang (2006)

In re Comcast Corp. Peer-to-Peer (P2P) Transmission Contract Litig., MDL 1992, No. 2:08-MD-1992 (E.D. Pa.)
"The notice program here was extensive and wide reaching."

"The Court finds that the form, substance, manner and timing of the notice to the Settlement Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement constituted the best notice practicable under the circumstances and satisfied the requirements of due process, Federal Rules of Civil Procedure, and any other applicable law or requirement." - Hon. Legrome D. Davis (2010)

In re Compact Disc Minimum Advertised Price Antitrust Litig., MDL No. 1361 (D. Me.).
In approving the notice plan for implementation in the Compact Disc Minimum Advertised Price Antitrust Litigation, Judge D. Brock Hornby stated, "(the plan) provided the best practicable notice

under the circumstances and complied with the requirements of both 15 U.S.C. 15c(b) (1) . . . the notice distribution was excellently designed, reasonably calculated to reach potential class members, and ultimately highly successful in doing so." - Hon. D. Brock Hornby (2002/2003)

In re Flonase Antitrust Litig., No. 08-3301 (E.D. Pa.)
"The notice provided was the best notice practicable under the circumstances and included individual notice to those members of the Settlement Class whom the parties were able to identify through reasonable efforts. The Court finds that Notice was also given by publication in multiple publications as set forth in the Declarations of Daniel Coggeshall and Katherine Kinsella dated May 1, 2013. Such notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law."- Hon. Anita B. Brody (2013)

In re Int'l Air Transportation Surcharge Antitrust Litig., No. M 06-1793, MDL No. 1793 (N.D. Cal.).
In approving the notice plan in this litigation that involved a proposed settlement of more than $200 million for U.S. and U.K. class members, U.S. District Judge Charles Breyer repeatedly praised KNC: "I think the notice is remarkable in this case. . . . This is brilliant. This is the best notice I've seen since I've been on the bench. . . . Turning back to the settlement, again I want to applaud the parties for the notice. I mean it's amazing. You know, it really is good. And I don't know where this person practices, I don't even know that she's a lawyer. But she really did a good job on this announcement, this notice. So thank you very much. . . . And I once again want to express my sincere appreciation of the notice. I mean, I was just extraordinarily impressed. Extraordinarily impressed." - Hon. Charles Breyer (2008)

In re Jamster Mktg. Litig., MDL 1751, No. 05-cv-0819
"Based on the Motion for Final Approval, the Court finds that the distribution of the Notice and Claim Form were materially implemented to all Class Members in accordance with Federal Rule of Civil Procedure 23(c)(2)(B), with the terms of the Settlement Agreement and the Preliminary Approval Order." - Hon. Jeffrey T. Miller (2010)

In re Lawn Mower Engine Horsepower Mktg. & Sales Litig., No. 2:08-md-01999 (E.D. Wis.)
"The form, content and manner of notice disseminated to the Class was the best notice practicable under the circumstances, included individual notice to all members of the Class identified through reasonable effort, and constituted due and sufficient notice of the proposed settlement, Settlement Hearing, and related matters. The Notice Plan complied with the Order of Preliminary Approval, the requirements of Fed. R. Civ. P. 23(c) and (e), and applicable standards of due process. Appropriate proof of the mailing of the Postcard Notice and the publication of the Summary Notice has been filed with the Court." - Hon. Lynn Aderman (2010)

In re M3Power Razor System Mktg. & Sales, No. 05-11177, MDL No. 1704 (D. Mass.)
"The form, content, and method of dissemination of the notice give to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Amended Settlement Agreement, and those proceedings to all Persons

entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process." - Hon. Douglas Woodlock (2011)

In re Municipal Derivatives Antitrust Litig., No. 08 Civ. 2516, MDL No. 1950 (S.D.N.Y.)
"This notice program fully complied with Fed. R. Civ. P. 23 and the requirements of due process. It provided due and adequate notice to the Class." - Hon. Victor Marrero (2011)

In re National Football League Players' Concussion Injury Litig., No. 2:12-md-02323 (E.D. Pa.)
"The content of the Long-Form Notice and Summary Notice satisfy the requirements of Rule 23 and due process. Each was written in plain and straightforward language.... The purpose of the one-page Summary Notice is...to alert Class Members to the suit and direct them to more detailed information. The Summary Notice does exactly that.... [The Long-Form Notice] repeatedly instructs readers to sources that can answer their questions. Like the Summary Notice, the Long-Form Notice contains a banner at the bottom of each page directing those with "Questions?" to call a toll-free support number or visit the Settlement Website.... The Settlement Class Notice clearly described of the terms of the Settlement and the rights of Class Members to opt out or object. [The] notice program ensured that these materials reached those with an interest in the litigation." – Hon. Anita B. Brody (2015)

In re Pre-filled Propane Tank Mktg. & Sales Practices Litig., MDL No. 2086, No. 09-2086 (W.D. Mo.)
"Counsel verified that the mailing, publication, and affixed notices conformed to the preliminary approval Order. The Court finds that the notice program fully complied with Rule 23 of the Federal Rule of Civil Procedure and the requirements of due process, providing to the Class the best notice practicable under the circumstances." - Hon. Gary A. Fenner (2010)

In re The Celotex Corp., Nos. 90-10016-8B1 and 90-10017-8B1 (Bankr. M.D. Fla.).
"...all counsel should be complimented on the fact that they have gone to every possible conceivable method of giving notice from putting it on TV and advertising it in papers..... the record should also reflect the Court's appreciation to Ms. Kinsella for all the work she's done, not only in pure noticing, but ensuring that what noticing we did was done correctly and professionally." - Hon. Thomas E. Baynes, Jr. (1996)

In re Western States Wholesale Natural Gas Antitrust Litig., No. CV-03-1431, MDL No. 1566, (D. Nev) (natural gas).
"This notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process. It provided to the MDL Class the best notice practicable under the circumstances." - Hon. Philip M. Pro (2007*)*

Johns-Manville Corp. 68 B.R. 618, 626 (Bankr. S.D.N.Y. 1986), aff'd, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom. *Kane v. Johns-Manville Corp*. 843 F.2d. 636 (2d Cir. 1988).
In approving the notification plan in the Johns-Manville Bankruptcy Reorganization, the court referred to it as "an extensive campaign designed to provide the maximum amount of publicity ... that was reasonable to expect of man and media." - Hon. Burton Lifland (1996/1998)

Keepseagle v. Vilsack, No. 99–3119 (D.D.C.)
"I'm not going to review in detail the exhaustive notice plan created and implemented by Plaintiffs' counsel at this time. For those interested, I invite you to examine the several motions on the docket relating to notice with affidavits from Kinsella Media, who class counsel have hired as Notice Administrators." - Hon. Emmet G. Sullivan (2011)

"In my view, the notice program was excellent and it persuades the Court that the parties worked extremely hard to notify the entire class about the settlement so that as many class members as possible can obtain monetary and other relief under the settlement." - Hon. Emmet G. Sullivan (2011)

Lovelis v. Titeflex Corp., No. CIV-2004-211 (Ark. 9th Cir. Ct. Clark Co.)
"Accordingly, the Notice as disseminated is finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the Notice campaign described in the Preliminary Approval Order and completed by the Parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions. The Court further finds that the Notice campaign undertaken concisely and clearly states in plain, easily understood language:
(a.) the nature of the action;
(b.) the definition of the class certified;
(c.) the class claims, issues or defenses;
(d.) that a Class Member may enter an appearance and participate in person or through counsel if the member so desires;
(e.) that the Court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
(f.) the binding effect of the Final Order and Judgment on Class Members."
Hon. John A. Thomas (2007)

Naef v. Masonite Corp., No. CV-94-4033 (Ala. Cir. Ct. Mobile County)
"In November, 1997, the Court approved a massive Notice Program to apprise class members of the class action Settlement, including the individually mailed, notices, publication notice and notification by way of other avenues nationally and locally. This Notice Program was designed by recognized experts, approved by the mediator and the Court, and implemented diligently by the parties, at defendants' cost. It provided the best notice practicable to the Class, comports with due process, and was clearly adequate under Alabama Rule of Civil Procedure 23(e), the United States Constitution, and other applicable law." - Hon. Robert G. Kendall (1997)

Yarrington v. Solvay Pharm., Inc., No. 09-CV-2261 (D. Minn.)
"Kinsella Media, LLC designed a comprehensive program for providing notice to the Settlement Class, which was approved by the Court on September 18, 2009. It was fully implemented in accordance with the Court's Order." - Hon. Richard H. Kyle (2010)

EDUCATION AND EXPERIENCE

Education

BA and MA from Simmons College, Boston, MA

Related Experience

Senior Vice President, The Kamber Group
Washington, DC
1981 - 1993

Prior to establishing her own business, Kinsella was Senior Vice President and Director of Marketing and Advertising for The Kamber Group -- the largest independently owned communications company in Washington, D.C. In that capacity, she handled national advertising, direct mail and marketing clients.

During her twelve years at The Kamber Group, she also served as Director of the Public Affairs Division, which included the firm's public relations, marketing, corporate communications and advertising operations.

Advertising and marketing clients included: American Federation of Government Employees, American Satellite Company, American University, Amnesty International, Consumers United Insurance Company, Diabetes Research Institute, Human Rights Campaign Fund, Huntsman Chemical Company, National Association of Homebuilders, National Cooperative Bank, National Education Association, PEPCO, Polystyrene Packaging Council, United Food and Commercial Workers, Union Labor Life Insurance company, US Committee for UNICEF, World Resources Institute.

SUPPLEMENTARY BACKGROUND

Kinsella is a former board member of Children of the Americas, a former Trustee of the Washington International School and a past president of the board of Co-op America, a progressive non-profit marketing association she helped found.

Ms. Kinsella is also experienced in small book publishing and marketing and was the associate producer of a documentary film that aired internationally. Earlier in her career, she directed a lecture and performing arts agency in Boston representing such speakers as author Tom Wolfe, Peter Jennings and Dr. Margaret Mead.

Attachment C
to the Declaration of
Shannon Wheatman

Local Newspapers

Tier 1 - Daily & Sunday (Markets with 5000+ vehicles)

	Circulation	Published	Unit Type/Size	Insertions
New York Daily News	377,772	Daily & Sunday	4 col x 13"	2
Los Angeles Times	782,631	Daily & Sunday	4 col x 13"	2
Chicago Tribune	686,763	Daily & Sunday	4 col x 13"	2
Washington Post	545,813	Daily & Sunday	4 col x 13"	2
San Francisco Chronicle	245,772	Daily & Sunday	4 col x 13"	2
Seattle Times	283,600	Daily & Sunday	4 col x 13"	2
Boston Globe	344,041	Daily & Sunday	4 col x 13"	2
Philadelphia Inquirer/Daily News	367,160	Daily & Sunday	4 col x 13"	2
Dallas Morning News	343,635	Daily & Sunday	4 col x 13"	2
San Diego Union-Tribune	245,501	Daily & Sunday	4 col x 13"	2
Houston Chronicle	359,100	Daily & Sunday	4 col x 13"	2
Oregonian	174,882	Daily & Sunday	4 col x 13"	2
Atlanta Journal-Constitution	287,346	Daily & Sunday	4 col x 13"	2
Baltimore Sun	259,150	Daily & Sunday	4 col x 13"	2
Arizona Republic	308,704	Daily & Sunday	4 col x 13"	2
Riverside Press-Enterprise	120,513	Daily & Sunday	4 col x 13"	2
Star Tribune (Minneapolis)	482,046	Daily & Sunday	4 col x 13"	2
Sun Sentinel (Ft. Lauderdale)	187,195	Daily & Sunday	4 col x 13"	2
Denver Post	312,387	Daily & Sunday	4 col x 13"	2

Tier 2 - Sunday (Markets with 2,000-4,999 vehicles)

	Circulation	Published	Unit Type/Size	Insertions
St. Louis Post-Dispatch	191,297	Sunday	4 col x 13"	1
Sacramento Bee	205,907	Sunday	4 col x 13"	1
Austin American-Statesman	122,257	Sunday	4 col x 13"	1
Detroit News / Free Press	318,531	Sunday	4 col x 13"	1
San Antonio Express-News	170,289	Sunday	4 col x 13"	1
Tampa Bay Times	293,967	Sunday	4 col x 13"	1
Bay Area News Group	520,077	Sunday	4 col x 13"	1
Providence Journal	88,588	Sunday	4 col x 13"	1
Hartford Courant	166,307	Sunday	4 col x 13"	1
Tribune-Review (Pittsburgh)	174,773	Sunday	4 col x 13"	1
Charlotte Observer	151,233	Sunday	4 col x 13"	1
Orlando Sentinel	218,146	Sunday	4 col x 13"	1
Cincinnati Enquirer	152,119	Sunday	4 col x 13"	1
Virginian-Pilot	147,129	Sunday	4 col x 13"	1
Las Vegas Review-Journal/Las Vegas Sun	125,490	Sunday	4 col x 13"	1
Milwaukee Journal Sentinel	252,734	Sunday	4 col x 13"	1
Florida Times-Union	67,343	Sunday	4 col x 13"	1
News & Observer	139,854	Sunday	4 col x 13"	1
Ventura County Star	54,582	Sunday	4 col x 13"	1
Salt Lake Tribune, Deseret News	264,602	Sunday	4 col x 13"	1
Times Union	67,343	Sunday	4 col x 13"	1
Plain Dealer	254,837	Sunday	4 col x 13"	1
Kansas City Star	221,885	Sunday	4 col x 13"	1
Tennessean	129,344	Sunday	4 col x 13"	1
Connecticut Post	39,573	Sunday	4 col x 13"	1
Indianapolis Star	244,860	Sunday	4 col x 13"	1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION This Documents Relates to: ALL CONSUMER AND RESELLER ACTIONS	MDL 2672 CRB (JSC) **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING CLASS, DIRECTING NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING** Hearing: July 26, 2016 Time: 8:00 a.m. Courtroom: 6, 17th floor The Honorable Charles R. Breyer

WHEREAS, a proposed settlement (the "Settlement" or "Class Action Settlement") has been reached between Court-appointed Lead Counsel and the Plaintiffs' Steering Committee ("PSC") on behalf of a defined proposed Settlement Class of certain Volkswagen and Audi branded 2.0-liter TDI vehicles defined in the Class Action Settlement, and Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.) (collectively, "Volkswagen"), which resolves certain claims against Volkswagen pertaining to the Volkswagen and Audi branded "Eligible Vehicles," listed below;

VOLKSWAGEN	
MODEL	MODEL YEARS
Beetle, Beetle Convertible	2013-2015
Golf 2-Door	2010-2013
Golf 4-Door	2010-2015
Golf SportWagen	2015
Jetta, Jetta SportWagen	2009-2015
Passat	2012-2015
AUDI	
A3	2010-2013, 2015

WHEREAS, Volkswagen has also entered related agreements with the United States Department of Justice ("DOJ") on behalf of the Environmental Protection Agency ("EPA"), the Federal Trade Commission ("FTC"), and the State of California by and through the California Air Resources Board ("CARB") and California's Office of the Attorney General ("CA AG");

WHEREAS, the Court, for the purposes of this Order, adopts all defined terms as set forth in the Class Action Settlement;

WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Approval of Class Notice (the "Motion");

WHEREAS, Volkswagen does not oppose the Court's entry of the proposed Preliminary Approval Order;

WHEREAS, the Court finds that it has jurisdiction over the Action and each of the Parties for purposes of settlement and asserts jurisdiction over the Settlement Class Representatives for purposes of considering and effectuating this Settlement;

WHEREAS, the Court held a Preliminary Approval Hearing on July 26, 2016; and

WHEREAS, this Court has considered all of the submissions related to the Motion and, having presided over and managed the MDL proceedings as Transferee Judge, the Preliminary Approval Hearing, and is otherwise fully advised of all relevant facts in connection therewith.

IT IS HEREBY ORDERED AS FOLLOWS:

I. <u>PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT</u>

1. The Settlement appears to be the product of intensive, thorough, serious, informed, and non-collusive negotiations overseen by the Court-appointed Special Master and former Director of the Federal Bureau of Investigation Robert S. Mueller, III; has no obvious

deficiencies; does not improperly grant preferential treatment to the Settlement Class Representatives or segments of the Class; and appears to be fair, reasonable, and adequate, such that preliminary approval of the Settlement should be granted, notice of the Settlement should be directed to the Class Members, and a Fairness Hearing should be set.

2. Accordingly, the Motion is GRANTED.

II. THE CLASS, CLASS REPRESENTATIVES, AND CLASS COUNSEL

3. The Court provisionally certifies, for settlement purposes only, under Fed. R. Civ. P. 23(a), 23(b)(3), and 23(e) of the Federal Rules of Civil Procedure, the following Settlement Class (the "Class"), defined under Rule 23(c)(1)(B) as follows: A nationwide class of all persons (including individuals and entities) who, on September 18, 2015, were registered owners or lessees of an Eligible Vehicle, or who, between September 18, 2015, and the end of the Claim Period, become a registered owner of an Eligible Vehicle. The following entities and individuals are excluded from the Class:

(a) Owners who acquired ownership of their Eligible Vehicles after September 18, 2015, and transfer title before participating in the Settlement Program through a Buyback or an Approved Emissions Modification;

(b) Lessees of an Eligible Vehicle that is leased from a leasing company other than VW Credit, Inc.;

(c) Owners whose Eligible Vehicle (i) could not be driven under the power of its own 2.0-liter TDI engine on June 28, 2016, or (ii) had a Branded Title of Assembled, Dismantled, Flood, Junk, Rebuilt, Reconstructed, or Salvage on September 18, 2015, and was acquired from a junkyard or salvage yard after September 18, 2015;

(d) Owners who sell or otherwise transfer ownership of their Eligible Vehicle between June 28, 2016, and September 16, 2016 (the "Opt-Out Deadline"), inclusive of those dates;

(e) Volkswagen's officers, directors and employees and participants in Volkswagen's Internal Lease Program; Volkswagen's affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and Volkswagen Dealers and Volkswagen Dealers' officers and directors;

(f) Judicial officers and their immediate family members and associated court staff assigned to this case; and

(g) All those otherwise in the Class who or which timely and properly exclude themselves from the Class as provided in the Class Action Settlement.

4. The Court preliminarily finds that claims of the proposed Settlement Class Representatives are typical of the claims of the Class under Rule 23(a)(3), and that they have and will fairly and adequately represent the interests of the Class under Rule 23(a)(4), and hereby designates as Settlement Class Representatives the proposed representatives identified in the Motion.

5. The Court preliminarily finds that the Lead Counsel and the PSC will fairly and adequately represent the interests of the Class under Rule 23(a)(4), have done so, and are adequate under Rule 23(g)(1) and (4), and, therefore, hereby appoints Lead Counsel and the PSC as Settlement Class Counsel, under Rules 23(c)(1)(B) and 23(g) to implement and complete the Settlement Approval Process.

III. NOTICE TO CLASS MEMBERS

6. Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Shannon Wheatman, and the Class Action Settlement—including direct First Class mailed notice to all known Class Members and an extensive and targeted publication campaign—is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B). The Court approves such notice, and hereby directs that such notice be disseminated in the manner set forth in the Class Action Settlement to Class Members under Rule 23(e)(1).

IV. SCHEDULE AND PROCEDURES FOR DISSEMINATING NOTICE, FILING CLAIMS, REQUESTING EXCLUSION FROM THE CLASS, FILING OBJECTIONS TO THE CLASS ACTION SETTLEMENT, AND FILING THE MOTION FOR FINAL APPROVAL

Date	Event
June 28, 2016	Settlement Class Representatives file Motion for Preliminary Approval of Settlement

Date	Event
June 30, 2016	Status Conference with the Court
July 5, 2016	Volkswagen provides Class Action Fairness Act Notice to State Attorneys General
July 26, 2016	Preliminary Approval Hearing
July 27, 2016	Class Notice Program begins
August 19, 2016	Class Notice Program ends
August 26, 2016	Motion for Final Approval filed
September 16, 2016	Objection and Opt-Out Deadline
September 16, 2016	End of Eligible Seller Identification Period
September 29, 2016	Deadline for State Attorneys General to file Comments/Objections to this Class Action Agreement
September 30, 2016	Reply Memorandum in Support of Final Approval filed
October 3, 2016 – October 7, 2016	Final Approval Hearing [Date TBD by Court]

V. FAIRNESS HEARING

7. The Fairness Hearing shall take place at [_______] on [______________________] at the United States District Court for the Northern District of California, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable Charles R. Breyer, to determine whether the proposed Class Action Settlement is fair, reasonable, and adequate, whether it should be finally approved by the Court, and whether the Released Claims should be dismissed with prejudice under the Class Action Settlement and the Notice Program.

VI. OTHER PROVISIONS

8. Settlement Class Counsel and Volkswagen are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Class Action Settlement including the approved Notice Program.

9. The deadlines set forth in this Preliminary Approval Order, including, but not limited to, adjourning the Fairness Hearing, may be extended by Order of the Court, for good

cause shown, without further notice to the Class Members, except that notice of any such extensions shall be included on the Settlement Website. Class Members should check the Settlement Website regularly for updates and further details regarding extensions of these deadlines.

10. Pending the final determination of whether the Settlement should be approved, each Class Member, and any person purportedly acting on behalf of any Class Member or Class Members, is hereby enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, regulatory, arbitral or other proceeding, in any jurisdiction or forum, against any of the Released Parties. Such injunction shall remain in force until the day after the Opt-Out Deadline, or until such time as the Parties notify the Court that the Settlement has been terminated. Nothing herein shall prevent any Class Member, or any person actually or purportedly acting on behalf of any Class Member(s), from taking any actions to stay and/or dismiss his, her or its Released Claims. This injunction is necessary to protect and effectuate the Settlement approval process, this Order, and this Court's flexibility and authority to effectuate this Settlement and to enter judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

11. Class Counsel and Defendants' Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Class Action Settlement that are not materially inconsistent with the Preliminary Approval Order or the Class Action Settlement, including making, without further approval of the Court, minor changes to the Class Action Settlement, to the form or content of the Class Notice, or to any other exhibits that the Parties jointly agree are reasonable or necessary.

12. The Court shall maintain continuing jurisdiction over these proceedings for the benefit of the Class as defined in this Order.

13. Because the Class Action Settlement does not resolve all claims asserted in the Action, there shall be no stay or suspension of the Action against any Defendants, including Volkswagen.

IT IS SO ORDERED.

DATED:

____
CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE