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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' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE 2.0-LITER TDI CONSUMER AND RESELLER DEALER CLASS ACTION SETTLEMENT

Hearing: October 18, 2016
Time: 8:00 a.m.
Courtroom: 6, 17th floor

The Honorable Charles R. Breyer

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I. INTRODUCTION

Like every human endeavor, class actions have come in for their criticism, fair or otherwise. But this historic Class Action Settlement has achieved the unprecedented, overwhelming support, and the early and eager participation of the Class it was designed to benefit. The Class Action Settlement, and the Class Members' response to it, demonstrates the importance and achievability of complete resolution of a daunting problem threatening our economy, our basic sense of marketplace integrity, and our belief that citizens going about their lives are entitled to legal protection. Over 311,000 Class Members have *already* registered for the settlement. It is impossible to imagine any other process that could have attained this momentum so quickly and so decisively resolve the Volkswagen emissions scandal. In the words of the typically skeptical U.S. Public Interest Research Group, the settlement "compensates consumers, cleans up the environment, and deters future wrongdoing."[1]

The sheer scale of this MDL proceeding is without precedent. The "clean diesel" emissions fraud not only compromised the interests of car purchasers, it also undermined environmental protection laws, and moved all the way across the spectrum to generate criminal investigations.

The consumers themselves, as well as the federal and state environmental and consumer protection agencies—the DOJ, the EPA, the FTC, CARB, and the California AG are all before this Court, requesting its approval. Together with Volkswagen, they are jointly eliciting its ongoing jurisdiction and supervision to assure the delivery of these interrelated settlements' consumer and environmental remedies.

The immediate issue before this Court under Fed. R. Civ. P. 23(e) is whether the proposed Class Action Settlement fairly and substantially compensates a nationwide class of owners, lessees, and resellers of the 2.0-liter diesel vehicles. Even this extraordinary class resolution addresses only a part of the integrated remedies at issue. The Class Action Settlement was

[1] Press Release, U.S. Public Research Int. Grp., Statement on Announcement of Partial VW Settlement (June 28, 2016), available at http://www.uspirg.org/news/usp/statement-announcement-partial-vw-settlement.

negotiated and crafted in conjunction with state and federal administrative enforcement to ensure not only compensation for the Class, but mitigation of the environmental damage resulting from the vehicles' unlawful emissions.

Despite the scale of the issues to be resolved, and despite the multiple harms that had to be addressed, the settlement process moved at unmatched speed: the final approval hearing occurs 13 months to the day after the "clean diesel" exposé. This swift resolution is but one element of a successful conclusion. More significant is the overwhelmingly positive response of the Class. As Professor Klonoff sets out in his Declaration,[2] class action settlements for small amounts of harm and recovery often elicit only a passive response from the class. This case is a landmark at the other end of the spectrum. To date, 311,209 owners, lessees and eligible sellers have already taken affirmative steps to register for the relief offered, even before the settlement is final.[3] The Settlement website has received 885,290 discrete visits.[4] Settlement Class Counsel has had many thousands of communications with Class members seeking information and input on the Settlement process.[5]

Far from being a "rationally indifferent" class, whose class members have claims too small to justify examination or engagement, these Class members suffered real harms related to one of their major life purchases. Americans take their car ownership seriously, and the response of the Class members here shows that they took their decision to purchase these cars, with these claimed environmental benefits, very seriously as well. The Class Action Settlement takes them

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[2] Exhibit 1, Declaration of Robert H. Klonoff Addressing Objections by Class Members to the Proposed Volkswagen "Clean Diesel" Settlement ("Klonoff Decl.").

[3] This registrant data from the settlement website administration includes 311,209 owners, lessees, resellers and eligible sellers who have gone to the website, entered their VIN, and created a Claims Portal account. It does not yet include the additional thousands who are submitting forms on paper, and already represents 303,261 unique VINs—nearly 65% of the approximately 475,000 Eligible Vehicles.

[4] For complete notice statistics and methodology on the mailing and dissemination of Class notice, see the accompanying Declaration of Shannon R. Wheatman, PhD, on Implementation and Accuracy of the Claim Notice Program ("Wheatman Decl.") and Declaration of Jason M. Stinehart re: Notification to Class Members ("Stinehart Decl.").

[5] Exhibit 2, Declaration of Elizabeth J. Cabraser on Settlement Class Member Communications ("Cabraser Decl.").

very seriously too: it restores the full retail value of their vehicles at pre-emissions scandal levels, and compensates them for economic loss.

When, as here, an engaged and informed class eagerly signs up for benefits in advance of final approval, and when only small numbers opt out or object, a milestone settlement has indeed been reached. The Settlement objection deadline was September 16, 2016. Although individual direct notice was mailed to the last known addresses of all potential Class members (and also emailed to most of them), and an unprecedented multi-media class notice program (including nationwide and regional publications, online publications, social media campaigns, a Settlement website, and toll-free phone line) was fully implemented, only 3,298 Class members have opted out of the Settlement.[6] This represents well less than 1% (closer to 0.7%) of the Class. Given the high-profile and well-publicized nature of this litigation and the significant sums at stake, this low opt out rate reflects Class members' resounding approval of the Settlement and constitutes powerful evidence of the Settlement's fairness and adequacy. In contrast, as of September 29, 2016, 311,209 Class members have already registered for Class Action Settlement benefits, two years before the ultimate deadline to do so.[7] In electoral terms, the ratio of registrations to opt-outs, of "yes" votes to "no" votes, is virtually 100 to 1: a landslide referendum in favor of settlement approval, by any standard.

To say that this is an active and engaged Class severely underestimates the level of Class Member engagement. Settlement Class Counsel attorneys and staff have responded by phone, email, and correspondence to over 16,000 inquiries from more than 8,000 Class members; the Settlement call center has received approximately 105,420 calls; and the Settlement website has received 885,290 unique visits since its launch. As of September 29, 2016, there were over 40,000 registrants from California, and registrants from all 50 states, plus DC, Puerto Rico, USVI, and Guam. There are over 1,000 registrants, from each of 45 states; over 5,000 registrants

[6] This process is now running in reverse: every day, revocations of earlier opt-outs are being filed with the Court and/or submitted to Ankura.

[7] This September 29, 2016, registrant figure, which will continually increase and which we will update at the October 18, 2016, final approval hearing, includes approximately 13,992 who have identified as Eligible Sellers online.

from each of 21 states; and over 10,000 registrants from each of nine states. There are 10,160 registrants from Virginia, which is the ninth largest state for registrations.[8] In contrast to the enthusiastic affirmative response of the clear majority of Class members, only 462, less than one-tenth of one percent (0.1%) of Class members objected to any aspect of the Settlement. And, notably, not a single state attorney general has voiced any objection. To the contrary, the Attorneys General actively support the Settlement, and some have even written letters urging Class members to participate.[9] The high level of attention, and the low level of objections, underscores the value of this Settlement, which will bring more benefits, in less time, to more consumers, than any other. And none of the relatively few objections establishes that the Settlement is anything other than fair, reasonable, and adequate.

Objections are addressed by general topic in this Reply. All filed and letter objections about the level, type and/or adequacy of settlement relief provided by the settlement are also addressed in the accompanying Declaration of class action expert Professor Robert H. Klonoff, who has comprehensively reviewed and analyzed all of objections relating to the adequacy of the class relief.[10] For the most part, the objections come from people who would like to receive more money. Others are based on mistaken interpretations of the Settlement and/or notice, ungrounded accusations, unsupported legal claims, and a few thinly-veiled attacks on class action litigation in general and plaintiffs' lawyers in particular. The demand for more relief is understandable, given the outrageous behavior at issue and the ensuing sense of betrayal felt by loyal Volkswagen customers. But all settlements involve compromise, and this one is no different. More was demanded and pressed by Class Counsel than could be obtained, in an intense negotiation that consumed not hours or days, but five months of effort.[11]

The question before the Court is not whether additional benefits could conceivably exist—a condition that is true of all negotiated settlements—but whether this particular settlement is fair,

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[8] There are 159 timely opt outs from Virginia.

[9] Exhibit 3, Letter from Kentucky Attorney General, Andy Beshar.

[10] *See* Ex. 1.

[11] The settlement registration process is described in the September 30, 2016, Declaration of Settlement Master Robert S. Mueller, III, on Settlement of Claims Regarding 2.0-Liter Vehicles.

reasonable, and adequate. It is. The Settlement is fundamentally sound, and provides an objective, consistent, and transparent structure to efficiently process payment of substantial economic and emissions-reducing benefits to a Class of nearly half a million consumers. It more than fulfills Rule 23's final approval standards. Plaintiffs therefore respectfully urge the Court to grant final approval to this important and far-reaching Settlement, and to enable its prompt implementation.

II. LEGAL STANDARD FOR FINAL SETTLEMENT APPROVAL

"[O]bjectors to a class action settlement bear the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015) (citing *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)); *see also Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19, 2014) (objector bears burden to show that settlement approval would contravene its equitable objectives).

The absence of objections from a large proportion of Class members raises a strong presumption that a settlement is fair, reasonable, and adequate. *See, e.g.*, *Nat'l Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.") (citations omitted); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (stating that the absence of negative reaction strongly supports settlement, and approving a settlement with an opt-out rate of 4.68%). The presumption of fairness applies here given the relatively small number of Class members (about 0.1%) submitting objections or opting out (less than 1%).

While every objection from a Class member merits consideration, the Court must make an independent assessment of the Settlement to determine its overall fairness under Fed. R. Civ. P. 23(e). The question it must answer "is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

III. ARGUMENT

A. The Settlement Fairly Compensates the Class, and Objections to the Financial Aspects of the Settlement Should Be Overruled.

This Settlement commits an unprecedented $10.033 billion directly to those affected by the Volkswagen emissions scandal. It offers every Class member a minimum of thousands of dollars, and up to the mid $40,000's, calculated based on a fair assessment of each vehicle's value, while freezing that value at the most recent available pre-emissions exposé level, and applying an irrefutable presumption that every vehicle, regardless of age or appearance, is in the most excellent cosmetic and mechanical condition. For those selling their vehicles back to Volkswagen under the Buyback program, the Settlement combines the Clean Trade-In market-value assessment with an additional cash payment. Those payments together exceed each vehicle's pre-scandal value, no matter the metric (they exceed the vehicles' Clean Retail value and replacement value), and empower Class members to purchase vehicles comparable to the ones they sell back. These payments are the same payments that constitute the "robust consumer relief" endorsed by the FTC in urging approval of all components of the "global" 2.0-liter "Clean Diesel" settlement: this Class Action Settlement, the DOJ Consent Decree, and the FTC Order.[12]

As with most consumer class action settlements, a small number of objectors are dissatisfied with the compensation they will receive. The class action notice sent to Class members invited them to voice objections by the simple expedient of writing a letter. Only 462 out of 490,000 times did so, and only 19 of them (including those who filed after the deadline) filed formal objections.[13] The low level of dissatisfaction with this Settlement is particularly significant given the substantial stakes of the potential recovery and the tremendous attention that the emissions fraud and ensuing litigation and settlement have generated. The objections, while for the most part sincere expressions of Class members' personal concerns, are misplaced. Class action settlements reflect a pragmatic assessment of risks and benefits, where the theoretical

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[12] *See* FTC Motion (Dkt. No. 1966), filed September 30, 2016.

[13] A chart demonstrating the distribution of the objections by category is attached to the Declaration of Elizabeth Cabraser on Settlement Class Member Communications.

maximum value that could be obtained by a class is reduced by the risks inherent in ongoing litigation, the cost of delay, and the defendant's ability to pay. *See, e.g., Perkins v. LinkedIn Corp.*, No. 13-CV-04303-LHK, 2016 U.S. Dist. LEXIS 18649, at *19 (N.D. Cal. Feb. 16, 2016) (noting that, though massive theoretical statutory damages may exist, the settlement was fair and adequate in light of the risks and delays associated with litigation); *Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 U.S. Dist. LEXIS 169922, at *15 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant."). "That certain Class Members evaluate the risks differently, or would prefer to go to trial despite those risks, does not prevent the Court from granting final approval to the Settlement." *Perkins*, 2016 U.S. Dist. LEXIS 18649, at *19.

The reasonableness of a recovery is related to, among other things, the strength of the case and risk of non-recovery. Generally, cases with lower risk warrant settlement values reflecting a high percentage of the total damages sought than in cases with greater risk. *See Villanueva v. Morpho Detection, Inc.*, No. 13-cv-05390-HSG, 2016 WL 1070523 *4 (N.D. Cal. March 18, 2016) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair."); *Ebarle v. Lifelock, Inc.*, No. 15-cv-00258-HSG, 2016 U.S. Dist. LEXIS 128279, at *14-16 (N.D. Cal. Sep. 20, 2016) (same). The strength of the instant case is reflected by the significant recovery, especially given that "courts do not traditionally factor treble damages into the calculus for determining a reasonable settlement value." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009). Additionally, the speed by which the Settlement has been reached and payment obtained for the Class merits additional, significant consideration. *See In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation."). Because of these factors, the value of this Settlement far exceeds the threshold necessary for its final approval.

1. The Settlement's Vehicle Valuation Formula Is Fair, Reasonable, and Adequate.

As described in detail in Motion for Final Approval and in the Settlement itself, the total compensation available to owners includes the Buyback amount plus the Owner Restitution. Lessees receive Lessee Restitution, and certain seller's receive Seller Restitution. Integral to all of these calculations is the Vehicle Value. The method used to determine the Vehicle Value—which, again, is only a *portion* of the total compensation available for those selling their vehicles—is fair, reasonable, and adequate. For example, when combined with Owner Restitution, the total owner Buyback amount exceeds the Clean Retail Value of the vehicle as of September 2015.

a. The Law Does Not Mandate Full Refund of the Purchase Price, and Refunds Must Be Reduced by Offsets.

The majority of the objections concerning compensation focus on the lack of a full refund of an objector's purchase price, or assert that factoring a vehicle's current mileage into the compensation amount is unfair. Even assuming a trial outcome in favor of the Class, full rescission may not be available under the law, given that Class members used and benefited from the vehicles, and that the vehicles would therefore be returned in a depreciated state.

Indeed, in its order granting preliminary approval of the Settlement, the Court already observed that restitution remedies for automotive defects based on rescission or repurchase calculations are subject to offset claims for the car owner's use of the vehicle. Dkt. No. 1688 at 26 ("The full purchase price of Eligible Vehicles is unlikely to represent the maximum recovery, as many state laws allow a deduction for vehicles' use."). To receive a full rescission or refund remedy, a plaintiff would need to return a product in the same condition as when he received it. Thus, because a vehicle's value depreciates significantly with use, courts require a reasonable reduction in the refund amount, to account for the depreciation of the vehicle and for the value provided to the plaintiff. *See, e.g.*, *Kruger v. Subaru of Am.*, 996 F. Supp. 451, 457 (E.D. Pa. 1998) ("[B]ecause the car is unavailable and because the plaintiffs used the car for eight months, thereby depreciating its value, I conclude that the plaintiffs are not entitled to a full refund.");

Kruse v. Chevrolet Motor Div., Civil Action No. 96-1474, 1997 WL 408039, at *6 (E.D. Pa. July 15, 1997) ("Awarding damages equal to the full purchase price does not take into account the natural depreciation of the vehicle from normal usage. Therefore, I find that plaintiff has not presented evidence that he is entitled to a refund of the full purchase price").

Many consumer protection laws codify this offset. *See* Dkt. No. 1688 at 26 (citing authority). California's Song-Beverly Consumer Warranty Act, for example, provides for an offset calculated on the basis of the mileage driven. Cal. Civ. Code § 1793.2(d)(2)(C); *Robbins v. Hyundai Motor Am., Inc.*, No. SACV 14-00005-JLS (ANx), 2015 WL 304142 at *6 (C.D. Cal. Jan. 14, 2015); *Rupay v. Volkswagen Grp. of Am. Inc.*, No. CV 12-4478-GW FFMX, 2012 WL 10634428, at *4 (C.D. Cal. Nov. 15, 2012). California's Lemon Law also prescribes a method for calculating depreciation of vehicles. Cal. Civ. Code § 1793.2(d)(2)(C). The National Traffic and Motor Vehicle Safety Act likewise notes that, following a safety recall, an available remedy to consumers is to "refund[] the purchase price, less a reasonable allowance for depreciation." 49 U.S.C. § 30120(a)(1)(A)(iii). And the federal Magnuson Moss Warranty Act ("MMWA") defines the term "refund" as "refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission)." 15 U.S.C. § 2301(12).

Under these facts, the demand for return of the full purchase price is not supported by law. This Settlement nevertheless provides extraordinary relief. A real life example reinforces this point. Earlier this year, Volkswagen offered to buy back a Class vehicle pursuant to California's Song-Beverly Consumer Warranty Act for a defect unrelated to the defeat device. Applying the customary valuation and depreciation formula resulted in a payment of approximately $28,000. Under the Settlement, that same vehicle would yield a Buyback payment of approximately $32,000. This means that the settlement provides almost $4,000 more in compensation than would be available under the traditional valuation formulas of car purchaser protection laws.

Accordingly, the Settlement's buyback calculation is supported by applicable law and is highly favorable to Class members, notwithstanding the offsets. *See* Declaration of Andrew Kull (Dkt. No. 1784-2) ¶¶ 12-13. In fact, by some calculations, Settlement Class members stand to do even *better* under the Settlement than they would if successful at trial because the Settlement's

vehicle valuation is frozen in time at the National Automobile Dealers Association ("NADA") September 2015 Clean Trade-In value and does not decrease to account for up to three years of depreciation between September 2015 and the ultimate date of Buyback.

b. A Mileage Adjustment Is an Industry Standard Offset, and the Adjustment Calculations Used Are Fair and Reasonable.

Certain Class members have objected to the mileage adjustment to the Vehicle Value. According to these objections, their vehicles were built to drive long distances and were sold based on their excellent gas mileage. Some objectors claim they relied on that representation and drove their vehicles long distances. But the fact remains that some people got more use out of their cars, a criterion well established in the mileage depreciation formulas used under lemon laws and other consumer protection regulations. No fair, adequate and reasonable settlement can treat in the same fashion individuals who in fact are differently situated. Fairness dictates acknowledging the reality that some Class members used their vehicles more than others, and therefore incurred more depreciation before surrendering their vehicles to Volkswagen. A mileage adjustment was necessary to effectuate a fair settlement.

At the same time, high mileage drivers actually benefit because the settlement allows Class members to continue driving their vehicles a standard number of miles per month after September 2015 without reducing their compensation ("free miles" as it were). *See* Declaration of Edward M. Stockton ("Stockton Decl.") (Dkt. No. 1784-1) ¶¶ 30-31. Some objectors complain that the mileage allotment for the post-September 2015 period is insufficient, but 12,500 miles of driving per year for each vehicle—an allowance that was negotiated—is more generous than the average driver's estimated annual mileage of approximately 12,000 miles.[14] Accordingly, the

[14] *See* Joseph Sinclair & Don Spillane, eBay Motors the Smart Way at 49 (2004) (noting that Edmunds "assumes the average annual mileage to be 12,000 miles and penalizes vehicles with mileage above that," the Kelley Blue Book "assumes the average annual mileage to be 13,000 miles and penalizes mileage above that," and Galves "assumes the average mileage to be about 11,500 annually").

Settlement adopts reasonable mileage allowances, and no objector has identified a superior mileage model.[15]

c. NADA Clean Trade-In Value Is a Fair and Reasonable Valuation Starting Point for the Buyback.

When dealing with hundreds of thousands of cars, it is not possible to kick the tires of each one and take it for a test drive. Individuals may have all sorts of sentimental attachments to their particular cars, and may have expended great effort in customizing their vehicles. Fortunately, used car sales generate a thick market with clear industry standards for baseline valuation of vehicles. The best industry valuation for large numbers of vehicles is NADA Clean Trade-In, which provides a fair and reasonable reference point for vehicle valuation.[16] It is the most objective available method, as other methods, such as MSRP minus depreciation, or Kelley Blue Book ("KBB"), would require more individualized calculations and determinations as to vehicle condition.[17,18] And, regardless, KBB values are very similar to NADA values. Stockton Decl. (Dkt. No. 1784-1) ¶ 16. Moreover, by adopting the September 2015 NADA Clean Trade-In values (or comparable projection, where necessary) for all vehicles, the Settlement avoids the delay, uncertainty, and potential reductions in value associated with the subjective vehicle-by-

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[15] Wheels, Inc. faults the Settlement for failing to include an alternative mileage calculation method "using reliable mileage records kept in the ordinary course of business," Dkt. No. 1882 at 5, but that alternative method would have been a realistic option for very few, and would have added considerable complication for only marginal benefit, if any.

[16] Certain Model Year 2015 Vehicles did not have NADA Clean Trade-In values as of September 2015. Therefore, Plaintiffs opted to analyze the observed relationships of NADA Clean Trade-In value to MSRP for those 2015 Model Year Volkswagen vehicles that did have NADA Clean Trade-In values—as discussed and negotiated by counsel for both Plaintiffs and Volkswagen—and reached a deduction-on-MSRP figure for applicable Model Year 2015 Vehicles of 71.7%. These values, intended to approximate NADA Clean Trade-In values, when combined with the restitution payment, provide an average payment of approximately 98% of MSRP and are "reasonable, reliable, and the product of a rigorous and analytically sound process." Stockton Decl. (Dkt. No. 1784-1) ¶ 32.

[17] As a peculiar, but perhaps inevitable result of the proposed Settlement, different objectors have argued that the NADA Clean Trade-In value is unfairly skewed towards favoring older vehicles, or unfairly skewed towards favoring newer vehicles. Neither is true.

[18] *See, e.g.*, *Kelley Blue Book vs. NADA Guides*, http://www.usedcars.com/advice/kelley-blue-book-vs-nada-guides/ (last visited Sept. 21, 2016) ("[KBB] places a large amount of emphasis on mileage, condition, features and popularity, while NADA tends to focus on the vehicle's wholesale price (i.e. what the dealer paid for the vehicle)").

vehicle appraisals at the time of Buyback or Fix. Here, all vehicles receive and retain a standard value. The Buyback requires only that Class members return a vehicle in working order. This is a benefit not just in terms of time to getting a remedy, but also relieving car owners of the need to fix up their cars, repair dents and other body damage, or otherwise spruce up for the trade-in. This is yet another gain for Class members whose vehicle condition might push them into less desirable trade-in categories, covered by NADA Rough or Average Trade-In, an inferior baseline for valuation compared to NADA Clean Trade-In.

d. The Settlement Properly Accounts for Optional Vehicle Equipment Adjustments.

Most cars are sold with fairly standard packages of additional features. This is already captured in the NADA Clean Trade-In values, which includes some of the most common options automatically in the NADA valuation. Other less-common features, such as optional navigation systems, power sunroofs, or sport packages, are picked up in the Settlement through Vehicle Value adjustments that increase the payments to Class members, regardless of whether they participate in the Buyback or the Modification.

Certain objectors have identified vehicle equipment components not accounted for in the Buyback or Modification adjustments, such as fog lights or anti-theft devices. *See* Lujan Objection (Dkt. No. 1886); Collins Objection (Dkt. No. 1889). Not adjusting Vehicle Value for this equipment directly matches the NADA pricing guidelines and maintains the administrability of the program and the integrity of the compensation schedules. Of course, Class Counsel understands that NADA does not account for every single option that Class members purchased. Therefore, as described more fully below, the Settlement restitution payment is designed to ensure that the *combined* payments for all Class members—including those who purchased options that did not affect the underlying Vehicle Value—exceeds the vehicles' September 2015 NADA Clean Retail value.

2. The Restitution Payment Is an Integral Part of the Buyback Compensation Package, and Ensures That All Eligible Owners Are Fairly Compensated, Regardless of Their Individual Circumstances.

Taken as a whole, the Buyback compensation package is designed to restore Class members to the positions they would have occupied if Defendants had never committed the frauds. The Settlement compensation must be understood as a package deal. Objectors who criticize the Settlement for pegging vehicle value to NADA Clean Trade-In as opposed to NADA Clean Retail miss that point. Together, the combined payments—which include the Vehicle Value, relevant adjustments, and the restitution payment—amount to more than a 20% premium over the Clean Trade-In value and compensate the average Class member with a minimum of 112.6% of the September 2015 *retail* value of their vehicles. Stockton Decl. (Dkt. No. 1784-1) ¶ 28.

While the September 2015 NADA Clean Trade-In fairly captures the pre-scandal market value of the Class Vehicles, it is not intended to cover all the harms suffered as a result of Volkswagen's fraud. It is not the entirety of the settlement benefits package. The restitution payment portion of the compensation package provides significant *additional* money to account for that harm. Plaintiffs' expert, Edward Stockton, discussed these issues in his report on the economic effects on consumers of Volkswagen's conduct, and the reasonableness of the settlement in addressing these effects. These additional tangible economic costs may include an accelerated purchase of a new vehicle and concomitant transaction costs (Stockton Decl. (Dkt. No. 1784-1) ¶¶ 18, 23), loss of extended warranty coverage or service plan coverage (*id.* at ¶ 24), sales tax on the excess original purchase price (*id.* ¶ 25), sales tax on replacement vehicle purchases (*id.* at ¶¶ 10, 28),[19] inflated vehicle price and heightened insurance premiums associated with the inflated vehicle price (*id.* at ¶ 25). Intangible costs were also incurred by some Class members, such as uncertainty related to the "clean diesel" scandal and the stress related to excess vehicle emissions and searching for a new vehicle. *Id.* at ¶¶ 18, 22. All of these factors, as well as potential storage costs that some Class members may incur by deciding not to

[19] *See also* Exhibit 4, Reply Declaration of Edward M. Stockton ("Stockton Reply Decl.") ¶¶ 3-4.

drive their vehicles, and the inevitability of certain Class members purchasing optional equipment for their vehicles not included in NADA adjustments, were considered in negotiating the additional restitution payment available to all Class members. *Id.* at ¶¶ 26-28.

The restitution payments also provide Class members who purchased extended warranties or service contracts sufficient compensation to cancel the contracts—a typical cancellation fee is $50—and then receive a reimbursement of the pro-rated remaining portion of the warranty purchase price. Thus, the Settlement provides a remarkable amount of flexibility and choice to conform to each Class member's individual preferences and needs, within an overall system that can be administered in a transparent, predictable, and efficient way to process hundreds of thousands of claims without undue delay.

3. The Settlement Fairly Compensates Lessees.

Class members leasing their vehicles from Volkswagen are afforded two choices: opt for a Fix and restitution payment, if approved, or terminate their lease at any time prior to the September 2018 Fix deadline and receive a restitution payment.[20] As is the case with owners, lessees are given flexibility to determine which option best suits their personal situation.

Nevertheless, a small number of objectors have criticized the compensation available for lessees—which is less than that available to owners. This difference in compensation, however, is attributable to the economic relationship a lessee has with his vehicle, as compared to an owner's relationship with his vehicle. An owner bears the risk of any depreciation of the vehicle during the course of ownership. Lessees, on the other hand, receive only the right to use the vehicle for the duration of the lease, in exchange for consideration. *See* Stockton Decl. (Dkt. No. 1784-1) ¶ 34. It would be inequitable for a lessee to receive the same compensation as owners, since owners owned an asset that lost value because of Volkswagen's conduct, and lessees did not. Despite the differences in compensation, lessees still receive remedies that are functionally analogous to the owner remedies: lessees can relinquish their vehicles or obtain a Fix and continue to drive them.

[20] These restitution payments are equal to 10% of the Vehicle Value (adjusted for options but not mileage) plus an additional $1,529.

Other lessees have objected to the Settlement based on the structure of their leasing contracts. Some complain about contractual mileage overages. Any charges related to mileage overages stem from the Class member's initial lease contract, and would be owed whether or not the vehicles met relevant emissions limits. The restitution payment offered to lessees explicitly does not include mileage adjustments, because the justification for doing so in the owner context (depreciation and use of the vehicle) does not apply in the lessee context. Other lessees contend they are not being adequately compensated for larger than normal down payments, or "pre-payments." But aside from the fact these pre-payments results in reduced monthly payments—a benefit these lessees have continuously enjoyed—this can be resolved by maintaining lease, thereby realizing the benefit of the larger down payment.

Finally, a small number of lessees have objected because they intended to become owners of their vehicles at the conclusion of their lease, yet are compensated by the Settlement only as lessees. But there is a difference between immediately assuming the burdens of ownership and an unconsummated intent to assume ownership at some future date. The decision to lease a vehicle is, by definition, a decision to not purchase one. It would be neither practical nor reasonable for the Settlement to treat certain lessees as if they suffered the same harm as owners, when they did not.

4. The Settlement Fairly Compensates Those Financing Their Vehicles.

Many Class members owe money on their vehicle purchase pursuant to a financing arrangement. These Class members are treated like any other vehicle owner, unless they owe more on their vehicle loan than the total Buyback compensation would provide. The Settlement establishes a funding pool of $42,670,723 for such Class members, and they are entitled to an additional amount up to 30% of the Buyback compensation package (inclusive of the restitution payment) as loan forgiveness. Some objectors believe the loan forgiveness is too generous; others complain it is not generous enough.

The extra payments to Class members with more debt merits explanation, because it is not a customary feature of a class settlement. One of the Settlement's many goals was to make Class members whole. If that were the only objective, then Class members should be treated identically

regardless of whether they financed a portion of their purchase or paid all cash. But another important objective of the Settlement was to get the polluting cars off the road. Forgiving the loans (up to a certain point) helps advance both goals by ensuring that no Class member (or at least, very few) would be required to pay additional money to Volkswagen to free themselves of the polluting Vehicles. It therefore incentivizes more of those Class members to participate in the Settlement and to sell their polluting vehicles back to Volkswagen. Some are tempted to view the settlement in zero-sum, comparative terms, but no Class member's compensation package under the Settlement was reduced in order to provide this additional benefit to those under water with their loans.

Of course, some of those who are eligible for loan forgiveness want more, and seek additional cash compensation in addition to the *enhanced* Buyback amount necessary to pay off the creditors.[21] The negotiated loan forgiveness compensates these Class members fairly.

5. The Settlement Fairly Compensates Those Who Disposed of Their Vehicles ("Eligible Sellers").

Class members who transferred title of their Class vehicles between September 18, 2015 and June 27, 2016, are treated as Eligible Sellers under the Settlement and receive half of the restitution amount that Eligible Owners receive: equal to 10% of the Vehicle Value plus a restitution payment of $1,493, subject to a $2,550 minimum. Some objectors criticize the Settlement for providing less compensation to sellers than to owners, but this difference is justified because a Class member whose vehicle was totaled most likely received or will receive an insurance payout reflecting the value of his vehicle when it was totaled. Those who sold their cars have also have been partially compensated for the then-current market value of their vehicles.

[21] A subset of these objectors have commented on the perceived inequity in a settlement forgiving loans made by VW Credit, equating it to Volkswagen paying the settlement to itself. These objections misunderstand the nature of the economic relationship. A Class member who owes money to VW Credit needs the same indemnity from debt as one who owes money to Citibank. More of the consumer debt is forgiven in either case, which increases the benefit to the class member and facilitates getting a polluting car off the road. The end result is the same.

Those sellers are now eligible for an additional payment—the restitution payment—designed to bridge the gap between the vehicles' then-current value and its fair, pre-fraud valuation and other harm caused them. These Class members, however, do not face the same costs as current vehicle owners. Moreover, the sellers' vehicle sales prices would have accounted for certain value-enhancing features, like extended warranties, anti-theft devices, and other features, that, for Eligible Owners, are to be covered by the restitution payment. For all of these reasons, the seller restitution payment fairly and adequately compensates Eligible Sellers.

6. Special Payments to Resellers Are Not Warranted.

Objector Wheels, Inc. argues that the Settlement fails to take adequate account of costs incurred by fleet management and reseller Class members. Dkt. No. 1882 at 4. Its claim is that because it owns many vehicles and incurs costs associated with storing them while it awaits the start of the Settlement's Buyback program, it should receive more under the Settlement to offset those costs. This reasoning is flawed. As noted above, some individual Class members also incurred storage costs, which were considered in the negotiation of the restitution payments. Moreover, individuals could just as well argue that they incurred costs that fleet members did not incur. The Settlement treats resellers and consumers equally: an inclusion and equity that many dealers urged. Resellers and consumers were equally allegedly misled by Volkswagen, and equally powerless to do anything about it. It is fully appropriate to treat them similarly, as the Settlement does.

This Court "must evaluate the fairness of a settlement as a whole, rather than assessing its individual components." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). In this regard, Wheels, Inc. fails to understand that, as the Ninth Circuit cautioned, "settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027. That Wheels, Inc. would prefer to be paid a greater amount does not render the

Settlement unfair, or inadequate, or suggest collusion. Indeed, Resellers have demonstrated strong support of the Settlement.[22]

Moreover, to the extent Wheels believed it should receive additional compensation for the storage of its "over 4,000 affected vehicles," it could have opted-out of the Settlement and pursued those claims individually, like any other Class member. *See Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 277 (N.D. Cal. 1976) (notice and the right to opt-out afford class members "the opportunity to make an informed and voluntary choice over whether (the Settlement) is satisfactory to them.") (parenthesis in original; internal quotations omitted). It chose not to do so.

B. The Class Action Settlement Is an Essential Element of a Synergistic Public/Private Initiative Which Fully Succeeds as a Package Deal.

The extraordinary relief reflected in the three related settlements before the Court resulted from an unprecedented joint effort. As Settlement Master Mueller observed: "The parties had overlapping claims and authority; multiple parties sought economic, injunctive, and environmental relief; *no single party could, as a jurisdictional or practical matter, obtain and enforce all the relief sought*."[23] The Parties thus came together to work towards a "***global*** resolution."[24] As it turned out, the sum of the DOJ/EPA, FTC, and private plaintiffs—led by the PSC—proved much greater than the individual parts. As the Court observed, it is the "***combination*** of these agreements,"—*i.e.*, the DOJ Consent Decree, FTC Order, and the Class Action Settlement—that provides "payment of substantial compensation to the consumer class members in connection with the car buy back, the car modification, and cancellation of lease options."[25] "Without the ***cooperation***" of both the government entities and the PSC, "none of this

[22] *See, e.g.*, Exhibit 5, Declaration of Suzanne Sarhan; Exhibit 6, Declaration of Abdulrahman Al Dachach.
[23] *See* accompanying Declaration of Settlement Master Robert S. Mueller, III on Settlement of Claims Regarding 2.0 Liter Vehicles, ¶ 7 (emphasis added).
[24] May 24, 2016, Case Status Conference, Hr'g Tr. 8:6-18 (emphasis added).
[25] Apr. 21, 2016, Case Status Conference, Hr'g Tr. 6:2-8 (emphasis added).

would have occurred."[26] Simply put, then, these agreements cannot be viewed in isolation and each plaintiff group was integral to reaching a quintessential package deal.[27]

One hostile objector posits an alternative universe in which aggregate results can be attributed to a single participant. *See* Comlish Objection (Dkt. No. 1891). Here, Comlish argues that the extraneous party was the private plaintiffs, and that the Settlement's benefits are properly accredited to the DOJ and, to a lesser extent, the FTC.[28] He asserts in a variety of ways that while the "DOJ and FTC Orders provide class members with substantial relief," "the [class] Settlement provides no additional relief but instead imposes transaction costs in the form of class counsel fees and expenses and requires a release of class members' claims." Dkt. No. 1891 at 5. Similarly, he claims that "even if a class member opted out of the Settlement, his/her vehicle must still be repurchased Volkswagen pursuant to the DOJ Consent Decree," and, relatedly, that the DOJ Consent Decree accounts for "99% of the $10 billion that class members will receive if all three orders (the DOJ Order, the FTC Stipulated Order, and Settlement) are entered." *Id.* These arguments rely on a misreading of the settlement documents, and a fundamental misunderstanding of the settlement negotiation process, and its resulting, interrelated settlements.

First, Comlish's interpretation of the settlement documents themselves is fatally flawed. Those who opt out of the Class Action Settlement are not eligible for the Buyback and cannot recover any cash. The Executive Summary of the Settlements—which all the Parties, DOJ

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[26] *Id.* at 12:25-13:3 (emphasis added).

[27] As quantum physicist Werner Heisenberg famously stated: "There is a fundamental error in separating the parts from the whole, the mistake of atomizing what should not be atomized."

[28] Ironically, elsewhere, Comlish's counsel—who also represents the Competitive Enterprise Institute and eight other lobbying special interest organizations—takes aim at the DOJ deal too. He filed an objection to the DOJ Consent Decree opposing the ZEV funding component, thus seeking to reduce or eliminate a major, $2 billion component of the environmental relief the Settlements provide. *See* Comments of the Competitive Enterprise Institute, American Commitment, Americans for Prosperity, Freedom Works, Frontiers of Freedom, Heartland Institute, Institute for Energy Research, Rio Grande Foundation, Science and Environmental Policy Project, and Tax Payer Protection Alliance, to the Assistant Attorney General Environment and Natural Resources Division United States Department of Justice, dated August 5, 2016 (available at: https://cei.org/sites/default/files/Coalition%20Comments%20on%20In%20re%20Volkswagen%20Clean%20Diesel%20Marketing%20Sales%20Prac....pdf).

included, reviewed; which the Court approved; and which is posted on the Court's case website[29] and on the official Settlement website[30]—could not be more clear on this point: "***If you exclude yourself from the Class***, you may still obtain an Approved Emissions Modification if available for your car, but ***you cannot receive a Buyback or Lease Termination, and you will not receive any cash payment***." Executive Summary at 1 (emphasis added). The FTC Order is equally clear: "Defendant must make all payments in accordance with this Order, provided that ***Defendant need not make these payments to those consumers who elect not to participate in the Settlement Program***." *See* FTC Order (Dkt. No. 1781) at IV(I) (emphasis added).

Quite simply, the DOJ did not direct itself to the compensation of Class members. Although the DOJ Consent Decree states that Volkswagen's "obligations under this [decree] are independent of the FTC Order and Class Action Settlement," Dkt. No. 1605-1 at ¶ 4.1, that decree *does not* provide a mechanism to compensate owners and lessees for Volkswagen's deceit. That obligation is created in the Class Action Settlement. Settlement (Dkt. No. 1784) ¶¶ 4.2.2; 4.2.4; 4.3.3. Likewise, the most specific and detailed existing plan and procedures to deliver consumer benefits to 2.0-liter owners, sellers, and lessees is set forth in the Class Action Settlement, in *e.g.*, ¶¶ 2.9-2.15; 5.1-5.5 and Exhibit 4 ("Class Claims Program and Administration"). This infrastructure, a massive project, is now under intensive construction and implementation by VW and the Court-appointed Claims Supervisor, to administer the prompt processing of buyback and compensation claims, as well as prospective emissions modification claims, upon final approval by the Court. This infrastructure, which also features input from and monitoring by the FTC (but not a separate competing FTC process), should not be scuttled in favor of a theoretical (and counterfactual) alternative process, all under the guise of a "superiority" argument. Approving only the DOJ Consent Decree, as Comlish proposes, would eradicate Volkswagen's obligation to conduct the Buyback as negotiated; eliminate both the obligation and the class relese incentive to pay restitution to owners and lessees; and would undermine the efforts of the Class, VW, the

[29] http://www.cand.uscourts.gov/crb/vwmdl/proposed-settlement.

[30] https://www.vwcourtsettlement.com/en/docs/Executive%20Summary%20of%20Proposed%20Settlement%20Program.pdf.

regulators, and the Court to comprehensively resolve all of the related harms promptly and efficiently. The Class Action Settlement is not surplusage; it is essential.

Second, and equally as important, Comlish's objections evince a deep misunderstanding of the settlement process and of the principle of causation. Comlish erroneously believes that an aggregated settlement result can be attributed to a single participant in the process, while cutting out the rest. In social psychology this is known as "attribution error": the fundamental mistake of ascribing all causation to the characteristic under observation. Colloquially (and with glee in certain quarters), we can observe that recently Cal beat Texas 50-46 in football. The game was "won", in some sense, by the players who scored the decisive points. The offensive line did not score any points, but we cannot assume the same result without the line, or even without quarterback Davis Webb. The record similarly shows that not only were class counsel indispensable to the result, in the manner of the offensive line; but also that they and their counterparts at DOJ and FTC, organized the team in the fashion of rotating quarterbacks. And, in some sense, by providing Volkswagen with the release it requires to offer any payments at all, the Class Action Settlement scores the "winning" touchdown as well.

This district recently recognized this principle and disposed of arguments similar to those made by Comlish here. *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015). In *In re TracFone* an objector argued that the settlement at issue was solely the work of the FTC and that the consumer action added nothing. Judge Chen found this argument "without merit" because the "consumer and FTC settlements were reached at the same time as part of a *global* settlement." *Id*. (emphasis in original). Further, Judge Chen observed, the defendant in that case stated that it only agreed to pay funds to the FTC "because those funds will be used to pay class members in the consumer cases, thereby resolving all of the pending lawsuits against it." *Id*. Here, too, the settlements comprise a "global" package, and there is no reason to believe that Volkswagen would have agreed to the substantial relief provided by the joint settlements without receiving in return the private plaintiff releases necessary to resolve the multitude of consumer suits it is also facing.

Comlish's error is compounded by his unfounded certainty that the deal was basically wrapped up from the beginning. Not only does that defy the record, again as captured by Director Mueller, but the claim misapprehends how extraordinary the ultimate remedy is. At one point Comlish claims remedy could have been had through some self-executing program administered by Volkswagen and Ken Feinberg, but provides no evidence that anything like the Class Action Settlement's generous terms was ever even contemplated early on—or, for that matter, that any remotely similar benefits have been provided anywhere else in the world, for any TDI vehicles.

This simply is not a case where—as the objector suggests—a class came along after a government settlement and rode on the government's coattails. *See, e.g., In re First Databank Antitrust Litig.*, 209 F. Supp. 2d 96, 101 (D.D.C. 2002). To the contrary, as the Court stated, this was a "global" resolution that required "cooperation" and it is the "combination" of the agreements that provides the consumers the relief they so rightly deserve. Again, neither the FTC Order nor the DOJ Consent Decree provide any mechanism for Class members to receive compensation; both rely upon the Class Action Settlement to put money into Class members' pockets, just as the Class Action Settlement relies upon provisions included only in the FTC Order and the DOJ Consent Decree to effect other important settlement goals. This is not a pick-and-choose, "either/or" situation. This public/private resolution is the quintessential "and": a package deal.

For these reasons, Courts regularly approve joint government-class settlements. *See, e.g., Ebarle*, 2016 U.S. Dist. LEXIS 128279 at *18 ("[T]he settlement was coordinated with the settlement in the FTC Action. This coordination favors final approval."); *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015) ("The FTC participated heavily in reaching this settlement, and supports the settlement. Indeed, the FTC will be responsible for the disbursement of the $40M settlement fund to class claimants. . . . This factor weighs in favor of final approval."), *reconsideration denied*, No. C-13-3440 EMC, 2015 WL 4735521 (N.D. Cal. Aug. 10, 2015); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *1, *17 (N.D. Cal. Apr. 3, 2013) ("Second Amended Order Granting Final Approval of Combined Class, Parens Patriae and Governmental Entity Settlements . . .");

see also In re Reebok Easytone Litig., No. 4:10-CV-11977-FDS (D. Mass.), Dkt. No. 61, at *2-3 (coordinated settlement of claims by private plaintiffs and the FTC); *id*. at Dkt. No. 74 (approving settlement).

Finally, Comlish's misguided argument finds no salvation in *In re Aqua Dots Prod. Liab. Litig.*, 654 F.3d 748, 751 (7th Cir. 2011). As an initial matter, the Ninth Circuit, like many of her sister Circuits, has not adopted the Seventh Circuit's reasoning in *Aqua Dots*, and, in fact, multiple district courts have rejected it. *See, e.g.*, *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397, 415 (S.D.N.Y. 2015); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 29, 34 (D. Me. 2013); *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, No. MDL 13-02439, 2016 WL 755640, at *7-8 (E.D. Wis. Feb. 25, 2016). In any event, *Aqua Dots* is wholly inapposite given that, here, the government and private settlements were negotiated concurrently. In *Aqua Dots*, makers of a defective children's' toy implemented a recall program with a money back option. 654 F.3d at 750. Nevertheless, plaintiffs sued on behalf of a putative class seeking full refunds. *Id*. The Seventh Circuit affirmed denial of class certification based on the plaintiffs' failure to "fairly and adequately protect the interests of the class" where they "want relief that duplicates a remedy that most buyers already have received, and that remains available to all members of the putative class." 654 F.3d at 752. Here, by contrast, Class plaintiffs did not file suit when government relief was already in the offing; in fact, to be technical, the Class lawsuits were on file before the DOJ and FTC. This distinction regularly appears in the authority cited by the objector and is fatal to his argument. *See, e.g.*, *Kamm v. California City Dev. Co.*, 509 F.2d 205, 207–08 (9th Cir. 1975) (affirming dismissal of class action where state court action and settlement previously entered); *Imber-Gluck v. Google Inc.*, No. 5:14-CV-01070-RMW, 2015 WL 1522076, at *1 (N.D. Cal. Apr. 3, 2015) (denying class certification where the FTC initiated an industry wide investigation "[p]rior to the filing of the complaint" and settled with Apple and Google before plaintiff moved for class certification).

In sum, the three agreements were negotiated contemporaneously and provide complementary relief. The Class Action Settlement is integral to the success of the combined efforts to right Volkswagen's wrong, and Comlish's suggestion to the contrary should be rejected.

C. The Timing and Structure of Settlement Class Counsel's Prospective Fee Request Is Appropriate and Does Not Affect the Fundamental Fairness of the Settlement.

Several objectors have raised concerns about timing and structure of Settlement Class Counsel's prospective fee request. Those concerns are unfounded and do not undermine the fairness, adequacy, or reasonableness of the Settlement.

With respect to timing, the argument is that the proposed settlement violates Fed. R. Civ. P. 23(h) by failing to provide Class members with an opportunity to object to a fee motion. *See, e.g.*, Weese Objection (Dkt. No. 1864); Li Objection (Dkt. No. 1871); Andrianos Objection (Dkt. No. 1876).[31] Rule 23(h) does not require counsel to move for motions for fees prior to final approval of settlement, as the Court already explained in granting preliminary approval: "Rule 23(h), which governs attorneys' fees in class actions, does not require Class Counsel to move for its fee award at the preliminary approval juncture, or even upon seeking final approval." Dkt. No. 1688 at 23. Other courts agree. *See In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 445 (3d Cir. 2016) ("[T]he separation of a fee award from final approval of the settlement does not violate Rule 23(h)."); *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891 (E.D. La. 2012) (approving settlement where "parties had no discussions regarding fees other than the PSC's making clear that it would eventually file a request for attorneys' fees"). Accordingly, the Settlement, pursuant to which Settlement Class Counsel will move for fees at a later date, does not violate Rule 23(h).

In re Mercury Interactive Corp. Secs. Litig., 618 F.3d 988 (9th Cir. 2010), upon which several objectors rely, does not hold otherwise. In *Mercury*, the Ninth Circuit disapproved of a

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[31] A few objectors have also framed this as defect in notice, but Rule 23(c)(2)(B), which sets forth the required contents of class notice, does not require disclosure of the amount of attorneys' fees sought. *See Ebarle v. Lifelock, Inc.*, No. 3:15-cv-258-HSG, slip op. at 12 (rejecting identical objection to notice in settlement involving segregated fee structure) (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 556, 757 (9th Cir. 2004). Here, the Long Form Notice went beyond the requirement by explaining that attorneys' fees will be negotiated separately and that Settlement benefits will not change as a result of the Court's award of attorneys' fees and costs, regardless of the amount. The purpose of notice is to allow class members to decide whether to accept a settlement in light of their recovery and how class counsel is to be compensated. The settlement notice provides all of that information and more. *See* Declaration of Shannon R. Wheatman, Ph.D. on Implementation and Adequacy of the Class Notice Program ("Wheatman Reply Decl.").

schedule that required "objections to be filed before the fee motion itself is filed," where the fee motion was set for hearing and determination with the final settlement approval, unsurprisingly finding that such sequence "denies the class the full and fair opportunity to examine and oppose the motion that Rule 23(h) contemplates." *Id.* at 995. That will not happen here. Class members here will have the opportunity to object to Settlement Class Counsel's fee request, after it is filed.

Moreover, contrary to Comlish's suggestion, the Court's Rule 23(e) fairness determination does not require a comparison between the benefit provided to the Class and the ultimate award of attorneys' fees as a condition of settlement approval. Dkt. No. 1891 at 21. That simply is not the law. *In re Bluetooth Headset Products Liability Litigation*, upon which Comlish relies for this argument, does not stand for the proposition that the resolution of attorneys' fees following final approval of settlement is problematic, much less that this practice is forbidden by Rule 23(e). 654 F.3d 935 (9th Cir. 2011). Rather, in *Bluetooth*, the Ninth Circuit held merely that a district court must assure itself that a fee award is "not unreasonably excessive in light of the results achieved." *Id.* at 943. Here, the Court will have an opportunity to analyze the propriety of Class Counsel's fee request, and to entertain any objections thereto, after Class Counsel files its motion for fees, and of course, when it has the opportunity to observe the results achieved in action, since the consumer relief will commence forthwith upon final approval. At this point, then, this and other objections to the prospective fee award are premature and should be overruled. *See, e.g.*, Kangas Objection (Dkt. No. 1826); Andrianos Objection (Dkt. No. 1876); Siewart Objection (Dkt. No. 1895).

Even if a fee versus class recovery analysis were necessary or appropriate at this juncture, Class members would have sufficient information to evaluate the prospective fee request. Per the Court's instruction, Settlement Class Counsel filed a Statement of Additional Information Regarding Prospective Request for Attorney's Fees and Costs on August 10, 2016. That Statement, available on the Court's website, explained that any request will be limited to $324 million in fees and $8.5 million in costs.[32]

[32] Comlish's *ad hominem* attack on Class Counsel allegedly "running up the lodestar" has no basis whatsoever. There was and could be no moratorium on litigation activity while the

Even by the most conservative measures, this fee cap is equivalent to only a small percentage of the cash put into Class members' pockets through the Settlement. Let's freeze the Class at the number of current registrants, although we know that number will grow substantially. As noted, approximately 311,209 Class members have already registered to receive Settlement benefits. Of those, approximately 14,000 are Eligible Sellers who will receive an average of $3,090.42 each or approximately $43.2 million in all. Based on the overall vehicle statistics, we can expect that about 5% of the remaining 297,209 registered Class members are lessees. They will receive an average restitution payment of $3,498.86, resulting in an aggregate of approximately $52 million. That leaves 282,349 owners in our sample of 311,209. We do not know what final choices they will make: that is up to each of them. But if half of them were to choose the buyback, and the other half the "fix," their combined mileage-adjusted average compensation would total approximately $3.95 billion. That raises the projected total amount for Class members *who have already registered* to $4.05 billion. Settlement Class Counsel's fees/costs cap of $324 million represents approximately 8% of the recovery in this conservative scenario, less than one third of the Ninth Circuit's benchmark of 25%. *See Bluetooth*, 654 F.3d at 942. Based on the extremely conservative assumption that none of the remaining Class members will claim Settlement benefits, although they have two more years in which to do so, and thousands of additional Class members continue to register weekly. Ultimately, Settlement Class Counsel's fee request will represent an even smaller fraction of the Class members' recovery, and will be well supported by controlling law—a fact that can be discerned even today.

Critically, no matter the amount of the fees ultimately awarded, those fees will not be deducted from the Class recovery. Volkswagen will pay them in addition to the Class

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Settlement was being negotiated: the pressure of an expedited 2.0-liter trial was essential to an intensive and expedited negotiation process. The PSC sought that trial, were preparing for it, and the Court had advised the parties that the mandate to "get[] the polluting cars fixed or off the road," would be addressed with all possible dispatch, through settlement, or trial. March 24, 2016, Case Status Conference, Hr'g Tr. 8:6-21. It is also ironic that Comlish complains about the apparent inefficiency of a lodestar analysis when Comlish's counsel is one of the leading proponents of using the lodestar method as a measure of appropriate fees, even though economists and courts have pointed out the perverse and inefficient incentives created by the lodestar method.

compensation outlined in the Settlement. Contrary to Comlish's suggestion, nothing about this statement is misleading. Dkt. No. 1891 at 16-17. Comlish envisions a zero-sum world in which any prospective fee application necessarily reduces the compensation available for the Class. That can't be true, especially under these facts. That Volkswagen will face a claim for fees—of an unknown amount, no less—does not compromise the settlement process any more than the fact that Volkswagen might face further liability in Canada and Europe, or that the 3.0-liter TDI vehicle claims remain unresolved, or even that the price tag on civil and criminal fines and penalties is not yet fixed. Consequently, Settlement Class Counsel's acquiescence to a segregated fee structure did not harm the Class, as Comlish suggests; to the contrary, it benefits the Class.[33]

D. Objections Regarding Exclusions from the Settlement Should Be Overruled.

A few objectors have criticized the Settlement for failing to include vehicles sold and leases terminated prior to the revelation of Volkswagen's wrongdoing, for failing to allow for Buyback of inoperable vehicles, or for failing to compensate lessees with leases with entities other than VW Credit. Those whose claims are not covered in the Settlement are not members of the Settlement Class. "It is well-settled that only class members may object to a class action settlement. Thus, a court need not consider the objections of non-class members because they lack standing." *Moore v. Verizon Communs., Inc.*, No. C 09-1823 SBA, 2013 U.S. Dist. LEXIS 122901, at *33 (N.D. Cal. Aug. 28, 2013) (Armstrong, J.); accord *Tarlecki v. Bebe Stores, Inc.*, No. C 05-1777 MHP, 2009 U.S. Dist. LEXIS 102531, at *4 n.1 (N.D. Cal. Nov. 3, 2009) ("Since [objector] is not a class member, she has no standing to object to the settlement."); *Bischoff v. DirecTV, Inc.*, 180 F. Supp. 2d 1097, 1113 (C.D. Cal. 2002) ("as non-class members, [objectors] lacked standing to object and their individual rights would not be affected by the settlement"); *In re Syngenta AG MIR 162 Corn Litigation*, Case No. 2:14-md-02591-JWL-JPO, Dkt. No. 2547 at 29-30 (D. Kan. Sept. 26, 2016) ("[B]y definition, however, the excluded plaintiffs are not class

[33] The anti-fee, anti-class counsel arguments raised uniquely by Comlish's counsel were inevitable, and were presaged in two earlier amicus filings by the same counsel—one before the Judicial Panel on Multi-district Litigation and one in this Court, before either a settlement or a PSC existed, before he appeared for any party, and before Comlish likely knew himself to be a class member.

members…."). These objectors are not Class members, and thus they lack standing to object to the Settlement, and certainly cannot attack the Settlement's definitions and structure piecemeal. *In re McKesson HBOC, Inc. Secs. Litig.*, 2009 U.S. Dist. LEXIS 26846, (N.D. Cal. Mar. 6, 2009) (Whyte, J.) (noting that certain objectors' oppositions to exclusion from recovery were entitled to limited consideration, as "the court could not have modified the proposed settlements; it could only have rejected them").

Finally, Weese argues that Class members with liens on their Vehicles are improperly excluded, but this is a misapprehension. Dkt. No. 1864 at 5. The Settlement requires that Class members deliver clean title and a release to Volkswagen in exchange for a Buyback payment, and a lien temporarily prevents the delivery of clean title. As is the case with third-party lessors, the Settlement cannot abrogate the rights of parties not privy to the Settlement (such as lienholders), and thus the Settlement cannot eliminate the lien for any individual Class member. Once a Class member has removed the lien from her vehicle, she is eligible for either the Buyback or the fix.

E. The Class Release Is Fair and Reasonable.

Two Class members object to being "bound by a class-wide compulsory release if the underlined [sic] agreement is voided." Kangas Objection (Dkt. No. 1826) at 12; S. Siewert Objection (Dkt. No. 1877) at 6. Specifically, these Class members take issue with the definition of "Release" in Section 2.57, which provides that separate and apart from the class releases and waivers described in the Settlement, any Class member who actually participates in one of the Settlement programs or otherwise receives restitution will execute an Individual Release as provided for in § 9.7 of the Settlement. That provision is both sensible and fair. If a specific Class member receives the benefits provided for in the Settlement before the Settlement is reversed on appeal, an Individual Release should be given as consideration. These releases are indispensable to getting the settlement program up and running as quickly as possible, subject to this Court's approval. In too many class settlements, frivolous objections tie up cases on appeal, thereby depriving class members of needed relief. The interest in getting the dirty vehicles off the road or fixed is overwhelming, and the ability to enter into a contractual resolution of any individual's claim is imperative. A release executed in the form of a contract on an individual

basis allows the program to get underway, even if appeals are ongoing. No *class-wide* release will be provided unless the Settlement is approved and becomes final.

These same objectors take issue with the fact that the class-wide release would release all claims "whether or not concealed or hidden." Kangas Objection (Dkt. No. 1826) at 13-14 (quoting Settlement § 9.3); S. Siewert Objection (Dkt. No. 1877) at 7-8 (same). Yet similar language is common in class action settlement agreements routinely approved by courts. *See, e.g., Four in One Co. v. S.K. Foods, L.P.*, No. 2:08-CV-3017 KJM EFB, 2014 WL 4078232, at *3, *15-16 (E.D. Cal. Aug. 14, 2014); *Torchia v. W.W. Grainger, Inc.*, 304 F.R.D. 256, 264 (E.D. Cal. 2014); *see also Taylor v. W. Marine Prod., Inc.*, No. C 13-04916 WHA, 2015 WL 307236, at *2 (N.D. Cal. Jan. 20, 2015).

Other objectors raise concerns about the breadth of the release with regard to personal injury or death claims—particularly claims related to the potential health effects from the emissions of the Class Vehicles. This is simply wrong on the facts. Class members are not waiving any claims they may have for personal injuries or death. Settlement (Dkt. No. 1685) § 9.3. The Settlement compensates and releases Class members' own emissions-related ***economic*** losses only. If Class members believe health problems they experience are caused by emissions exposure from the affected vehicles, Class members remain able to pursue an action against Volkswagen for those injuries.

Finally, some have raised a concern that when a Class member owns more than one eligible vehicle (currently or in the past), the release operates to release claims related all of the Class member's vehicles even if the Class member is settling the claims pertaining to fewer than all of his or her vehicles. This is not how the Settlement operates. A Class member can opt out certain vehicles and leave others in the Class. Only claims pertaining to the vehicle for which a Class member is seeking benefits are released.

F. Objections Raising Public Policy Concerns Should Be Overruled.

1. Volkswagen Is Not Profiting From the Settlement.

Some Class members have expressed concern that Volkswagen will unfairly profit from the Settlement. This fear is unfounded. The Settlement reflects an enormous financial obligation

for Volkswagen that far outweighs any benefit it ever reaped, or ever will reap, from the dirty diesel vehicles. Volkswagen has committed more than $10 billion for the buyback and restitution programs. It is paying another $4.7 billion for environmental remediation. Volkswagen will spend billions more to continue developing and implementing fixes for all three generations of the 2.0-liter vehicles. In contrast, Volkswagen's total ***revenue*** (not profit) for the Class vehicles is estimated at $12.937 billion. Stockton Decl. (Dkt. No. 1784-1) ¶ 33. Volkswagen may end up re-selling some of the vehicles it buys back, but again, it can do so only after implementing costly repairs. Volkswagen did not profit from this endeavor—far from it. By the time this is done, Volkswagen will have more than disgorged its revenues for the vehicles, and will have disgorged its profits many, many times over.

2. Concerns Pertaining to Future Emissions Testing Are Immaterial.

Some owners raise concerns about perpetuating the fraud in future emissions testing through the use of a still-defective modification, or squashing future diesel innovation if a modification is not approved. There can be no doubt that all of the state regulators are aware of the defeat device implicated in this case, and of Volkswagen's efforts with the EPA and CARB to achieve an approved fix. Until such time as a modification is approved, the vehicles will continue to pass emissions tests with the defeat device installed. Regulators are aware that this is a result of Volkswagen's wrongdoing, not the owner's. Finding that a fix would be impossible would be limited to these vehicles that had the defeat device installed, and need not implicate the broader diesel market. If such vehicles comply with applicable emissions requirements, they can continue to be sold.

3. The Settlement Adequately Addresses Environmental Concerns.

A number of Class members objected raising environmental concerns, claiming the Settlement does not properly account for the environmental harm already caused by the vehicles or the additional harm that will be caused during the Settlement's implementation. This is not true. To address the environmental effects, Volkswagen will be paying $2.7 billion to support environmental programs that will reduce NOx in the atmosphere by an amount intended to fully mitigate the past and future excess emissions from the 2.0-liter vehicles as well as spending $2

billion to promote non-polluting cars, over and above what it previously planned to spend. Settlement (Dkt. No. 1685) at 3. These significant environmental investments are specifically designed to account for and offset the environmental harm of all the Class vehicles in the past and continuing into the future through the implementation of the Settlement.

Objector Ronald Clark Fleshman, Jr. argues that the Settlement violates state and federal laws because the vehicles are—according to him—illegal to drive. Fleshman has tried and failed to make these same arguments repeatedly in this Settlement process. *See* Dkt. Nos. 1672, 1742. Fleshman's objections are, again, without merit, and he again cites no persuasive authority for his argument that state or federal authorities believe that the Class vehicles are illegal to drive. To the contrary, the EPA has stated it "will not confiscate your vehicle or require you to stop driving."[34] The 44 states participating in the Attorneys General settlement have also agreed to allow Class vehicles to stay on the road pending participation in the Class Action Settlement.

Unsurprisingly, then, Chief Judge White, who recently issued an Opinion Letter order addressing the claims of Fleshman and others raised in the parallel "Clean Diesel" litigation proceeding in Virginia state court observed that "neither the EPA nor Virginia has declared the vehicles to not be road worthy or otherwise illegal." *In re Volkswagen Clean Diesel Litigation*, CL-2016-9917, Opinion Letter (Dkt. No. 1812-1) at 19.

Even if Virginia, or any other state, had made such a statement, that court held, it would be unenforceable because the federal "CAA bars Virginia from attempting to enforce any standard relating to the control of emissions." *Id.* Indeed, the Clean Air Act "protects the authority of the states to regulate air pollution" in a number of ways, but "with the exception of … standards for new motor vehicles." *Exxon Mobil Corp. v. U.S. Environmental Protection Agency*, 217 F.3d 1246, 1254, 1255 (9th Cir. 2000). In other words, only the EPA can regulate new vehicle emissions standards, and any state implementation plans are irrelevant.

[34] U.S. Envtl. Protection Agency, Frequent Questions about Volkswagen Violations, https://www.epa.gov/vw/frequent-questions-about-volkswagen-violations (last visited Aug. 29, 2016).

Moreover, as this Court already held in denying Fleshman's earlier motion to intervene, "Fleshman may not object on behalf of all Virginia class members. Objecting to a settlement is an individual right that Fleshman cannot usurp from others….Virginia class members can evaluate the Settlement and decide for themselves if they should participate, object, or opt out. Fleshman cannot choose for them." Dkt. No. 1742 at 6-7. Notwithstanding his posturing, Fleshman's standing to object does not extend beyond ***his*** claim, and if he does not wish to release that claim he could have elected to opt out. He did not.

G. Objections Concerning "Reversion" Should be Overruled.

Some Class members object to what they describe as a "reversion" provision in the Settlement[35]—although they label different clauses of the agreement as the purported reversion language. *Compare* Kangas Objection (Dkt. No. 1826) at 9 (citing Settlement § 2.42), *with* Chechik Objection (Dkt. No. 1869) at 11 (citing Settlement § 10.3). These objections misconstrue the Settlement and the manner in which it would operate.

Through the Settlement, each Class member is guaranteed to receive his or her full recovery. If every Class member participated (*i.e.*, there were no opt-outs), and all of them chose the Buyback option, then the Class members' collective compensation would amount to $10,033,000,000—defined as the "Funding Pool" in the Settlement. Settlement (Dkt. No. 1685) § 2.42. Pursuant to Section 10.1 of the Settlement, the Parties will set up an escrow account with an initial $1.5 billion deposit to compensate Class members; this account must be replenished whenever it dips below a certain threshold (initially $1.25 billion). The creation of this escrow account and maintenance of a minimum balance were negotiated by Class Counsel for the benefit of the Class to facilitate timely payment of claims.

Moreover, concerns that Volkswagen will somehow avoid expending the majority of the funds in the Funding Pool are misplaced. Volkswagen has enormous financial incentive to encourage as much Settlement participation as it can. Under the related DOJ Consent Decree, Volkswagen has stipulated to pay an additional $98.5 million ($85 million to a federal trust, and

[35] *E.g.* Kangas objection (Dkt. No. 1826) at 9-10; Chechik objection (Dkt. No. 1869) at 11-12; G. Siewert objection (Dkt. No. 1895) at 2-3; S. Siewert objection (Dkt. No. 1877) at 3-5.

$13.5 million to a California trust) for every 1% that the Settlement participation rate falls below the 85% threshold. DOJ Consent Decree, App'x A (Dkt. No. 1605-1) § 6.3. These fines are steep and will properly motivate Volkswagen to help drive a robust turnout. In any case, the opt-out deadline of September 16, 2016 already has passed, and 99% of Class members decided to remain in the Class. Therefore, 99% of the Funding Pool remains in play, available to be paid out to Class members. These Class Members, in deciding between a buyback or a fix, will determine how much is spent, when it is paid out, and how it is allocated.

Finally, even if this Settlement contained a traditional reversion clause, such a clause would still not be a basis for denying approval. Courts generally concerned about reversion clauses have approved settlements containing them where other considerations support approval—as is the case here. For example, one court placed weight on the fact that "a significant portion of the class participated in the settlement, and the average class member recovery is at least $1,200" in approving a settlement despite concerns about traditional reversion clauses. *Lemus v. H & R Block Enterprises LLC.*, No. C 09-3179 SI, 2012 WL 3638550, at *5 (N.D. Cal. Aug. 22, 2012); *Hightower v. J.P. Morgan Chase Bank, N.A.*, 2015 U.S. Dist. LEXIS 174314, at *21 (C.D. Cal. Aug. 4, 2015). And courts' concerns about reversion clauses are often coupled with concern about possible collusion in reaching the settlement. *See, e.g.*, *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 785 (7th Cir 2004). Here, there are no indicia of collusion, as the Court has held. *See* Dkt. No. 1746 at 5 ("[T]he Court carefully reviewed the Settlement in light of the factors set forth in *In re Bluetooth* . . . for signs of collusion. It found none.") (record citations omitted). The settlement process was extensive and hard fought—and led by an independent, well-respected, court-appointed mediator. Moreover, no agreement has been reached on attorneys' fees, and the eventual PSC request is capped at the equivalent of a very low percentage of the overall settlement value—far below the Ninth Circuit benchmark. The absence of collusion therefore further establishes that objections about supposed "reversion" are unfounded and not a basis for denying final approval.

H. The Remaining Objections Should Be Overruled.

1. Objections Regarding Private Counsel Attorneys' Fees Are Premature.

Some objectors contend the Settlement should be rejected because it fails to compensate those Class members' private attorneys who were ***not*** selected by the Court as Class Counsel. *See, e.g.*, D'Angelo Objection (Dkt. No. 1862); Barrera Objection (Dkt. No. 1863); Andrianos Objection (Dkt. No. 1876); Labudde Objection (Dkt. No. 1887); Collins Objection (Dkt. No. 1889). These objections are premature as there is no proposed distribution of attorneys' fees before the Court. It would be unseemly to have lawyers try, in effect, to place a lien on a class settlement process until their fees are guaranteed.

2. The Cutoff Date for "Eligible Seller" Class Members Is Neither Arbitrary Nor Unfair.

Under the terms of the settlement, "'Eligible Seller' means a person who purchased or otherwise acquired an Eligible Vehicle on or before September 18, 2015, and sold or otherwise transferred ownership of such vehicle after September 18, 2015, but before June 28, 2016." Dkt. No. 1685 at ¶ 2.31. One objector, Wheels Inc., argues the cutoff date for Eligible Seller Class members is arbitrary. Dkt. No. 1882 at 2. Of necessity, any cut-off date is subject to challenge as arbitrary—it could always be moved one day forward or back. The key is that no one is harmed by the cut-off date. Vehicles sold after June 28, 2016, are not included in the Settlement. To the extent that Wheels believes it is entitled to compensation for those transactions, it can pursue them against Volkswagen individually.

Moreover, there is nothing arbitrary about the use of June 28, 2016, as the cutoff date. That is the date of Class Counsel's filing of the motion for preliminary approval of the Settlement. The settlement announcement was preceded by approximately one month of extensive publicity as to the issues and likely terms of the settlement. Individuals who sold their Vehicles after the announcement of the Settlement are differently situated that those who did so before the Settlement. For example, parties to transactions that took place after the announcement of the Settlement had knowledge that a Buyback program was in place, which

certainly affected the pricing of the vehicles. Class members who sold their vehicles prior to the announcement of the Settlement did not enjoy these same certainties.

Wheels' objection to final approval of the Settlement based on the cutoff date for Eligible Seller Class members should be overruled.

3. The Deadline for Eligible Sellers to Register Is Fair.

Objector Autoport objects to final approval of the Settlement and argues that the opt-in period for Eligible Seller Class members is too short. Dkt. No. 1879. The Settlement requires Eligible Sellers to identify themselves to the Court within forty-five days of preliminary approval—*i.e.*, by September 16, 2016.[36] As of that date, over 13,900 had done so. Autoport fails to show that the deadline already approved by the Court is unfair to Class members, or that there is any legal requirement for a longer period.[37]

Moreover, the objection ignores that, under the Settlement, Eligible Owners who purchased their vehicles after September 18, 2015 are entitled to a share of any funds not claimed by Eligible Sellers. Accordingly, the Eligible Sellers must be an identified set before it is possible to determine compensation and begin Buyback. Deferring the Eligible Seller deadline would unnecessarily delay compensation to Class members and removal of the Vehicles from the road.

Finally, Autoport alleges that it never received notice of the Settlement, despite the fact that it had actual knowledge of the Settlement and that was able to file its objection in a timely manner. Instead, Autoport speculates that there must be "hundreds if not thousands" of dealers

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[36] "Eligible Seller Identification Period" means the time period in which an Eligible Seller must identify himself, herself, or itself, by (1) electronic registration on the Settlement Website or (2) submission of an Eligible Seller identification form by mail or fax. The Eligible Seller Identification Period will last at least 45 days from entry of the Preliminary Approval Order. If the Court enters the Preliminary Approval Order on July 26, 2016 (the date of the preliminary approval hearing), the Eligible Seller Identification Period will run until September 16, 2016, the same date as the Opt-Out Deadline. Eligible Sellers who do not identify themselves during that time period will not be eligible for a Restitution Payment under this Class Action Agreement." Settlement (Dkt. No. 1685) ¶ 2.32.

[37] None of the cases Autoport cites supports its contention that there is a ***requirement*** for a longer notice period or that the forty-five day notice period here is unfair. Indeed, none of Autoport's cited cases even pertain to consumer class action settlements; rather, *every* case Autoport cites is a conditional collective action certification order under the Fair Labor Standards Act ("FLSA"), which requires class members to affirmatively opt in in order to participate.

nationwide who did not receive notice. Autoport offers no evidence to support its speculation, and it is belied by the fulsome direct and media notice, including direct notice to resellers and their trade organizations, described in the accompanying Declaration of Shannon R. Wheatman, at ¶¶ 39-40. Instead, Autoport attempts to offer its objection on behalf of some hypothetical dealership that did not receive notice. Autoport has no authority to speak for anyone other than itself, and Autoport was able to timely file an objection and thus timely register itself as an Eligible Seller. Indeed, the requirements for registration as an Eligible Seller are far less onerous than filing its objection.

4. No Health or Personal Injury Claims Are Released by the Settlement.

Objectors Susan and Douglass Day argue the Settlement is inadequate to compensate Class members such as themselves who sold their vehicles prior to the Settlement date because of an alleged belief that the vehicles were causing them personal injuries that they believe to be related to NO_X emissions. Dkt. No. 1857.

As they themselves acknowledge, personal injury claims are not included in or released by the Settlement. The Days are free to pursue personal injury claims against Volkswagen or any other entity they believe responsible. Contrary to the Days' suggestion, they do not need the involvement of or dispensation from either the DOJ or the EPA to do so. The Days' objections to final approval should be overruled.

5. The Environmental Remediation Fund Should Not Be Distributed to Class Members.

Objector Weese objects to final approval of the Settlement because she believes funds to be paid by Volkswagen to government agencies for "environmental remediation and public awareness" should be paid directly to Class members. Dkt. No. 1864 at 3. Weese's objection lacks merit. While the three settlement agreements all address Volkswagen's behavior, the laws applicable to and available to the DOJ, FTC, and private plaintiffs are separate and distinct. Class members have no legal claim or entitlement to the funds paid to the DOJ and EPA as statutory penalties. Weese's objection should be overruled.

6. Class Counsel's Request to Defer Decision on a Motion to Remand or Opposition to a Motion to Intervene Does Not Create a Conflict with the Interests of the Class.

Some objectors complain that "Settlement counsel have repeatedly asked this court to delay any ruling on motions to remand." and "Settlement Class Counsel have also filed motions in opposition to class members attempts to intervene and to conduct discovery in order to determine whether settlement was in a class member's best interest." Barrera Objection (Dkt. No. 1863) at 6. It is not clear how or why the Barrera Objectors believe that Class Counsel's request that the Court defer (not deny) a motion to remand adversely affected any Class member, let alone the Class as a whole. It did not.

The Barrera Objectors argue that Class Counsel's opposition to fellow objector Kangas' motion to intervene to conduct discovery into the Settlement itself somehow evidences a conflict of interest. But the Barrera Objectors again fail to explain how the opposition was adverse to the interests of the Class rather than adverse to the wishes of the attorney for a single Class member. That opposition was **not** adverse to the interests of the Class. Intervention was unnecessary and unwarranted. District courts thus routinely deny attempts at the underlying discovery requests as inimical to the Court's exclusive control and independent decision making under Rule 23(e). *See* Newberg on Class Actions § 13:32 (5th ed.) (collecting cases). Indeed, as the Court rightly found, denying discovery was not adverse to even Kangas' own interests: "Kangas may opt out of the Settlement and litigate his claims independently. This adequately protects his interests." Dkt. No. 1746 at 3-4 (internal record citation omitted). The Court has already ruled on Kangas' attempts to derail this Settlement; the Barrera Objectors offer nothing new by claiming that Class Counsel's opposition to those attempts indicates a conflict.

7. The Selection of Settlement Master Robert Mueller Does Not Create a Conflict with the Interests of the Class.

Objector Kangas objects to final approval of the Settlement by attacking the impartiality of both the Court and Settlement Master Robert Mueller. Dkt. No. 1826. According to Mr. Kangas, because other attorneys at WilmerHale represent Volkswagen in areas other than this litigation, Settlement Master Mueller "will profit from WilmerHale's representation of

Volkswagen regarding diesel emission tax liabilities in the United States." at 2-3. This conclusion is unfounded. In his declaration, Settlement Master Mueller states that he was walled off from his firm's representation of Volkswagen in other matters. Nevertheless, Kangas asserts his representation "demonstrates a lack of civil litigation experience" and that "the wall separating Mr. Mueller from his law firm was made of tissue paper." *Id.* at 3. Kangas offers no evidence in support of his accusations, and they are contradicted by Settlement Master Mueller's declaration.[38] Moreover, the Court is familiar with Settlement Master Mueller's years of public service as an Assistant United States Attorney, United States Attorney, and Director of the Federal Bureau of Investigation.

Kangas is represented by serial objector Frederic Fletcher. This is not Mr. Fletcher's first time making unfounded arguments against class action settlements and falsely alleging collusion in the process. *Id.* at 3. Mr. Fletcher represented himself as an objector before the United States District Court for the District of Columbia, which wrote:

> While objector Fletcher alleges, without support, that "[t]he Settlement favors LivingSocial to such an unprecedented degree that collusion must have occurred" (Fletcher Obj. at 4), his assumption is based on a flawed understanding of the settlement agreement and the release.

In re LivingSocial Mktg. & Sales Practice Litig., 298 F.R.D. 1, 11 (D.D.C. 2013).

In alleging "cronyism" and conflict, Kangas, of course, conveniently ignores the language of the Court's order that clearly states "Mr. Mueller will not adjudicate, or assist the Court with adjudicating, any issues in these consolidated proceedings; rather, his role will be to use his considerable experience and judgment to facilitate settlement discussions among the various

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[38] Among the litany of Kangas' other unfounded objections is a complaint about tax implications. Kangas wrongly believes that the Settlement "puts the tax burden on the consumer while Volkswagen is insulated. On tax matters Volkswagen was adequately represented by WilmarHale [sic], but the class members are forced to fend for themselves in this complex litigation." Dkt. No. 1826 at 3. Kangas bases this statement on a single clause in the Settlement that in fact discloses that Class members may have tax advantages and should consult their personal tax advisor for assistance. At best, Kangas' complaint regarding the tax implications paragraph can be interpreted as dissatisfaction that the Settlement does not provide for Volkswagen or Class Counsel to pay for Class members' tax preparation fees. This is, of course, utter nonsense. Regarding the accusation that Class members must "fend for themselves," Mr. Kangas ignores that Class Counsel have been appointed and have been and are working on their behalf.

parties in these complex matters." Dkt. No. 797 at 2. As the Court is well aware, Settlement Master Mueller was not in a position to force terms of the Settlement to favor or disfavor either side. Rather, he was there to facilitate Settlement, and his ultimate goal was accomplished to the satisfaction of all parties, including three federal agencies, two state agencies, and the class plaintiffs: an atmosphere in which cronyism could neither survive nor flourish. All such insinuations and accusations are belied by the actual account of the settlement process. *See* Mueller Decl. ¶ 2.

Kangas completes his objection about the Settlement Master with a conspiracy theory regarding the consent decrees Volkswagen reached with the FTC and DOJ and President Obama's negotiation of the Trans-Atlantic Trade and Investment Partnership. Dkt. No. 1826 at 4. There is no basis to consider fancifully speculative effects on international trade policy in determining the fairness and adequacy of this Settlement.

Kangas' objections to final approval of the Settlement based on the involvement of Special Master Mueller are unfounded, inaccurate, and irrelevant; they should be overruled. The Court also has discretion to impose sanctions on counsel for publicly filing such factually and legally baseless accusations. *See* Fed. R. Civ. P. 11.

8. Benefits from the Goodwill Program Are Properly Not Part of the Settlement.

A number of Class members raised objections related to the "goodwill program" offered by Volkswagen, arguing the goodwill payment should be available even though they missed the April 30, 2016, deadline to request it. Because the goodwill program was separate from this litigation, and did not affect Class members' claims in this litigation, it has no relevance to the determination of final approval.

9. The Other Remaining Objections Should Also Be Overruled.

A number of Class members raised objections that, while not expressly requesting more money, argued for additional benefits including loaner cars, transportation to a Volkswagen dealership, and extended warranties or special financing from Volkswagen. All of these objections fall into the category of "the settlement should be better." As Professor Klonoff notes

in his Declaration, which analyzes the variety of objections going to the adequacy of class relief, some Class members opined not that they should get more, but that other should get less. The Settlement procedure facilitated he expression of all views, from a highly-interested and concerned group. Of course, this Court "must evaluate the fairness of a settlement as a whole, rather than assessing its individual components." *Lane*, 696 F.3d at 818-19. In this regard, as the Ninth Circuit cautioned, "settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027. The Settlement's failure to offer every feature every Class member can dream of does not render it unfair, inadequate, or unreasonable.

One possible alternative to this Class Action Settlement could have been a more individualized, *ad hoc* claims program that evaluated each consumer's claims based upon her particular, and subjective, circumstances. Objector Comlish, for example, seems to prefer the never-effectuated proposed program to have been administered by Mr. Feinberg. To our knowledge, Mr. Feinberg, who has a well-earned reputation for tackling challenging compensation scenarios, never actually considered, processed, or paid any Volkswagen claims under such a regime, most likely because the prospects of actually doing so quickly became impracticable. Such a program, applied to nearly 500,000 claims, would certainly be inferior to the transparent, consistent, and easily calculable provisions of the Settlement that actually came to pass. From a Fed. R. Civ. P. 23(b)(3) standpoint, a class structure is superior of the available *ad hoc* alternative, as a matter of speed, objectivity, and administrative cost-effectiveness.

One Class member objected that the process should move faster, that the proposed timeline of the Settlement was not being met by Volkswagen, and that the vehicles should be bought back on a first-in, first-out basis. Speed does matter, and the Class members are eager to receive its benefits. Those benefits will start essentially immediately, upon the final approval of the Settlement by this Court.

Finally, a number of Class members objected and voiced opposition to the Settlement, or support for less payment, or no liability, by Volkswagen, due to opposition to environmental regulations or to the very existence of federal agencies. Everyone is entitled to an opinion.

However, "[b]ecause such objections appear to support no recovery for the Class, these objectors' interests are adverse to the Class" and such objections should be overruled. *Perkins*, No. 13-CV-04303-LHK, 2016 WL 613255, at *4 (citations omitted).

IV. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the 2.0-liter TDI consumer and reseller dealer Class Action Settlement.

Dated: September 30, 2016

Respectfully submitted,

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On the Brief

CERTIFICATE OF SERVICE

I hereby certify that, on September 30, 2016, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

EXHIBIT 1

In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation	MDL 2672 CRB (JSC)
This document relates to: All Consumer and Reseller Actions	HONORABLE CHARLES R. BREYER

DECLARATION OF ROBERT H. KLONOFF ADDRESSING OBJECTIONS BY CLASS MEMBERS TO THE PROPOSED VOLKSWAGEN "CLEAN DIESEL" SETTLEMENT

ROBERT H. KLONOFF, under penalty of perjury, declares as follows:

I. INTRODUCTION

1. I am the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School. I have been asked by class counsel to review and comment on the objections that have been submitted in connection with the Volkswagen (VW) "Clean Diesel" settlement. My focus is solely on objections that address the adequacy of the relief afforded to individual class members. I do not address objections relating to the adequacy of class counsel, class counsel's attorneys' fees, or class notice. I am offering my opinions for the Court's consideration based on my background and experience. As I discuss below, my analysis of objections in class action settlements has been relied upon by courts in a number of cases. I recognize, of course, that my role is limited and that this Court will make the ultimate decision.

II. QUALIFICATIONS

2. I have served as the Jordan D. Schnitzer Professor since June 1, 2014. This is an endowed, tenured position at the rank of full professor. My areas of expertise include complex civil litigation and civil procedure. From July 1, 2007, to May 31, 2014, I served as the Dean of Lewis & Clark Law School, and I was also a full professor at Lewis & Clark during that time. Immediately prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). That appointment was an endowed, tenured position at the rank of full professor.

I taught courses on complex litigation, civil procedure, and appellate procedure. Prior to my academic post at UMKC, I served for more than a dozen years as a partner with the international law firm of Jones Day, working in the firm's Washington, D.C. office. For most of that time, I was an equity partner at the firm. While working at Jones Day, I also served for many years as an adjunct professor of law at Georgetown University Law Center, where I taught courses on class actions. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. I also served as a law clerk for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School.

3. I am a co-author of the first casebook devoted specifically to class actions (Robert H. Klonoff, Edward K.M. Bilich, and Suzette Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed. 2012)). The fourth edition of the casebook will be published in 2017. As a textbook author in the class action field, I annually supplement my casebook, and thus remain up to date on the latest case law developments. I am also the author of the Nutshell on class actions (Robert H. Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 4th ed. 2012)). The fifth edition of the Nutshell will be published in 2017. These texts are used at law schools throughout the United States and have been cited by many courts and commentators.[1] I have also authored or co-authored numerous scholarly articles on class actions.[2] In addition, I serve on the advisory board of Class Action Litigation Report, a Bloomberg/BNA publication.

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[1] *See, e.g.*, *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 468 (1st Cir. 2013) (citing class action *Nutshell* (4th ed.)); *Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (citing class action *Nutshell* (1st ed.)); Jaime Dodge, *Privatizing Mass Settlement*, 90 NOTRE DAME L. REV. 335, 337 n.12 (2014) (citing class action casebook); Vaughn R. Walker, *Class Actions Along the Path of Federal Rule Making*, 44 LOY. U. CHI. L.J. 445, 449 n.17 (2012) (citing class action *Nutshell* (1st ed.)); Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 COLUM. L. REV. 149, 151 n.5 (2003) (citing casebook); Kenneth S. Rivlin & Jamaica D. Potts, *Proposed Rule Changes to Federal Civil Procedure May Introduce New Challenges in Environmental Class Action Litigation*, 27 HARV. ENVTL. L. REV. 519, 521 n.10 (2003) (citing class action *Nutshell* (1st ed.)).

[2] For example, my 2013 article, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013), has been widely cited. *See, e.g.*, *In re National Football League Players' Concussion Injury Litig.*, 775 F.3d 570, 576 (3d Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.); *In re Johnson*, 760 F.3d 66, 75 (D.C. Cir. 2014); *In re Kosmos Energy Ltd. Secs. Litig.*, No. 3:12-cv-373-B, 2014 WL 1095326, at *2 n.20 (N.D. Tex. Mar. 19, 2014); Claire E. Bourque, Note, *Liability Only, Please—Hold the Damages: The Supreme Court's New Order for Class Certification*, 22 GEO. MASON L. REV. 695, 698 n.29 (2015); Martin H. Redish & Julie M. Karaba, *One Size Doesn't Fit All: Multidistrict Litigation, Due Process, and the Dangers of Procedural Collectivism*, 95 B.U. L. REV. 109, 110 n.2 (2015); Robert G. Bone, *The Misguided Search For Class Unity*, 82 GEO. WASH. L. REV.

4. I served for five years as an Associate Reporter for the American Law Institute's class action (and other multi-party litigation) project, *Principles of the Law of Aggregate Litigation* ("*ALI Aggregate Litigation*"). I was the principal author of the chapter that addresses class action settlements and attorneys' fees (chapter 3). The project was unanimously approved by the membership of the American Law Institute at its annual meeting in May 2009, and was published in May 2010. It has been frequently cited by courts and commentators.[3]

5. I have extensive experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and many oral arguments in other federal and state courts throughout the country. As an attorney at Jones Day, I personally handled more than 100 class action cases, mostly (but not entirely) on the defense side. These cases have included some of the largest and most highly publicized civil cases in U.S. history. My class action experience includes, among other things, class certification, class discovery, notice, settlement, claims administration, and a variety of appellate issues. I have handled many types of class actions, including mass torts, antitrust, consumer, insurance, securities fraud, employment discrimination, RICO, and numerous others.

651, 654 n.6 (2014); David Freeman Engstrom, *Private Enforcement's Pathways: Lessons From Qui Tam Litigation*, 114 COLUM. L. REV. 1913, 1920 n.17 (2014); Howard M. Erichson, *The Problem of Settlement Class Actions*, 82 WASH. U. L. REV. 951, 956 n.20 (2014); Arthur R. Miller, Keynote Address, The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative, 64 EMORY L.J. 293, 294 n.7 (2014); Linda S. Mullenix, *Ending Class Actions As We Know Them: Rethinking the American Class Action*, 64 EMORY L.J. 399, 403 n.14 (2014); Stephen R. Subrin & Thomas O. Main, *The Fourth Era of American Civil Procedure*, 162 U. PA. L. REV. 1839, 1853 n.80 (2014); Erin L. Geller, *The Fail-Safe Class as an Independent Bar to Class Certification*, 81 FORDHAM L. REV. 2769, 2775 n.38 (2013); Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286, 314 n.105 (2013); D. Theodore Rave, *Governing the Anticommons in Aggregate Litigation*, 66 VAND. L. REV. 1183, 1186 n.5 (2013); Brandon L. Garrett, *Aggregation and Constitutional Rights*, 88 NOTRE DAME L. REV. 593, 610 n.82 (2012); Richard Marcus, *Still Confronting the Consolidation Conundrum*, 88 NOTRE DAME L. REV. 557, 560 n.17, 589 n.154 (2012); *Hearing on "The State of Class Actions Ten Years after the Class Action Fairness Act" Before the Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice* (U.S. House of Representatives, Feb. 27, 2015) (statement of Prof. Patricia W. Moore), at 2 n.4.

[3] *See, e.g.*, *Smith v. Bayer Corp.*, 131 S. Ct. 2368, 2381 n.11 (2011); *Baker v. Microsoft Corp.*, 797 F.3d 607, 615 n.5 (9th Cir. 2015), *cert. granted*, 136 S. Ct. 890 (No. 15-457) (Jan. 15, 2016); *Hill v. State Street Corp.*, 794 F.3d 227, 229, 231 (1st Cir. 2015); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060, 1063–67 (8th Cir. 2015); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 19–20 (1st Cir. 2015); *In re Trans Union Corp. Privacy Litig.*, 741 F.3d 811, 813 (7th Cir. 2014); *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 171–72 (3d Cir. 2013); *Ira Holtzman, CPA v. Turza*, 728 F.3d 682, 689–90 (7th Cir. 2013); *In re Lupron Marketing & Sales Practices Litig.*, 677 F.3d 21, 32–33 (1st Cir. 2012); *Klier v. Elf Atochem N.A., Inc.*, 658 F.3d 468, 474–75 n.14–16 (5th Cir. 2011); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 n.2 (9th Cir. 2011); *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 116 (D.D.C. 2015); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1355–56 (S.D. Fla. 2011).

6. I have given lectures and taught courses on class actions and other litigation topics throughout the United States and abroad, including presentations at law schools in Cambodia, Canada, China, Colombia, Croatia, Ecuador, India, Italy, Japan, the Philippines, Russia, South Korea, Taiwan, and Turkey. Over the years, I have frequently appeared as an invited speaker at class action symposia, conferences, and continuing legal education programs.[4]

7. In September 2011, Chief Justice John G. Roberts, Jr., appointed me to serve a three-year term as the sole academic voting member of the Judicial Conference Advisory Committee on Rules of Civil Procedure. That Committee considers and recommends amendments to the Federal Rules of Civil Procedure. In May 2014, Chief Justice Roberts reappointed me to serve a second three-year term on the Committee. I also serve on the Advisory Committee's Class Action Subcommittee, which has been taking the lead for the full Committee on possible amendments to the federal class action rule, Federal Rule of Civil Procedure 23. Included in the Committee's recent package of proposed amendments to Rule 23 are proposals dealing with the fairness of settlements and with class objectors.[5]

8. In October 2014, I was elected to membership in the International Association of Procedural Law (IAPL), an organization of preeminent civil procedure scholars from around the world. I was selected in a competitive process to present a scholarly article on class actions at the May 2015 Congress of the IAPL, an event held once every four years.

9. I have testified as an expert in numerous class action cases, and in other cases raising civil procedure issues. Between 2011 and the present, I testified in the following cases:

- *In the Matter of Gosselin Group*, No. 15/3925/B (Antwerp Court of First Instance, Belgium) (submitted expert declaration discussing the role of federal appellate courts in the factfinding process) (dated 9/27/16);
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys' fees relating to proposed Halliburton/Transocean class settlement) (filed 8/5/16);

[4] Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A).

[5] *See, e.g.*, Andrew McGuinness, *Rule 23 Proposed Changes En Route*, American Bar Ass'n (Feb. 29, 2016), http://apps.americanbar.org/litigation/committees/classactions/articles/winter2016-0216-rule-23-proposed-changes-en-route.html.

- *Ben-Hamo v. Facebook, Inc. and Facebook Ireland Limited*, No. 46065-09-14 (Central District Court, Israel) (submitted expert declaration on Sept. 3, 2015, on behalf of Facebook, Inc. and Facebook Ireland Limited addressing various issues of U.S. civil procedure and class action law);

- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Super. Ct. of CA, Santa Clara County) (submitted expert declaration on class settlement approval, attorneys' fees, and incentive payments to class representatives) (filed 12/30/14);

- *In re National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration on class certification, class notice, and settlement fairness) (Doc. No. 6423-9) (filed 11/12/14);

- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) ("Deepwater Horizon") (submitted expert declarations on class settlements for economic and property damages (Doc. No. 7104-3), and personal injuries (Doc. No. 7111-4) (both filed 08/13/12), and supplemental expert declarations for both class settlements (Doc. No. 7727-4) (economic), (Doc. No. 7728-2) (medical) (both filed 10/22/12));

- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC*, Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness on Feb. 13, 2013; submitted supplemental expert declaration on Feb. 19, 2013; and testified in court on Feb. 20, 2013);

- *Robichaux v. State of Louisiana, et. al* (No. 55,127) (18th Judicial Dist. Ct., Iberville Parish, La.) (submitted written report on class action attorneys' fees on February 20, 2012, gave deposition testimony on March 7, 2012, and testified in court on April 11, 2012); and

- *In re AT&T Mobility Wireless Data Svcs. Sales Tex Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed settlement (Doc. No. 163-3) and on attorneys' fees and incentive payments (Doc. 164-1) (both filed 03/08/11), and testified in court on March 10, 2011).

10. In a number of the cases cited in ¶ 9, I was assigned the task of reviewing and commenting on objections by class members. Courts reviewing class settlements have relied extensively on my testimony. In the *Deepwater Horizon* case, for example, Judge Carl Barbier cited and quoted my Declarations more than 60 times in his analysis of class certification and fairness.[6] As another example, in the *AT&T Mobility* litigation, Judge Amy St. Eve cited and

[6] *See In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff'd*, 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

quoted my Declarations more than 20 times in upholding a class settlement and awarding attorneys' fees.[7]

11. In my many years of academic work, work as an expert, and work as a practicing lawyer, I have reviewed untold numbers of class action decisions assessing the fairness of class action settlements. I have also devoted substantial time and attention to studying settlement fairness criteria in the course of my work as an Associate Reporter for the American Law Institute's *Principles of the Law of Aggregate Litigation* project and as a member of the Civil Rules Committee and Class Action Subcommittee.

12. I am being compensated for my work at my standard rate of $700 per hour. Payment is not contingent on the substance of my opinions.

13. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae, attached hereto as Appendix A.

III. BASIS FOR TESTIMONY

14. I have reviewed numerous court filings relating to the Volkswagen "Clean Diesel" settlement, including the briefs and exhibits in support of preliminary and final approval. In addition, to the best of my knowledge, I have reviewed all of the 462 timely objections to the settlement submitted by class members. I have also reviewed extensive media coverage relating to the settlement.

IV. BACKGROUND

15. The terms of the proposed VW settlement, as well as the procedural background leading to the settlement, are set forth in this Court's July 29, 2016 Amended Order Granting Preliminary Approval of Settlement. This Declaration assumes familiarity with the terms and background of the settlement.

16. The deadline for filing objections was September 16, 2016. A total of 462 timely objections have been submitted out of a class of about 475,000. Some of the objections were prepared by attorneys, but most appear to have been written by class members themselves. The

[7] *See In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys' fees).

462 timely objections represent about a tenth of one percent of all class members. A total of 3,298 class members have opted out, representing less than one percent of all class members. By contrast, it is my understanding that as of September 29, 2016, 311,209 class members have registered to participate in the settlement. According to the Court-appointed notice provider, Shannon Wheatman, "well over 90%" of the class received notice (by email, U.S. mail, or both). Wheatman Decl. ¶ 35, at 8.

17. In addition to the objections that have been submitted in the case, many commentators have weighed in on the settlement. Objections, almost by definition, tend to focus on the perceived negatives (although numerous objectors applaud the hard work of this Court, class counsel, and the government officials involved).[8] By contrast, commentators can be expected to offer both positive and negative insights. From the many analyses that I have seen, it appears that the reaction of commentators has been overwhelmingly favorable.[9]

V. ANALYSIS OF OBJECTIONS

[8] *E.g.*, Richard Hay, Jr. ("I appreciate the hard work of the attorneys and the Court in reaching this settlement relatively quickly."); Michelle Morse-Buszard (offering "a sincere thank-you to Judge Breyer, the Court, and the Plaintiffs' Steering Committee"); J. Paul Johnson (expressing "thanks to the Court for its efforts adjudicating this case"); S. Davis Carniglia (congratulating counsel and this Court "on the tremendous progress you have made toward settling this matter"); Glenn Rothenberg (praising this Court's "time and attention to this massive litigation"); Kathy Nitayangkul (expressing gratitude for this Court's "energy in remedying this unfortunate situation"); Adam Grossman ("I respect the work and effort that has gone into the detailed settlement thus far."); Justin Beltz ("I thank the Court and the parties to the negotiation for the marathon effort required to advance the settlement to this point.").

[9] For example, the New York Times' Editorial Board opined that the settlement "appears to provide fair compensation to consumers" and "should also act as a deterrent to future bad behavior by companies that deliberately violate rules aimed at protecting consumers and the environment." N.Y. Times Ed. Bd., *Compensating Volkswagen's Victims*, N.Y. Times (June 28, 2016), http://www.nytimes.com/2016/06/29/opinion/compensating-volkswagens-victims.html?_r=0. The Los Angeles Times Editorial Board likewise called the settlement "good for consumers" and praised the deterrent effect of "a sanction far greater than the profit [Volkswagen] could have made off the cars." L.A. Times Ed. Bd., *Civil Settlement in the VW Scandal Is Just the Start. It's Now Time for Criminal Accountability*, L.A. Times (June 28, 2016), http://www.latimes.com/opinion/editorials/la-ed-volkswagen-emissions-carb-environment-20160628-snap-story.html. The Sierra Club called the settlement "a strong step" toward remedying the environmental harms caused by Volkswagen. Sierra Club Statement on Volkswagen's Emission Scandal Settlement, SierraClub.org, http://content.sierraclub.org/press-releases/2016/06/sierra-club-statement-volkswagen-s-emissions-scandal-settlement-0 (last visited Sept. 26, 2016). Mike Litt, a consumer program advocate for the U.S. Public Interest Research Group, noted that the settlement "compensates consumers, cleans up the environment, and deters future wrongdoing." Press Release, U.S. Public Research Int. Grp., Statement on Announcement of Partial VW Settlement (June 28, 2016), *available at* http://www.uspirg.org/news/usp/statement-announcement-partial-vw-settlement. Karl Brauer, a senior analyst at Kelley Blue Book, called the settlement "the most comprehensive and customer-friendly resolution I've ever seen." Graeme Roberts, *VW Emissions Offer Goes Down Well in U.S.*, Just Auto (June 29, 2016), http://www.just-auto.com/news/vw-emissions-offer-goes-down-well-in-us_id170366.aspx. Two sources with some critical comments—ConsumersUnion and a *Road and Track* newsletter—are discussed in ¶¶ 39–41.

18. This section begins with some introductory observations. First, I discuss the unprecedented nature of VW's conduct and the need to provide substantial relief to class members. Second, I discuss the relatively low number of objections and opt outs and explain the significance of those numbers. After those introductory comments, I identify and analyze in detail 10 predominant and recurring objections. I ultimately conclude that, whether considered separately or in combination, those objections do not negate the overall fairness, reasonableness, or adequacy of the settlement.

A. Introductory Observations

1. Strength of the Case

19. At the outset, it is important to note that this is not a typical consumer claim. Here, information in the public domain suggests that VW committed intentional fraud that has directly impacted hundreds of thousands of people in the United States alone, not to mention millions of others throughout the world.[10] VW has now apologized for its conduct. The fraud has caused not only significant economic damages to class members, but also serious harm to the environment. In its seriousness and scope, VW's conduct is virtually unprecedented. As U.S. Senator Richard Blumenthal noted, VW's "massive fraud [is] unprecedented in the annals of automotive history and maybe in the history of consumer protection around the world."[11] VW touted its "clean diesel" vehicles as offering outstanding driving performance, high gas mileage, and low greenhouse-gas emissions. Class members and the public at large were thus outraged to find out that a "defeat device" masked the fact that the vehicles were causing pollution at a rate of up to 40 times the allowable level of nitrogen oxides.

20. The objections by class members are filled with expressions of anger (and, in some instances, humiliation). For instance, Kristin Henning stated that "[e]very day I drove my 104 mile commute, I was unknowingly hurting the environment. As a mother, it makes me SICK to think I unwittingly contribute[d] to the pollution of our planet" (all capitalization in original). Donald Hyatt noted that "I no longer can park at Clean Vehicle Parking spots and now feel

[10] *See* William Boston & Sarah Sloat, *Volkswagen Emissions Scandal Relates to 11 Million Cars*, Wall St. J. (Sept. 22, 2015), http://www.wsj.com/articles/volkswagen-emissions-scandal-relates-to-11-million-cars-1442916906 (noting that VW's fraud involved "as many as 11 million vehicles world-wide").

[11] Mark Pazniokas, *Blumenthal Keeps His Consumer Focus With a Shot at VW*, The Connecticut Mirror (Oct. 12, 2015), http://ctmirror.org/2015/10/12/blumenthal-keeps-his-consumer-focus-with-a-shot-at-vw/.

humiliated." Gareth and Donna Gridley stated that, having "promoted [the] car day in and day out for over 6 years," they are now "the laughing stock in the area." Kevin Glenn noted that he has suffered "ridicule from coworkers and neighbors for polluting the air they breathe." Paul Letterman stated that he feels "humiliated and angry." Several objectors reported that their anger—and their concern about how the fraud would impact them financially—has resulted in adverse health consequences, including "gastrointestinal problems and headaches" (W. Clinton McSherry, II (discussing wife's ailments)), "many hours of trepidation and lost sleep" (Stephen Campbell), and "trauma" (S. Davis Carniglia). There is no question in my mind that these feelings are genuine and fully justified.

21. Courts have regularly approved class action settlements that award only pennies on the dollar.[12] Given the seriousness of VW's conduct, however, I would be concerned about any settlement in this case that did not provide *substantial* compensation to class members.

2. Number of Objections and Opt Outs

22. At the same time, while the objections that have been submitted are frequently angry and passionate, I am struck by the relatively low number of both objections and opt outs. Out of approximately 475,000 class members, only 462 have submitted timely objections—about one-tenth of one percent of the class. While a low objection rate might be expected in some cases, such as those involving very small sums of money,[13] the money at stake for class members here

[12] *See, e.g., Officers For Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (year) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair."); *TBK Partners Ltd. v. Western Union Corp.*, 675 F.2d 456, 463–64 (2d Cir. 1982) ("As to the adequacy of [the monetary recovery] under the settlement, we note that '[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement' is inadequate; there is no reason 'why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.' (citation omitted; brackets in original)); *Saccoccio v. JP Morgan Chase Bank, N.A.*, No. 13-21107-CIV, 2014 WL 808653, at *8 (S.D. Fla. Feb. 28, 2014) ("Even assuming that the monetary figure represents only 12.5% of Plaintiff's damages, which the Court is satisfied they do not, this recovery would still be adequate."); *In re Checking Account Overdraft Litig.*, 830 F.Supp.2d 1330, 1346 (S.D. Fla. 2011) (recovery between 9% and 45% of plaintiffs' damages deemed an "exemplary result"); *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement awarding 6–9% of investor losses in securities class action, and noting that median amounts recovered in shareholder class settlements were "2.7% in 2002, 2.8% in 2003, 2.3% in 2004, 3% in 2005, and 2.2% in 2006").

[13] *See, e.g.*, Manual for Complex Litigation, Fourth, § 21.62 ("The court should interpret the number of objectors in light of the individual monetary stakes involved in the litigation. When the recovery for each class member is small, the paucity of objections may reflect apathy rather than satisfaction. When the recovery for each class member is high enough to support individual litigation, the percentage of class members who object may be an accurate measure of the class's sentiments toward the settlement."); *Lachance v. Harrington*, 965 F. Supp. 630, 645

is significant—in the tens of thousands of dollars. Class members have been following this multidistrict litigation closely, and it has been the subject of extensive media coverage on television, radio, newspapers, magazines (news, automobile, consumer), and myriad Internet sites. Attorneys have actively solicited class members.[14] Surely, if there was widespread dissatisfaction with the settlement, one would have expected to see many more objectors.[15]

23. Similarly, I am struck by the low number of opt outs in a case like this. With 3,298 opt outs, the figure represents fewer than one percent of class members. In addition, many objections submitted on law firm letterhead state in no uncertain terms that the objecting class members do *not* want to opt out.[16] And attorneys have been contacting class members, urging them to opt out.[17] Like the number of objections, the number of opt outs in this case is relevant in assessing the reaction of the class (and thus overall fairness).[18] That is particularly true here,

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(E.D. Pa. 1997) (giving weight to low number of objections from class members "who certainly had sufficient [financial] incentive to object").

[14] One objector noted, for example: "I have received no less than 15 letters, postcards, and advertisements from attorneys' offices wanting to represent me in this case . . . ." (Stephanie Ponti-Krivinko)

[15] *See, e.g.*, *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (low number of objections compared to putative class members supported fairness of settlement); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) ("In an effort to measure the class's own reaction to the settlement's terms directly, courts look to the number and vociferousness of the objectors."); *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 389 (E.D. Pa. 2015) (that "only approximately 1% of Class Members filed objections" deemed "impressive" and "weigh[ed] in favor of approving the settlement"), *aff'd*, 821 F.3d 410 (3d Cir. 2016); *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *11 (N.D. Cal. Apr. 1, 2011) (0.020% objection rate "strongly support[ted] approval of the settlement"); *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of [the] proposed class settlement are favorable to the class members."); *Nat'l Treasury Employees Union* v. U.S., 54 Fed. Cl. 791, 798 (2002) ("[T]here is no question that the small number of objections weighs in favor of the court's approval.").

[16] For example, the Hawks Quindel law firm represents a substantial number of class members who submitted objections on firm letterhead. Those objections repeatedly emphasize that the objector has chosen *not* to opt out. Examples include Kristin Henning, Mindi Schumacher, and Sean and Peggy Brennan.

[17] Stephanie Ponti-Krivinko, for example, noted that the many attorneys who contacted her (*see supra* n. 14) have told her "to opt out, that they can get [her] more money" (capitalization omitted).

[18] *See, e.g.*, *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (upholding settlement in part based on only 500 opt outs compared to 90,000 notified class members); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 269 (E.D. Pa. 2012) (opt-out rate of 1.14 percent in class of 13,200 was "virtually *de minimis*" and "weigh[ed] in favor of the proposed settlement's fairness and adequacy"); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV-08-1365 CW (EMC), 2010 WL 1687832, at *15 (N.D. Cal. Apr. 22, 2010) (0.4 percent opt-out rate provided "further indication of the fairness of the settlement"); *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (stating that low opt-out rate indicated "overwhelming support" and provided "strong circumstantial evidence supporting the fairness of the settlement").

where class members who opted out remain eligible to have their vehicles repaired by VW (if an approved fix becomes available).[19] In other words, one of the alternative remedies provided by the settlement remains available even to class members who opt out and thus preserve their right to sue. In light of this fact, the low number of opt outs is striking, and indicates that class members are satisfied with the relief afforded by the settlement.[20]

B. Specific Objections

24. As noted in ¶ 14, to the best of my knowledge, I have reviewed all of the 462 timely objections. Having analyzed those objections, I have identified 10 significant and recurring subject areas that are worthy of detailed analysis. They are:

(1) the failure of the settlement to reimburse class members for the full price they paid for their vehicles;

(2) use of trade-in value rather than retail value in the settlement formula;

(3) use of 12,500 as the annual mileage allowance;

(4) failure of the settlement to provide reimbursement for extended warranties, maintenance packages, factory options, and other add-ons;

(5) failure of the settlement to provide reimbursement for sales taxes and other official fees;

(6) inadequacy of the "fix" option;

(7) failure of the settlement to compensate class members for vehicle repair costs;

(8) failure of the class definition to encompass individuals who sold or totaled their vehicles after June 28, 2016, but before September 16, 2016;

(9) various subcategories of class members claiming disproportionate and unique unfairness; and

(10) failure of the settlement to award compensation for punitive damages or for emotional harm and inconvenience.

I address each of these objections below.

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[19] *See* Executive Summary of Proposed Class Settlement Program, VWcourtsettlement.com, https://www.vwcourtsettlement.com/en/docs/Executive Summary of Proposed Settlement Program.pdf (last visited Sept. 26, 2016) ("If you exclude yourself from the class, you may still obtain an Approved Emissions Modification if available for your car, but you cannot receive a Buyback or Lease Termination, and you will not receive any cash payment.").

[20] Based on some reports, the low numbers of objections and opt outs are not surprising. As the CEO of one online used-car dealer stated, "Financially, consumers are going to do far better than if [VW's fraud] had never happened." Volkswagen Settlement May Be Windfall for Owners—And Send 85,000 Cars to the Junker, The Denver Post (July 26, 2016), http://www.denverpost.com/2016/07/29/volkswagen-settlement-owners/ (quoting Ernie Garcia, and further noting that "owners stand to make at least double what their cars were worth just before news of the scandal").

25. As I discuss below, it is always possible to make a settlement stronger. In my opinion, however, none of the objections discussed herein casts doubt on the overall fairness of the settlement. This is by far the largest settlement in the history of the automobile industry. It ensures that class members will receive either (1) compensation sufficient to purchase a comparable replacement vehicle, or (2) a repair that would negate the emissions-cheating defeat device, plus significant additional compensation. Many of the objections, if implemented, would lead to an administrative nightmare. Moreover, the various objections would add substantially to the cost, and it is anything but clear that VW, having already engaged in hard-fought negotiations, would be willing to agree to major modifications to the settlement. And, of course, rejection of the settlement—and perhaps years of contested litigation—would be disastrous for the class and for the environment.

26. As noted, I do not address every objection but only what I view as the major ones. Many of the objections that I do not address raise narrow, fact-specific issues that do not bear on the overall fairness of a $10 billion-plus settlement.[21] Some of the others are insubstantial.[22]

1. Entitlement to Full Reimbursement, With No Depreciation or Deductions

27. Many class members seek 100 percent of what they paid for their vehicles, notwithstanding the vehicle's age or mileage. Examples include James Fiumara, Mark Dietrich, Kristine Brereton, J. Paul Johnson, Shaun O'Hara, Matthew Poore, and William Lennon. As William Lennon put it, "anything short of" the purchase price "would not represent a fair and just settlement." Indeed, some ask for even more. Joseph Carpe, for example, who owns a 2010 Jetta Diesel Wagon, wants to receive at "[n]o charge" a "brand new VW *of [his] choice*" (emphasis added).[23]

[21] For example, James Rehfeldt notes that there is no VW dealer in his home town of Juneau, Alaska, and complains about the cost and inconvenience of having to drive his car to the dealership in Anchorage for the buyback program.

[22] As just a sample, John Lutes complains about the quality of the "hold music" during his calls to the online portal help number. Ally Rich complains that she had "to make two separate trips to [the] Volkswagen dealer to register [her] gift cards [previously issued by VW] because there was only one person at the dealership allowed to register the cards and she was at lunch." Michelle Morse-Buszard complains generally about the "higher costs of both diesel fuel and diesel oil changes." Richard Banks argues that the Administrative Procedure Act should be repealed and that the Environmental Protection Agency (EPA) is unlawful because only states can regulate the environment. Stephen Replogle complains that the EPA, not VW, is the real polluter.

[23] Some VW high-end models sell for much more than Carpe paid for his 2010 Jetta. For instance, a 2017 VW CC starts at $34,475, and with options could cost considerably more. VW.com,

28. In an ideal world, payment to about 475,000 class members of the original price of their vehicles would be a good thing. VW's conduct was certainly reprehensible. But the test in reviewing a settlement is not whether it is perfect, but whether it is fair, reasonable, and adequate. As the Ninth Circuit stated in *Hanlon v. Chrysler Corp*.,

> "Of course it is possible, as many of the objectors' affidavits imply, that the settlement could have been better. But this possibility does not mean the settlement presented was not fair, reasonable or adequate. Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter, or snazzier, but whether it is fair, adequate and free from collusion."

150 F.3d 1011, 1027 (9th Cir. 1998).[24]

29. Significantly, to my knowledge no state's "lemon law" provides for such a full-price remedy. Lemon laws vary widely by state, and some are substantially more restrictive than others.[25] But one consistent provision is that the value of the vehicle is reduced for the vehicle's actual use, generally subtracting a reasonable allowance for use prior to the first report of the defect at issue.[26] Some also include offsets for use after reporting the defect (when the vehicle was not out of service for repair), or offsets for damage to the vehicle unrelated to the defect.[27]

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http://www.vw.com/?&cid=ssem_ZvKeruEG_120404330346_c (last visited Sept. 24, 2016). Indeed, VW concept cars are available that cost as much as $3 million. Most Expensive Volkswagen Cars, SuccessStory, https://successstory.com/spendit/most-expensive-volkswagen-cars (last visited Sept. 26, 2016).

[24] *Accord, e.g., Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) ("[W]hether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the reviewing court."); *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003) ("The Settlement as a whole, as opposed to its individual components, is examined for overall fairness." (quoting *Hanlon*, 150 F.3d at 1026)); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005) ("A settlement is, after all, not full relief, but an acceptable compromise."); *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *5 (N.D. Cal. Nov. 16, 2007) ("This is tantamount to complaining that the settlement should be 'better,' which is not a valid objection.").

[25] *See* Patricia Kussmann, *Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws)*, 88 A.L.R. 301 (2001) (discussing differences among state lemon laws and citing examples). For example, some law cover used vehicles, while others exclude them, and still others are written in very general terms, thus requiring state courts to decide their scope. *See id*. at §§ 13(a)–(b). They likewise differ widely regarding the treatment of leased vehicles. *See id*. at §§ 12(a)–(b).

[26] *See, e.g.*, Cal. Civ. Code Ann. § 1793.2 (West 2016) (offset for "use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer [for repair]"); Conn. Gen. Stat. Ann. § 42-179 (West 2016) (offset for "reasonable allowance for the consumer's use of the vehicle"); Mass. Gen. Laws Ann. ch. 90, § 7N 1/2 (West 2016) (offset for "a reasonable allowance for use"); Mont. Code Ann. § 61-4-503 (West 2016) (offset for "reasonable allowance for the consumer's use of the motor vehicle"); N.H. Rev. Stat. Ann. § 357-D:3(I) (West 2016) (offset for "consumer's use of the vehicle"); Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 6.07 (West 2016) (refunding purchase price "less a reasonable allowance for the owner's use of the vehicle"); Va. Code Ann. § 59.1-207.13 (West 2016)

30. Moreover, in automobile cases not involving lemon laws, compensation is also often adjusted for use, deterioration, and "wear and tear." For example, in *Browne v. American Honda Motor Co*., compensation for prematurely replaced defective brake pads was offset for actual use "despite the objectors' argument that they should be fully reimbursed." No. CV 09-06750 MMM, 2010 WL 9499072, at *17 (C.D. Cal. July 29, 2010).[28]

31. Plaintiffs' expert, Professor Andrew Kull, offers further support as a matter of rescission and restitution law. He notes that a rescission "remedy that allowed an owner the free use of an automobile for an extended period of time would grant a windfall to the owner while imposing a forfeit on Volkswagen—outcomes that traditional principles of equity seek to avoid." Kull Decl. ¶ 22, at 13. He adds that, while a court might justify such a remedy given VW's fraudulent conduct, "punishment is not the accepted function of rescission and restitution." *Id*.

32. There is another important consideration: An agreement requiring VW to pay the full purchase price, regardless of the age of the vehicle, would increase the cost of the settlement multifold. The possibility of bankruptcy under such a scenario cannot be ignored.[29] And as the

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(offset for "reasonable allowance for the consumer's use of the vehicle up to the date of the first notice of [the defect] that is given to the manufacturer").

[27] *See, e.g.*, Del. Code Ann. tit. 6, § 5003 (West 2016) (offset for use prior to reporting defect and "damage not attributable to normal wear and tear"); Or. Rev. Stat. § 646A.404 (West 2016) (offset for use prior to reporting defect and any subsequent period when the vehicle was not out of service for repair).

[28] *Accord, e.g., Kearney v. Hyundai Motor North America*, No. SACV 09-1298-JST (MLGx), 2013 WL 3287996, at *2 (C.D. Cal. June 28, 2013) (approving settlement providing for replacement or buyback of defective vehicles "subject to . . . a mileage offset according to the Eligible Vehicle's mileage on the date of the [settlement] offer"); *Skeen v. BMW of N. Am., LLC*, No. 2:13-cv-1531-WHW-CLW, 2016 WL 4033969, at *16–17 (D.N.J. July 26, 2016) (approving settlement that "provides fewer benefits to the owners of high-mileage or older Class Vehicles than to the owners of new, low mileage vehicles").

[29] This settlement is only a part of a worldwide problem facing VW. Addressing the problem globally "could drive the automaker's costs for the scandal up towards $100 billion [warns an analyst, a] . . . result [that] would very likely be bankruptcy . . . ." Paul A. Eisenstein, *Volkswagen's $15 Billion Settlement Is First Step for Car Company*, NBC News (June 28, 2016), http://www.nbcnews.com/business/autos/volkswagen-s-15-billion-settlement-first-step-car-company-n600581; *see also* Douglas McIntyre, *Could Volkswagen Go Bankrupt?*, 24/7 Wall St. (Oct. 5, 2015), http://www.247wallst.com/autos/2015/10/05/could-volkswagen-go-bankrupt/ (citing VW Chairman's statement that "the financial fallout of the debacle could ruin Volkswagen"); Chris White, *Facing the Specter of Bankruptcy, Volkswagen May Get a Reprieve from Europe*, The Daily Caller (Jan. 10, 2016), http://www.dailycaller.com/2016/01/10/facing-the-specter-of-bankruptcy-volkswagen-may-get-a-reprieve-from-europe/ ("All told, if the fines and lawsuits leveled against VW top $50 billion [worldwide], as some believe possible, then the German automaker faces the real possibility of being rendered bankrupt by the scandal."); Agence France-Presse, *One Year Later, Five Things to Note About the Volkswagen Scandal*, PRI (Sept. 17, 2016), http://www.pri.org/stories/2016-09-17/one-year-later-five-things-note-about-volkswagen-scandal (noting that Volkswagen's financial situation "has been pretty bad, and could get worse" and explaining that "[t]he company says it has set aside around $20 billion to cover repairs, buy backs, and legal costs, but experts believe the final bill will be much, much higher").

asbestos fiasco reveals, bankruptcy is a huge impediment to prompt, efficient, and fair payments to injured claimants.[30] The fact that a greater recovery "would put the defendant at risk of bankruptcy or other severe economic hardship" weighs in favor of settlement. *In re AOL Time Warner, Inc.*, No. 02 Civ. 5575(SWK), 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006).[31]

33. To illustrate, Dean DiGiovanni seeks full price (plus, presumably, restitution) for his seven-year-old Jetta. Thus, his claim alone would add thousands of dollars to the settlement. For about 475,000 class members, a full-value settlement would no doubt add several billion dollars to VW's price tag.

34. Because of the devastating potential consequences of agreeing to such a settlement, as explained in ¶ 33, it is unrealistic to believe that VW would ever do so. I am advised that the negotiations were vigorous and hard-fought. Importantly, they included both a neutral mediator and government representatives.[32] Had the plaintiffs insisted on a full-price remedy, VW almost

[30] As then-Senator Bill Frist noted in connection with proposed asbestos reform legislation, "[f]uture funds for asbestos victims are threatened because company after company is going bankrupt." William Frist, *Asbestos Litigation Crisis*, Capitolwords (Nov. 22, 2003), http://capitolwords.org/date/2003/11/22/S15514-6_asbestos-litigation-crisis/. Indeed, the VW settlement—attentive to potential bankruptcy concerns—requires that VW maintain an escrow account of $1.5 billion at all times. *See* Consumer Class Action Settlement Agreement and Release (Amended) ("Settlement Agreement") ¶ 10.1.

[31] *Accord, e.g.*, *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534–35 (3d Cir. 2004) (considering the "ability of the defendants to withstand a greater judgment" in evaluating fairness of class settlement); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 427–28 (S.D.N.Y. 2001) (noting, in finding settlement fair and reasonable, that "[w]ithout the Settlement, Plaintiffs may well have obtained substantially less *or no recovery* from some of the Defendants" due to potential for bankruptcy (emphasis added)).

[32] The involvement of a neutral mediator increases the assurance that a settlement is fair and reasonable, and is "a factor weighing in favor of a finding of non-collusiveness." *In re Bluetooth Headset Prod. Liability Litig.*, 654 F.3d 935, 948 (9th Cir. 2011). *Accord, e.g.*, *Rosales v. El Rancho Farms*, No. 1:09-cv-00707-AWI-JLT, 2015 WL 4460918, at *16 (E.D. Cal. July 21, 2015) (quoting *In re Bluetooth* and noting that the use of private mediators supported approval of the settlement); *Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014) (noting that the parties' "consideration of the views of a third-party mediator weigh in favor of settlement"); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013)("[P]articipation of a mediator is not dispositive, but is 'a factor weighing in favor of a finding of non-collusiveness.'" (quoting *In re Bluetooth*, 654 F.3d at 948)); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964 (E.D. Cal. 2012) (noting, in approving settlement, that it "was largely the result of arms-length negotiations conducted by an experienced mediator").

Similarly, the participation of government entities "serves to protect the interests of the class members, particularly absentees," and weighs in favor of settlement approval. *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977). *Accord, e.g.*, *In re Bluetooth*, 654 F.3d at 946 ("the presence of a governmental participant" should be weighed by courts in evaluating class settlements for fairness (citations 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[.]"); *Wellman v. Dickinson*, 497 F. Supp. 824 (S.D.N.Y. 1980) ("[T]he participation . . . by a government agency committed to the protection of the public interest and its endorsement of the agreement are additional factors which weigh heavily on the side of approval of the settlement." (citing *Marshall*, 550 F.2d at 1178)).

certainly would have chosen trial and delay. Despite the strength of the case for plaintiffs, every case presents risks, and VW would have had little reason to agree to pay every vehicle owner the full original retail price, regardless of the year or mileage of the vehicle. Even in a strong case such as this one, objectors must recognize that "the Settlement provides the Class with a timely, certain, and meaningful cash recovery, while a trial—and any subsequent appeal—is uncertain, would entail significant additional costs, and in any event would substantially delay any recovery achieved." *In re High Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2, 2015).[33]

35. Moreover, it is no answer to say that this Court can simply rewrite the settlement to force VW to pay each class member his or her full original cost. It is fundamental that "the power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed." *Evans v. Jeff D*, 475 U.S. 717, 726 (1986).[34]

36. At bottom, while class members would obviously prefer a more robust award, a settlement does not represent a "wish-list of class members that the [defendant] must fulfill." *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 65 (S.D.N.Y. 2003). When "the form and amounts of benefit provided were arrived at as a result of hard-fought negotiations," *id.*, class members must temper their expectations.

37. One final point: Those class members who were unsatisfied with the terms of the settlement—and who believed they could recover full value in contested litigation—had the

[33] *Accord, e.g.*, *Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011) ("Considering [the] risks, expenses, and delays [associated with ongoing litigation], an immediate and certain recovery for class members . . . favors settlement of this action."); *Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750 MMM, 2010 WL 9499072, at *12 (C.D. Cal. July 29, 2010) ("Estimates of what constitutes a fair settlement figure are tempered by . . . [among other things] the expected delay in recovery (often measured in years)."); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 682 (N.D. Cal. 2016) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (citation omitted)).

[34] *Accord, e.g.*, *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("The Court is "not permitted to substitute [its] notions of fairness for those of . . . the parties to the agreement."); *Officers for Justice v. Civil Svc. Comm'n of San Fran.*, 688 F.2d 615, 628 (9th Cir. 1982) (court may not "delete, modify, or substitute" terms of settlement); *In re Engineering Animation Sec. Litig.*, 203 F.R.D. 417, 422 (N.D. Iowa 2001) ("[T]he Court cannot force the parties to alter the terms to which they have agreed."); *Howard v. McLucas*, 597 F. Supp. 1504, 1506 (M.D. Ga. 1984) ("[T]he court's responsibility to approve or disapprove does *not* give this court the power to force the parties to agree to terms they oppose." (emphasis in original)), *rev'd in part on other grounds*, 782 F.2d 956 (11th Cir. 1986).

option of opting out. As one court has noted: "Federal courts routinely hold that the opt-out remedy is sufficient to protect class members who are unhappy with the negotiated class action settlement terms." *Eisen v. Porsche Cars North America, Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *7 (C.D. Cal. Jan. 30, 2014).[35] Here, according to notice provider Shannon Wheatman, "all Class Members . . . had frequent and ample opportunities to learn about these Settlements and act on their rights before the September 16, 2016 deadline." Wheatman Decl. ¶ 41, at 10; *see also id*. ¶ 35, at 8 ("well over 90%" of the class received notice (by email, U.S. mail, or both). As noted, 3,298 class members have exercised their right to opt out, and others who were unhappy about the settlement's failure to authorize recovery of a vehicle's original cost could have done so as well.[36]

2. Use of Trade-In Blue Book Value

38. Numerous objectors complain about the settlement's use of the Clean Trade-In blue book value for assessing the payout value of the car. They contend that the settlement should be based instead on NADA's Clean Retail value. For instance, Gwen Kennedy notes that the trade-in value is inapposite because it represents "what a dealer would offer a customer purchasing

[35] *Accord, e.g.*, *In re Nat'l Football League Players' Concussion Injury Litig*., 307 F.R.D. 351, 396 (E.D. Pa. 2015) (class members' "opportunity to opt out" weighed in favor of finding settlement fair and reasonable), *aff'd*, 821 F.3d 410 (3d Cir. 2016); *In re Oil Spill By the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 295 F.R.D. 112, 156 (E.D. La. 2013) ("Those objectors who are unhappy with their anticipated settlement compensation could have opted out and pursued additional remedies through individual litigation."); *In re Nissan Radiator/Transmission Cooler Litig*., No. 10 CV 7493(VB), 2013 WL 4080946, at *12 (S.D.N.Y. May 30, 2013) ("Class members here have the ability to opt-out if they do not like the terms of the settlement."); *Milligan v. Toyota Motor Sales, U.S.A., Inc*., No. C 09-05418 RS, 2012 WL 10277179, at *7 (N.D. Cal. Jan. 6, 2012) (overruling objections to class settlement in part on the basis that "[o]bjectors who raised these concerns could have simply opted out of the settlement").

[36] With respect to the opt out remedy, I would note that the law firm of Crowell and Moring has submitted a detailed objection on behalf of Wheels, Inc., a fleet management company that owns more than 100 VW "clean" diesel vehicles. The objection argues that fleet management companies have unique issues and that the "interests and considerations of automotive fleet management companies like Wheels were not adequately taken into account." As a practical matter, however, class settlements cannot be expected to address every unique situation. *See, e.g.*, *Dauphin Island Prop. Owners Ass'n v. U.S.*, 90 Fed. Cl. 95, 104 (Fed. Cl. 2009) (noting that "[a] fair settlement need not satisfy every concern of the plaintiff class" (citation omitted)); *In re Pet Food Prods. Liab. Litig*., No. 07-2867 (NLH), 2008 WL 4937632, at *11 (D.N.J. Nov. 18, 2008) ("[A] settlement cannot address every concern and provide the total relief sought or envisioned by every class member."), *vacated in part on other grounds*, 629 F.3d 333 (3d Cir. 2010); *Handschu v. Special Svcs. Div.*, 605 F. Supp. 1384, 1394 (S.D.N.Y. 1985) (fair settlement "need not satisfy every concern" raised by class members and "may fall anywhere within a broad range of upper and lower limits" (citations omitted)). Moreover, given all of its vehicles, Wheels, Inc. had a substantial amount at stake and could have opted out if its interests were not adequately addressed by the settlement. The company was represented by sophisticated counsel, who presumably advised Wheels, Inc. on the pros and cons of the settlement before the company decided not to opt out.

another car from them and assumes the dealer will make a profit from the resale of that car." A similar point is made by both Thomas McGuinness and S. Davis Carniglia. And Jorn Schaffner is especially upset because he always sells cars on his own and never trades them in.

39. The same point has been made by ConsumersUnion and by a newsletter from *Road and Track* magazine.[37] Thus, while ConsumersUnion "generally support[s] th[e] settlement as fair, adequate, and reasonable," it notes, *inter alia*, that "it would be more accurate for the settlement not to use the NADA Clean Trade-In value as the figure to represent the value of a consumer's car prior to public knowledge of the VW deceit." Instead, ConsumersUnion asserts that the settlement should use, "at a minimum, an estimated private sale price (approximately between the Clean Trade-In and Clean Retail values) . . . ." The *Road and Track* author goes further, calling the settlement a "raw deal" because NADA Clean Trade-In value "doesn't make customers whole." The *Road and Track* author and various objectors, such as Terry Kurtz, further argue that the settlement's use of Clean Trade-In value violates the U.S. Government's partial consent decree, posted on the website of the Federal Trade Commission (FTC), which provides that VW will implement a remedy that provides a buyback option "at a price no less than Retail Replacement Value. . . ."

40. If the entire settlement consisted solely of payment of the Clean Trade-In value immediately prior to the fraud, I would be very concerned about the adequacy of the settlement, given the nature of the misconduct here and the strength of plaintiffs' claims. As I noted (¶ 21), class members are entitled to a substantial recovery, and any settlement that fails to so provide would not be fair, reasonable, and adequate. But, in complaining about the use of Clean Trade-In value, the objectors, ConsumersUnion, and *Road and Track* fail to give weight to the fact that the settlement also includes a substantial restitution payment. Specifically, the restitution consists of (1) an upward adjustment based on 20 percent of the Clean Trade-In value, and (2) a fixed component of almost $3,000 per car. The result is significantly *more* than the Clean Retail value. In fact, plaintiffs' motor vehicle industry expert, Edward Stockton, concludes that *the*

[37] *See* Letter from Laura MacCleery, Vice President, Consumer Reports, & William Wallace, Policy Analyst, ConsumersUnion, to John Cruden, Assistant Attorney General, U.S. Dept. of Justice (Aug. 5, 2016), *available at* https://consumersunion.org/wp-content/uploads/2016/08/CU-comments-to-DOJ-on-VW-2.0-liter-partial-settlement-8-5-2016.pdf; Colin Comer, *VW's Emissions Settlement Is a Raw Deal for Its Most Important Customers: Loyal, Original Owners Are Getting the Short End of the Stick*, Road & Track (July 26, 2016), http://www.roadandtrack.com/car-culture/news/a30118/vw-emissions-settlement/.

settlement will provide a minimum of 112.6 percent of the car's Clean Retail value. Stockton Decl. ¶ 28, at 15.[38] Because the Clean Trade-In value is merely *one component* of the settlement, objectors are unpersuasive in isolating it and not assessing the settlement benefits as a whole.

41. Indeed, while several objectors (and the *Road and Track* newsletter) claim that the class settlement's use of Clean Trade-In value violates the U.S. Government's consent decree, the FTC, in an August 26, 2016 submission (Doc. 1781), reveals the flaw in that argument. In its submission, the FTC states that it "*strongly supports* the proposed $10 billion 2.0L 'Clean Diesel' settlement, *which fully compensates* victims of Volkswagen's unprecedented deception." Fed. Trade Comm'n Stmt. 1:15 (emphasis added). It adds that "[t]he proposed private settlement provides the same generous, but appropriate, compensation to each consumer as the FTC Order," *id.* at 2:7, and notes that the settlement's use of Clean Trade-In value has caused "confusion." *Id*. at 1:18. As the FTC explains, "using various adjustments to significantly increase payments above Clean Trade, *the proposed private settlement provides the same appropriate, generous compensation as the FTC's settlement package*," and, therefore, "the proposed settlement is clearly in the public interest." *Id*. (emphasis added).

42. Finally, retaining the restitution component as-is but switching from Clean Trade-In value to Clean Retail value would add significantly to the cost of the settlement. As noted in ¶ 35, the Court cannot dictate new terms to the parties, and there is no assurance—given the contentious negotiations that have already occurred—that VW would agree to such a costly change.

3. Mileage Allowance

43. A number of objectors complain that the mileage allowance under the settlement is only 12,500 miles per year, with excess mileage reducing the payment. As one objector captures the issue, that mileage "grossly underestimates the actual miles driven by owners of diesel cars" (Thomas Niehaus). According to Andrew Winters, III, putting on many miles "is the reason that many of us bought our cars." Some objectors argue that *no* mileage deduction should be allowed (*e.g.*, Rod Goeman, J. Paul Johnson, Dale Speelman). As Rod Goeman states, "the excess

[38] Significantly, 112.6 percent of retail value is substantially more than consumers receive in insurance payouts for totaled vehicles, which generally fall somewhere between trade-in and retail value. *See, e.g.*, Frequently Asked Questions, Kelley Blue Book, http://www.kbb.com/company/faq/used-cars/#uc_26 (last visited Sept. 26, 2016).

mileage penalty should be removed and drivers should all be treated equally regardless of miles driven." Others argue for a specific, higher limitation. *E.g.*, Jody McKinley (arguing for allowance of 25,000 miles per year, calling the 12,500 figure "ridiculous," and stating, "If I was only driving 12,000 miles per year I would not have purchased a diesel vehicle"); Philip Oyerly (citing study that average diesel car owner drives 18,750 miles per year); Christopher Self (arguing for allowance of 16,000–18,000 miles per year); Stephen Park (attaching EPA Fuel Economy Estimate sticker that bases its calculation on 15,000 miles per year); Russell Karnes (arguing for allowance of at least 18,858 miles per year); David Hardinger (arguing for allowance of "between 20,000 and 24,000 miles [per] year" or no mileage allowance at all); Jeffrey and Barbara Krouse (arguing for allowance of 25,000 miles per year); Joseph Gromala (noting that his VW service advisor said that the average TDI driver puts on 15,000 miles per year). Some objectors (*e.g.*, Glenn Rothenberg, Michael Nadeau, Stephen Mace, and Peter Zafian) argue that mileage at least should have been frozen as of September 18, 2015, when the fraud was disclosed.

44. As noted with respect to the two previous objections, it is understandable that objectors might wish for a more robust settlement. An ideal settlement might have allowed, for example, more mileage before a penalty kicked in, or might have eliminated the mileage penalty altogether. It is certainly reasonable for objectors to point out that they were attracted to the diesel vehicles precisely because those vehicles were suitable for high-mileage drivers.

45. At the same time, the objectors provide no precedent for challenging a mileage allowance generally, or a 12,500 figure specifically. To the contrary, numerous sources support the settlement's mileage allowance.

46. First, a car with high mileage, as a matter of basic valuation, is worth less than a car with low mileage.[39] Second, the 12,500 figure is in line with various accepted car valuations. For example, consumer advocate Michael Royce states that "the 'normal' mileage for a used car is about 12,000 miles for each year of its life." Kelley Blue Book FAQ, *supra* n. 38. Most

[39] *See, e.g.*, Doug DeMuro, *What's More Important When Buying a Car: Miles or Age?*, Autotrader (June 2015), http://www.autotrader.com/car-shopping/whats-more-important-when-buying-a-car-miles-or-age-240611 (mileage has a "major effect" on a car's value, and "a car with only 70,000 miles is worth a lot more than one that's covered 170,000"); Car Buyer's FAQ, Beat the Car Salesman, http://www.beatthecarsalesman.com/mailbag17.html (last visited Sept. 26, 2016) ("Mileage is probably the single most important factor in determining the value of a used car.").

calculations offered by Carmax, Kelley Blue Book, Edmunds, and others are based on 11,500 to 13,000 annual miles,[40] and to my knowledge no blue book provides for different mileage adjustments depending on whether a vehicle has a diesel or gas engine. *Accord* Stockton Reply Decl. ¶ 5, at 3. Finally, most lemon laws simply refer to "motor vehicles," and apply an equal adjustment whether the vehicle at issue is a car, truck, SUV, diesel, gas, or electric.[41] Given all of this support for the settlement's methodology, it cannot be seriously argued that a mileage limitation renders the agreement unfair.

47. Moreover, the alternative approaches urged by objectors present their own problems. For example, if the settlement designated 15,000 miles, some objectors would still complain that it is too low. And if the mileage penalty were removed altogether, some class members would certainly complain. An owner of a car that had been driven 4,000 miles per year, for example, would no doubt feel cheated by receiving the same payment (all other things equal) as the owner of a car that had been driven 30,000 miles per year. *See, e.g.*, Clayton Smith, Jr. ("added compensation" should be given to a vehicle with "low mileage"). Designating average annual mileage is a classic example of "line-drawing," *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, No. C 09-05418 RS, 2012 WL 10277179, at *7 (N.D. Cal. Jan. 6, 2012), and the failure to draw the line in the exact place urged by an objector does not make the settlement unfair.[42] As noted in *Skeen v. BMW of North America, LLC*, "the line must be drawn somewhere," and "the value

[40] *See, e.g.*, Joseph Sinclair & Don Spillane, eBay Motors the Smart Way at 49 (2004) (noting that *Edmunds* "assumes the average annual mileage to be 12,000 miles and penalizes vehicles with mileage above that," the *Kelley Blue Book* "assumes the average annual mileage to be 13,000 miles and penalizes mileage above that," and *Galves* "assumes the average milage to be about 11,500 annually"); Fuel Savings Calculator, Carmax.com, https://www.carmax.com/research/mpg-calculator (calculating miles per gallon based on average 12,500 annual miles). Additionally, a typical lease has a mileage cap of 12,000 to 15,000 miles per year, after which the lessee must pay additional charges for extra miles. See KBB Editors, Kelley Blue Book's Complete Guide to Leasing, Kelley Blue Book (June 8, 2016), http://www.kbb.com/car-news/all-the-latest/kelley-blue-book-complete-guide-to-leasing/2100000780/#survey.

[41] *See, e.g.*, Fla. Stat. Ann. § 681.104(2)(a) (West 2016) (deducting 20 cents per mile driven for all "motor vehicles," defined as a vehicle "propelled by power other than muscular power"); Mass. Gen. Laws Ann. ch. 90, §§ 1, 7N1/2(3) (West 2016) (buyback value calculated by multiplying purchase price by number of miles driven divided by 100,000 for all "motor vehicles," and defining motor vehicles as "all vehicles constructed and designed for propulsion by power other than muscular power, except [railroad cars, trolleys, and wheelchairs]").

[42] *See, e.g.*, *Milligan*, 2012 WL 10277179, at *7 (noting that "settlement involves some line drawing, and 'full compensation is not a prerequisite for a fair settlement" (citation omitted)); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 910 F. Supp. 2d 891, 949 (E.D. La. 2012) ("[L]ines must be drawn somewhere, and the objectors have failed to demonstrate that the line drawn here was not reasonable."); *cf. UAW v. General Motors Corp.*, No. 05-CV-73991-DT, 2006 WL 891151, at *4 (E.D. Mich. Mar. 31, 2006) (approving class settlement and noting that "line-drawing of this kind is inherently subject to criticism by those marginally above the line").

of vehicles decreases with . . . mileage." No. 2:13-cv-1531-WHW-CLW, 2016 WL 4033969, at *16–17 (D.N.J. July 26, 2016).

48. Finally, the mileage adjustment is *not* a strict 12,500 per year average. As plaintiffs' expert Edward Stockton explains, "the amount of the credit is 12,500 miles per year, *pro-rated for each month after September 2015*. Stockton Decl. ¶ 30, at 16. Thus, as Stockton explains, a vehicle that was sold back to VW in September 2017 with 125,000 miles would be designated, for purposes of the excess mileage deduction, as having only 100,000 miles (because of a credit for two years totaling 25,000 miles). Thus, the actual mileage formula is *more* generous than the strict 11,500 to 13,000 mile calculations used by various car valuation formulas. *See also* Stockton Reply Decl. ¶ 6, at 3 (noting that using September 2015 NADA mileage tables "result[s] in more generous mileage adjustment" than using later mileage tables).[43]

4. Reimbursement for Add-Ons

49. Several objectors complain that various add-ons are excluded from the buyback calculations. The objectors focus on (1) extended warranties and maintenance plans, (2) factory-installed options, and (3) aftermarket add-ons. I consider these three types of add-ons seriatum, since they raise some separate issues.

a. Extended Warranty and Maintenance Plans

50. Several objectors, including Michael and Lynn Henry, Kenneth and Janice McReynolds, James Eckman, James Rosato, and John and Julie Martin, seek reimbursement for the entire cost of their extended warranties (in the neighborhood of $2000-$3000 per vehicle). This is a surprising request. The settlement does not require class members to forfeit their extended warranties. To the contrary, most extended warranties—some of which are issued by third-party insurers—allow the insured to cancel the warranty and receive a refund for the unused portion. *See, e.g.*, Stockton Decl. ¶ 24, at 12 ("Under most extended warranties, a consumer may cancel the warranty for a $50 charge or other nominal amount. Upon cancellation, customers receive a

[43] In addition, assuming that the market understood that the vehicles in question "could be driven more over their lifetimes" than other vehicles, that benefit would be reflected in the Clean Trade-In values. Stockton Reply Decl. ¶ 6, at 3.

pro-rated refund for the remaining period of warranty coverage.").[44] Objectors Todd and Debra Komaniak confirm that they were able to cancel their extended warranty for a pro-rated refund, including taxes. The ability to cancel is a matter of contract, and thus terms may vary, but assuming that the option to cancel exists, there is no reason why a class member who selects a buyback could not request a pro-rated refund or other remedy from the insurer at the time the car is turned over to VW or Audi. And there is no reason for the settlement to provide double recovery for a warranty purchase.

51. To be sure, a pro-rata reimbursement does not account entirely for the remaining value of an extended warranty. As plaintiffs' expert, Edward Stockton, notes, an extended warranty is more valuable in the later period than in the earlier period, since the manufacturer's warranty will apply in the earlier period without the need for the extended warranty. Stockton Decl. ¶ 24, at 13. Nonetheless, the reimbursement process offers a substantial recovery, and in my view it is sufficient to address the various objections on this topic.

52. The same analysis is true for maintenance packages. Some objectors, including Michael and Lynn Henry and Erik and Anne Emerson, seek compensation for packages they purchased that provide for oil changes and other maintenance during the period of the contract. But like extended warranties, the settlement does not require class members to forfeit their maintenance packages. Such packages can generally be cancelled with a pro-rated refund.[45]

b. Factory-Installed Options

53. Numerous class members seek reimbursement for a host of factory-installed options for their vehicles. For example, Sagid Elhillali seeks reimbursement for a factory-installed technology package costing $1,730; Betty Carroll seeks reimbursement for, *e.g.*, heated seats, a rear window defroster, a power driver's seat, and driver/passenger lumbar support; and Michael

[44] *See, e.g.*, *Canceling an Extended Car Warranty*, Automotive.com, http://tools.automotive.com/new-cars/14/warranty/53138/canceling-an-extended-car-warranty.html (last visited Sept. 26, 2016) ("Extended warranty refunds are pro-rated on the amount of time/miles the warranty was in force.").

[45] *See, e.g.*, *Prepaid Maintenance*, Total Care Auto, http://www.totalcareauto.com/prepaid-maintenance.html (last visited Sept. 26, 2016) (third-party company describing maintenance plan and stating: "[I]f you sell your car, no problem, you can cancel your remaining plan"); United States Warranty Corp., Pre-Paid Maintenance for New and Used Vehicles at 2 (2012), *available at* http://www.uswarranty.com/pdfs/USWCPPMBrochure04-12.pdf (third-party company's maintenance plan is "Transferrable [and] Cancellable"); John C. Erianne, *How to Cancel Infiniti Prepaid Maintenance*, eHow, http://www.ehow.com/how_7886474_cancel-infiniti-prepaid-maintenance.html (last visited Sept. 26, 2016) ("A prepaid maintenance agreement can be canceled at any time (the terms of which are subject to the language in the contract).").

Weiss seeks reimbursement for the cost of a sunroof. In my opinion, those objections are not well taken.

54. Although a vehicle's VIN number provides little information about a car's options,[46] the settlement itself permits upward adjustments for major factory options, such as a premium stereo, a navigation system, sport or luxury packages, power seats, and sunroofs. *See* Settlement Agreement ¶ 4.2.1.[47] After entering his or her VIN number into the settlement calculator, each class member uses charts provided by NADA to adjust the base value to account for the vehicle's specific factory options. For example, a 2010 Hatchback 4D TDI Premium Plus owner will recoup an additional $360 for a Bose premium stereo, $600–$660 (depending on region) for a power sunroof, $630 for a navigation system, and $900 for a "sport package." *See* Tracy, *supra* n. 47. Accordingly, concerns of some objectors about losing money that they invested in factory upgrades are unfounded; the settlement gives class members the opportunity to recoup significant value for many factory options.

c. Aftermarket Add-ons

55. A number of objectors similarly seek reimbursement for aftermarket add-ons. For example, Stephen Campbell seeks compensation for protective paint film and door side molding; David Sherman seeks compensation for custom sheepskin seat covers, headrest covers, a roof rack, a custom front end protective mask, mirror covers, fog lights, a custom dash mat, and a car cover; John and Julie Martin seek compensation for window tinting; Michael Weiss seeks compensation for a trailer hitch and added cross bars to his roof rack; Scott and Pascale Rail seek compensation for front and rear monster mats and an extra pair of windshield wipers; Anita Mahaffey seeks compensation for a bike hitch; Richard Hinman seeks compensation for window tint, a roof rack, a trailer hitch, tires, and a battery; Andres and Maria Lujan seek compensation

[46] NADA Guides states that "[t]he VIN does not tell what options are on a vehicle outside of the engine size and a few other components. Items like leather, sunroofs, and stereos are not detailed by the VIN on about 99% of all vehicles." Frequently Asked Questions, NADA Guides, www.nadaguides.com/FAQ/vin-numbers (last visited Sept. 26, 2016).

[47] *See also* Executive Summary of Proposed Settlement Program, United States District Court, Northern District of California, http://www.cand.uscourts.gov/crb/vwmdl/proposed-settlement (last visited Sept. 26, 2016) (noting that Volkswagen will pay each class member the Clean Trade-In value of his or her car "adjusted for options and mileage"); David Tracy, *Here's Exactly How Much Volkswagen Will Pay You for Your Diesel Car*, JALOPNIK (June 28, 2016), http://jalopnik.com/heres-exactly-how-much-volkswagen-will-pay-you-for-your-1782745097 (explaining that class members have the opportunity to select their specific factory options after entering their VIN number, and providing screenshot of sample buyback calculation adjusting for various factory options).

for Theft Guard and LoJack systems; Joanne Costa seeks compensation for a rear hatch top spoiler (painted black to match), aluminum sport pedal caps, an aluminum foot rest, and polished metal exhaust tips; and Kenneth Johnson seeks compensation for window tint, exhaust modification, a cold air intake, a cargo mat, door sills, a rear lid protector, a rear bumper protection plate, a performance module for the motor, fog light inserts, and a sub-woofer and amp.

56. The settlement does not appear to cover such aftermarket items. Upon reviewing the objections, however, it is clear that any sort of reimbursement for such items—when dealing with approximately 475,000 class members—would be an administrative nightmare. The list of add-on items raised by objectors alone is breathtaking in scope, and the valuation issues would be extremely difficult. Courts have repeatedly recognized the value of administrative simplicity in class settlements. *See, e.g.*, *In re Corrugated Container Antitrust Litigation*, No. 310 (MDL), 1981 WL 2093, at *36 (S.D. Tex. June 4, 1981) (refusing to "create[] an administrative nightmare that would have at best delayed and at worst entirely frustrated the distribution of these valuable settlements to the members of the class"), *aff'd*, 659 F.2d 1322 (5th Cir. 1981), *cert. denied sub nom, CFS Continental, Inc. v. Adams Extract Co.*, 456 U.S. 998 (1982)[48]

57. If full reimbursement *were* to occur, an enormous claims administration infrastructure would be needed to examine receipts and other proof of cost for every aftermarket item. That would defeat the settlement's paramount virtue: simplicity and prompt payment. And what would be the scope of the covered additions? For instance, would a high-powered stereo system, easily removable but nonetheless purchased for use in that vehicle, be covered? What about seat covers that presumably could be used on another car and sold separately on eBay? Just defining "add-on" would be difficult.

[48] *Accord, e.g.*, *In re Equity Funding Corp. of Am. Securities Litig.*, 603 F.2d 1353, 1358–59 (9th Cir. 1979) (affirming district court's approval of settlement provision that was justified in part as "a compromise reached by counsel for the plaintiff classes which helped to resolve [an] administrative nightmare"); *In re Polyurethane Foam Antitrust Litig.*, ___ F. Supp. 3d ___, No. 1:10 MD 2196, 2016 WL 320182, at *7 (N.D. Ohio Jan. 27, 2016) (highlighting class settlement's "straightforward" means of calculating and distributing settlement funds); *Charron v. Pinnacle Grp*. N.Y. LLC, 874 F. Supp. 2d 179 (S.D.N.Y. 2012) (praising simplicity and speed of claims process in approving class settlement); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005) (noting benefits of "a streamlined single-tiered Claim Review Process"); *In re Nasdaq Market-Makers Antitrust Litig.*, No. 94 Civ. 3996 RWS, 2000 WL 37992, at *2–3 (S.D.N.Y. Jan. 18, 2000) (considering potential "administrative burden" in approving class settlement).

58. Moreover, it would not be reasonable for class members, who have used and enjoyed their add-on items (in some instances for 5–6 years), to expect full reimbursement. Thus, a mechanism would have to be established to assess the depreciated value of each add-on. In addition, some add-ons may actually be *undesirable* to most consumers. How would the settlement deal with the many add-ons and options that add no significant value to a vehicle (and may actually *decrease* a car's value)?[49]

59. In sum, there is an overriding need to keep the claims process simple and efficient. Any program that would provide compensation for aftermarket add-on items would create an impossible situation in the context of about 475,000 class members.

60. Indeed, it is presumably to keep the process simple that, under the settlement, no adjustment is made depending on whether a vehicle is in perfect condition or has been severely damaged (assuming it is operable). *See* Settlement Agreement ¶¶ 2.33, 2.50, 2.7.[50] Although some objectors have demanded a premium for taking great care of their cars,[51] the settlement wisely avoids the need for an individual assessment of every scratch or dent. Attempting to ascertain, for about 475,000 class members, whether the car is in excellent, very good, good, fair, or poor condition would be a complicated, time-consuming process. Moreover, because appraisals are subjective, concerns could arise about whether appraisers are giving fair and consistent assessments. The interest in a simple and expedient process justifies not basing awards on the condition of the vehicle. That same interest weighs strongly against a process that requires an assessment, for every vehicle, of the value of every aftermarket item.

5. Reimbursement of Sales Taxes and Other Fees

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[49] *See*, *e.g.*, Frequently Asked Questions, NADA Guides, http://www.nadaguides.com/FAQ/car-options (last visited Sept. 26, 2016) (noting that those add-ons that "add real value to a vehicle" are limited); *Modifications That Will Hurt Your Car's Value*, Autoblog (Nov. 8, 2013), http://www.autoblog.com/photos/car-modifications-resale-value/ (noting that some modifications "can damage your vehicle's value in the used car market").

[50] *See also* Kathleen Pender, *$15 Billion VW Emissions Deal Gets Judge's Preliminary OK*, S.F. Chronicle (July 26, 2016), http://www.sfchronicle.com/business/networth/article/SF-judge-allows-huge-VW-settlement-to-proceed-8425362.php (noting that each class member "can sell [his or her] car back to the manufacturer at its September 2015 clean trade-in value regardless of its condition," assuming it is operable).

[51] *E.g.*, Mark Reinfandt (noting that he "babied [his] VW so it has clean, low mileage and is a cream puff"); Clayton Smith, Jr. (requesting "added compensation when a vehicle has been meticulously taken care of"); Alice Wegman (requesting added compensation because her car is "in great condition"); Alan Fuller (vehicle was serviced every 5,000 miles instead of the recommended 10,000 miles and "has always been garaged").

61. A number of objectors complain that the settlement does not reimburse class members for sales taxes and other official fees (such as licensing, DMV fees, and title costs). These objectors argue that class members are being "punished" because they "will be forced to pay" such costs "on the purchase of [their] next vehicle" (Michael Kaplan).[52]

62. It is true that many lemon laws cover sales taxes and other official fees.[53] And since the class members did not choose to trade in their cars but are doing so only because of VW's fraud, it is understandable that they are angry at the thought of paying taxes and fees *twice* (on the original VW purchase and on the replacement vehicle).

63. The short answer, however, as noted in ¶ 40, is that every class member who exercises the buyback option will receive 112.6 percent of the car's Clean Retail value, enough to purchase a comparable vehicle *and pay taxes and fees on that vehicle*. *See* Stockton Decl. ¶ 28, at 15 (buyback formula enables consumers to buy a comparable vehicle "and pay taxes and other transactions costs on those vehicles"); Stockton Reply Decl. ¶ 3, at 2 (noting that "settlement discussions included consideration of taxes potentially incurred by buyback participants on replacement vehicle purchases"). Thus, it is unnecessary to award taxes and fees to make a class member whole, and in my opinion the failure to include those benefits does not render the settlement unfair.

64. Moreover, as a matter of valuation, the blue book value of a car does not depend on how much the owner paid for sales taxes and other fees. The value may differ based on average sale prices in a particular state,[54] but in a vacuum a car's value is the same in a state with no sales tax, such as Oregon, and a state with a high tax, such as California. While the seller (the original purchaser) may have had to pay sales tax and other fees, the fact that such payments were made does not increase the attractiveness of a vehicle from a buyer's perspective. For instance,

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[52] Some objectors also complain that they are deprived of the option to reduce any new sales taxes from the purchase of a replacement vehicle (because, in many states, sales taxes are paid only on the difference between the new car and the car traded in). *E.g.*, Glenn Rothenberg; Kenneth Dodson. It is my understanding that states differ on whether sales taxes apply to the entire price of the vehicle purchased or are reduced by the amount of a trade-in.

[53] *See, e.g.*, N.J. Stat. Ann. 56:12-21(a)–(b) (West 2016) (providing for "sales tax, license and registration fees, [and] finance charges"); Wis. Stat. Ann. § 218.015(2)(b) (West 2016) (providing for "any sales tax, finance charge, amount paid by the consumer at the point of sale and collateral costs"); *but see* Mont. Code Ann. § 61-4-503(2) (West 2016) (taxes and official fees excluded from buyback remedy).

[54] *See, e.g.*, Frequently Asked Questions, Kelley Blue Book, http://www.kbb.com/company/faq/used-cars/ (last visited Sept. 26, 2016) (noting that "there are regional factors that make the values different").

assume two identical cars, one originally purchased in southern Oregon, the other originally purchased in northern California. No reasonable buyer would pay more for the California car than for the Oregon car merely because the California owner (but not the Oregon owner) originally had to pay sales tax. From the buyer's perspective, the cars are worth exactly the same.

65. Finally, requiring vehicle-by-vehicle analysis based on taxes and other fees paid would create administrative problems that would inevitably delay the payment process. What kinds of documents would suffice to prove such payments (and the amounts)? Would an owner's vague recollection suffice? What sorts of fees would be covered? For example, would personal property taxes on the vehicle be covered? Would fees for license plates be covered? What about added fees for customized plates? What about vehicle taxes when an owner moves from one state to another? And how would the process work in the event that the settlement administrator denied a request for certain fees? Would there be an appeal to this Court? The process of reviewing and assessing taxes and fees would be a monumental task given a class size of about 475,000. As noted, a virtue of this settlement is its ease of administration, which ensures that class members will be compensated promptly.

66. In sum, given that the buyback formula pays enough for a class member to buy a comparable vehicle *and* pay taxes and fees, I do not believe that the failure to provide for taxes and fees separately renders the settlement unfair.

6. Unfairness of the "Fix" Option

67. As an alternative to a buyback, the settlement proposes a "fix" to resolve the emissions issues if and when an EPA-approved modification becomes available. The fix will also include an emissions modification extended warranty that is valid for 18 months or 18,000 miles. *See* Settlement Agreement ¶ 4.3.6. A person who selects the fix will still obtain the cash restitution payment. Numerous class members have objected to the fix, expressing a variety of concerns—*e.g.*, that the fix will "reduce mileage, reduce pickup speed driving . . . , and potentially will infringe[] on trunk space" (Sean Von Manowski); will "significantly reduce the longevity of the engine" (Stephen Campbell); could impact "fuel economy" and affect the car's resale value (Matthew Poore); and may ultimately not be approved by regulators (Kimberly Taylor).

68. Were the fix the only option, I, too, would be very concerned about it. It is fair to say that great uncertainty exists whether the fix will affect performance, fuel (and other) costs, and resale value. On a more basic level, it is unclear whether a fix will emerge, and whether such a fix will receive regulatory approval. Indeed, in January 2016, the California Air Resources Board *rejected* a fix proposed by VW.[55]

69. Importantly, however, the fix is only one of two options. Courts are far more lenient about a settlement term if the class member is given a *choice* between that term and another term. As one court noted in approving a settlement that offered class members a choice of remedies: "The terms of the proposed settlement offer sufficient options to address the needs of individual class members and the class as a whole. Having the choice between [two distinct options] gives individual plaintiffs an opportunity to assess their own situations." *Berkley v. United States*, 59 Fed. Cl. 675, 711 (Fed. Cl. 2004).[56]

70. Here, the settlement provides an *alternative* remedy to address a genuine need: many class members love their cars and would prefer not to start over with a different vehicle. For those individuals, a fix (assuming one emerges) provides them with an opportunity to receive restitutionary compensation and, at the same time, keep the cars to which they have become attached. Although no one can predict with certainty whether a fix will emerge, receive approval, and correct the problem without compromising vehicle performance, class members do not need to make a decision right away. Rather, they have until September 1, 2018, to elect the buyout or the fix.[57] By then, class members should have much more information on whether an approved fix has emerged that does not compromise vehicle performance, longevity, or cost. Indeed, class members will be notified by written disclosure and on the settlement web site when VW has identified a fix for their vehicles. Settlement Agreement ¶ 4.3.2.

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[55] *See* Joe Lorio, *VW's Proposed TDI Diesel Fix Rejected by Regulators*, Car & Driver (Jan. 12, 2016), http://blog.caranddriver.com/vws-proposed-tdi-diesel-fix-rejected-by-regulators/.

[56] *Accord, e.g., U.S. v. New York*, Nos. 13-CV-4165 & 13-CV-4166 (NGG) (MDG), 2014 WL 1028982, at *9 (E.D.N.Y. Mar. 17, 2014) (praising "flexibility [that] will allow the proposed settlement to respect the choices of all class members"); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 468 (D.N.J. 1997) (class settlement's provision of "the choice between obtaining (1) full rescission and restitution or (2) full benefit of the bargain relief" weighed in favor of fairness of settlement), *aff'd*, 148 F.3d 283 (3d Cir. 1998).

[57] *See* Volkswagen/Audi Diesel Emissions Settlement Program, VWcourtsettlement.com, https://www.vwcourtsettlement.com/en/ (last visited Sept. 26, 2016).

71. In addition, it is important to note that the settlement has a "back-end opt out." Thus, in addition to giving class members the right to select the buyback if a fix does not emerge for their vehicles, the settlement allows them to opt out in lieu of having to participate in the buyback. *See* Settlement Agreement ¶ 4.3.1 (opt-out period is between May 1, 2018, and June 1, 2018).

72. The "fix" structure here is much more favorable to the consumer than the remedy under most lemon laws. In the lemon law context, a manufacturer is given multiple opportunities to fix the problem before having to provide compensation. For example, Michigan's lemon law allows the manufacturer and its agents a "reasonable number of attempts" to repair a vehicle before the consumer may demand a buyback remedy, and specifies that such attempts will only be presumed "reasonable" if the vehicle has been "subject to repair a total of 4 or more times" within 2 years of the first attempt. Mich. Comp. Laws Ann. § 257.1403 (West 2016).[58] By contrast, in the VW settlement, a buyback is immediately available without the need for the consumer to test out a fix. And class members can wait well into 2018 to see if a fix emerges without losing either their buyback remedy or their opt-out right. In short, in my opinion, the buyback/fix structure of the VW settlement is reasonable.

7. Money Spent to Service and Repair the Car

73. Several objectors complain that they wasted considerable money on repairs for a car that they would ultimately return to VW, and thus should be compensated. Some, such as David Bacon and Patricia Rizzuto, specify emissions-related repairs, presumably on the theory that the defeat device caused the errors. Others claim repairs without suggesting that the defeat device may have been responsible, such as Donald Hyatt ($1,600 for exhaust system repair and $8,000 for engine and turbo repair); Andrea Torrens and Lawrence Smith ($2,000 for new timing belt); and Alice Wegman (seeking compensation for horn replacement, rear wheel speed sensor, new battery, replaced headlight, trunk strut, and A/C compressor, as well as "time away from work" to take the car in for recalls and repairs). Some of these repairs involve substantial dollar figures. *E.g.*, Donald Hyatt ($9,600); Christopher Sweeney ($4,000); David Bacon ($4,000); Patricia Rizzuto ($3,379.25).

[58] *Accord, e.g.*, Ala. Code Ann. § 8-20A-2 (West 2016) (allowing manufacturer "reasonable attempts" to repair vehicle); Minn. Stat. Ann. § 325F.665 (West 2016) (allowing manufacturer or agents "a reasonable number of attempts" to repair vehicle); Ohio Rev. Code Ann. § 1345.72(B) (West 2016) (allowing manufacturer or agents "a reasonable number of repair attempts").

74. For repairs that are not related to the emissions system, there would seem to be no basis for reimbursement. Repairs are a fact of life with automobile ownership, and the fact that VW defrauded owners about the emissions system does not mean that the company should be liable if a vehicle needed transmission work or had a problem with the navigation system.

75. A claim for emissions-related repairs is more plausible, since the repair arguably relates to the fraud at issue. But such an award would still require an individual assessment whether the particular problem was mechanically related to the defeat device. It is not logical to believe that *every* emissions problem stems from the defeat device. Emissions specialists—and emissions-related repairs—were common long before VW began installing defeat devices. And an emissions repair unrelated to the fraud would be no different, for purposes of analysis, than a navigation system repair. As a result, a determination of what caused a particular emissions problem would be critical, and such a determination would create serious administrative problems in implementing the settlement. It was reasonable to design the settlement to avoid those problems, which could instead be addressed, on VW's initiative and evaluation, outside the settlement as a matter of customer relations.

76. In short, in my opinion, the settlement's failure to cover repair costs—whether arguably related to the defeat device or not—does not negate the fairness, reasonableness, or adequacy of the settlement.

8. Exclusion of Sales or Total Losses Between June 28, 2016, and September 16, 2016, and Sales Before September 18, 2015

77. The settlement provides that if a vehicle was sold or totaled between June 28, 2016, and September 16, 2016 (the opt-out date), the owner is not a member of the class. *See* Settlement Agreement ¶ 2.16(d). Also, because the class is limited to registered owners or lessees as of September 18, 2015, it does not cover people who sold their vehicles before that date. *Id.* ¶ 2.16. A number of excluded individuals object to these exclusions.

78. As an initial matter, since these objectors are not bound by the settlement, and are not signing any sort of release, they lack standing to object.[59] They are free to sue, either

[59] *See, e.g.*, Fed. R. Civ. P. 23(e)(5) ("Any *class member* may object to [a proposed settlement requiring court approval]." (emphasis added)); *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (noting that "non-class members have no standing to object" to a settlement, and that "[i]nterjection of the . . . views of non-class members should proceed via intervention under Rule 24"); *San Fran. NAACP v. San Fran. Unified Sch. Dist.*, 59 F. Supp. 2d

individually or as a group. Moreover, the fact that excluded individuals are lodging a protest and want to be *included* in the settlement is evidence of the fairness of the agreement. *Cf. In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, 295 F.R.D. 112, 152 (E.D. La. 2013) ("Others 'object' because they are not within the Class, but want to participate in the Settlement, presumably because they believe the terms of the Settlement are fair.").

79. With respect to individuals who sold their vehicles prior to disclosure of the fraud, *e.g.*, David Krahmer; Jack Danuser, it is true that they were contributing more pollution to the environment than they realized at that time. *See, e.g.*, Kenneth and Janice McReynolds (pre-September 18, 2015 sellers were injured because they are "environmentally conscious"). Yet, they suffered no economic harm, since they sold their vehicles before the announcement of the fraud and the resulting price drop of the vehicles. As one objector notes, "[i]f the car was sold before September 2015, one can assume [the sellers] are satisfied with what they received for their car at the time of the transaction." (Greg and Andrea Fabian). *Cf. In re Compuware Sec. Litig.*, 386 F. Supp. 2d 913, 920 (E.D. Mich. 2005) (plaintiff was not injured and therefore could not state securities fraud claim where it sold the defendant's stock "long before" the alleged fraud became public). These objectors may now be suffering some anger or resentment relating to their prior ownership, but VW and class counsel were well justified in focusing on those who suffered demonstrable economic loss. The class size would expand dramatically if pre-September 2015 sellers were included. Without a huge infusion of additional money from VW to pay these new class members, the result would be less money available for those with genuine, demonstrable economic injury. In any event, pre-September 18, 2015 sellers can still sue, individually or as a class, because they are not bound by this settlement.

80. The exclusion of sales and totaled vehicles between the period of June 28, 2016, and September 16, 2016, is puzzling. Several people who fall into that category have lodged objections—*e.g.*, Ralph Kirchner, Lauren Priest, Anthony Calandra, and Jacob Levernier. Levernier states that "[t]here is no logical or compelling reason" for this exclusion. One individual, whose car was totaled on August 3, 2016, called the telephone claims assistance line

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1021, 1032 (N.D. Cal. 1999) ("[N]onclass members have no standing to object to the settlement of a class action." (citing *Gould*, 883 F.2d at 284)).

asking for an explanation and was told: "This is what the lawyers wrote up." (Randal Lee Gremel).

81. I was not part of the settlement negotiations, and I have seen no explanation for this two-and-a-half month carve out. June 28, 2016, was the date the settlement was announced, and September 16, 2016, was the deadline to object or opt out. Perhaps there was some concern that allowing participation during that period could lead to manipulation to maximize settlement benefits. No useful purpose is served by speculating about the reason for the carve out. Obviously, it is not satisfying to see a carve out that I cannot explain, and it is troublesome that at least one consumer who falls into that gap was given such a useless "explanation" by the VW settlement hotline. Yet, I do not see this carve out as a basis for invalidating the $10 billion-plus settlement. These individuals are excluded from the class, and thus preserve their rights to sue VW, either individually or on a group basis. Moreover, as noted, the Court cannot force the parties to modify the settlement to include those who are in the gap. *See* ¶ 35. In short, I do not see the gap as a legitimate ground to reject a deal that offers substantial benefits to about 475,000 class members.

9. Subcategories of Class Members Claiming Disproportionate and Unique Unfairness

82. Several objectors assert that one or more subcategories of class members are treated unfairly by the settlement. These subcategories include those who purchased their vehicles shortly before the fraud was announced; those who have owned their vehicles the longest; those who leased their vehicles; those who sold their vehicles after the fraud was announced; those who financed their vehicles with auto loans; and those who hired individual attorneys. I address each subcategory in turn.

a. Those Who Purchased Their Vehicles Shortly Before The Fraud was Announced

83. A number of class members purchased their vehicles within weeks (or even days) of the announcement of the fraud. For those individuals who purchased new vehicles, the difference between the price paid and the trade-in book value is substantial, given the short period of ownership. As one objector noted, "it is often joked (with some basis in fact) that a newly purchased passenger vehicle depreciates by many thousands of dollars the *moment* the newly

purchased vehicle is driven off the dealer's premises." R. Kent Roberts (emphasis in original). Or as one prominent blue book notes: "The *minute* a person drives a new car off the lot, it loses approximately 10 percent of its value. By the end of the first year, that car will lose an additional 10 percent on average." *What to Consider: Car Depreciation*, CARFAX, https://www.carfax.com/guides/buying-used/what-to-consider/car-depreciation (last visited Sept. 26, 2016) (emphasis added).[60]

84. Several objectors offer specific dollar and percentage figures, which I have not attempted to independently verify. Christi and Gary Garfinkel, for example, claim that they bought their car on June 1, 2015, for $37,309, and have been offered a trade-in price of $24,121 (which presumably does not include the restitution payment). That is a 35-percent depreciation for 10 weeks of use. Similarly, Michael Petre claims that he bought a car on August 7, 2015, for $30,554, drove it 42 days before the fraud was announced, and was given a trade-in price of $25,975, for a $4,579 reduction in just 42 days. Kathryn and Don McKnight claim that they bought a car on September 11, 2015, one week before the scandal broke, for $22,325. They state, based on their research, that the trade-in value is $16,975. Matthew Lasner claims that the value of a car he bought on September 1, 2015, dropped nearly 29 percent in 17 days. And John Vanderheyden claims that the car he bought on July 2, 2015, depreciated 24.97 percent in two months and 16 days.

85. Of course, the depreciation figures cited by objectors are not surprising, as the authorities discussed in ¶ 83 reveal. As noted, it is common knowledge that anyone who buys a new car immediately suffers a huge depreciation hit. But the unfairness alleged here is that, but for the fraud, the affected class members never would have considered selling their (basically) new cars. For example, David Pasik, Jr. states, "I feel like I am being FORCED to go out and replace this car" (all capitalization in original); James and Jamie Maslanka note that they "had planned to keep the vehicle"; and Adam Johnson states that his vehicle "was a long-term purchase." Thus, according to objectors, VW should provide full compensation for the depreciation suffered by class members who recently purchased new vehicles.

[60] *See also, e.g.*, *Depreciation Infographic: How Fast Does My New Car Lose Value?*, Edmunds.com, www.edmunds.com/car-buying/how-fast-does-my-new-car-lose-value-infographic.html (last visited Sept. 26, 2016) (an average new car with a purchase price of $29,873 depreciates $2,559 in the first minute "as you leave the [dealer's] lot").

86. An analysis that simply compares the price paid against the Clean Trade-In value is incomplete; it fails to acknowledge the substantial additional compensation in the form of restitution. As noted in ¶ 40, the settlement structure ensures a minimum of 112.6 percent of *retail* blue book value. Thus, while the settlement does not reimburse for 100 percent of the full price paid for purchases close in time to the announcement of the fraud, it provides sufficient compensation for the class member to purchase another comparable late model vehicle (whose owner similarly suffered a depreciation hit). For instance, a "demo" vehicle or a late-model used car might be found at a price significantly below that of a new car.[61] For that reason, I do not believe the failure to provide full reimbursement renders the settlement unfair.

87. Indeed, as discussed below, some objectors argue that recent purchasers are given an unfair *advantage* under the settlement.

b. Those Who Have Owned Their Vehicles the Longest

88. In a telling example that any line-drawing may provoke objections, numerous class members who purchased their cars years ago say that they are *disadvantaged* vis-à-vis owners who purchased their cars more recently. (Of course, as I just discussed, recent owners claim that *they* are the ones who are being treated unfairly.) Those who purchased their cars years ago zero in on the amount of the restitution payment, which is tied to the value of the vehicle (*i.e.*, 20 percent of the pre-fraud-disclosure NADA Clean Trade-In value). As objector Eric Welborn put it, "it is categorically unjustifiable that owners who have owned cars the longest, and therefore were duped into polluting the most, should receive the least amount of restitution payment." Likewise, Deborah Quinn has noted that "[r]estitution for older cars has been devalued . . . . I am every bit as inconvenienced, if not more so, as the person with the newer car."

89. The rationale of these objectors is that "[t]hose who have used more miles and those who have older cars technically were defrauded longer and were a party to VW's illegal actions

[61] *What is the Real Deal With Buying a Demo Car*, Consumer Reports, http://www.consumerreports.org/cro/news/2009/03/what-is-the-real-deal-with-buying-a-demo-car/index.htm (last visited Sept. 26, 2016) (noting that "[l]ate model used cars can be a great buy due to the fact that they have already gone through the period of greatest depreciation (the first 2–3 years), yet still offer contemporary levels of comfort, fuel economy, safety, and performance"); *See* Philip Reed, *Can Buying a Demo Car Save You Money*, Edmunds.com (June 21, 2013), http://www.edmunds.com/car-buying/can-buying-a-demo-car-save-you-money.html (discussing demos).

longer" (David Macdonald). Under that theory, long-term owners should recover more, not less, restitution than recent owners.[62]

90. There were many possible ways to design the restitution formula, and basing it on a percentage of NADA Clean Trade-In value is certainly reasonable. That is especially so given that recent buyers of new cars are disadvantaged (as noted in ¶ 83) with respect to depreciation. At bottom, there are features of the settlement that favor recent buyers and features that favor those who bought years ago. That is the nature of compromise, and the pluses and minuses for various categories reflect that the terms were designed to strike a fair balance. Importantly, despite the restitution structure, drivers who have owned their cars the longest—just like those who have owned their cars for only a short period of time—will recover at least 112.6 percent of the retail value of their vehicles prior to the disclosure of the fraud. Moreover, despite the age of the vehicle, the settlement guarantees a restitution payment of at least $5,100. *See* Settlement Agreement Ex. 1, § 5.

c. Eligible Lessees

91. Many of the class members impacted by VW's conduct are lessees rather than owners. Under the settlement, a lessee's restitution consists of a variable component (10 percent of the vehicle's Clean Trade-In value, adjusted for options but not mileage) and a fixed component ($1,529). Settlement Agreement, Ex. 1(9). As plaintiffs' expert Edward Stockton notes, "[p]ayments to lessees are equal to approximately one-half of the payments (over [Clean Trade-In value]) to purchasers." Stockton Decl. ¶ 34, at 18. Because they do not own the vehicles, lessees obviously recover much less than similarly situated owners. Yet a number of objections, focusing on the bottom line, complain about the low numbers. These include Michael DeTardo ($6,357), Robert Burdette ($3,681), and Shaun Coetsee ($3,086.50). Some, such as Robert Burdette and Sean Von Manowski, complain that the formula ignores the fact that, but for the fraud, they intended to buy their vehicles at the end of the lease. Some objectors simply ignore the economic realities of a lease. For instance, Luke Hueber states that "[a] Lessee should have the same rights and monetary compensation as a Purchaser" (boldface omitted).

[62] Alternatively, a few objectors argue that the restitution payment should be the same across the class. As objector Gene Steele put it, restitution for false advertising "should not be different based on the age of the vehicle."

92. The bottom line here is that a lease is not a purchase. As Stockton explains, "[l]essees generally retain their vehicles for shorter time periods than do purchases, and, as a consequence, would have had their subsequent purchases accelerated less by the scandal than did purchasers." Stockton Decl. ¶ 34, at 18. In addition, lessees "tend to have strict mileage limitations" under their leases. *Id.*; *see also id*. (noting other differences between lessees and purchasers). For this reason, the notion that lessees "should have the same rights and monetary compensation" as owners is illogical, and the settlement properly rejected that approach. Moreover, while some objectors state that they intended to keep their vehicles at the conclusion of the lease, it would not be feasible to have a payout structure based on class members' statements regarding their intent. Thus, I do not believe that the settlement's treatment of lessees is unfair.

d. Eligible Sellers

93. The settlement defines an "Eligible Seller" as someone who purchased a covered vehicle before September 18, 2015, and sold or otherwise transferred ownership (including to an insurance company) after September 18, 2015, but before the settlement was announced on June 28, 2016. Settlement Agreement ¶ 2.31. The settlement provides an "Eligible Seller" with 50 percent of the restitution amount for the vehicle in question, namely, 10 percent of the vehicle's Clean Trade-In value and a fixed payment of $1493, with a $2,550 minimum. Settlement Agreement, Ex. 1, § 7. At bottom, the seller and the purchaser share in the recovery. Not surprisingly, various objectors complain about the split. Some, including Karen and Jason Hegener, Walter Coyle, and Barry Lopez and Debra Gwartney, claim that the sellers are being cheated vis-à-vis the purchasers. As Kenneth Stockbridge puts it, while he suffered a loss, current owners "enjoy a windfall." Or as Mary Ulmo explained, the person who bought her car (which she traded in on December 5, 2015) "was well aware of the fraudulent diesel testing procedure." Justin Beltz likewise explains that "the settlement arbitrarily provides an unreasonably large amount of compensation to the new owner," and in his submission he proposes his own formula. Of course, counterarguments can be made. For instance, Christopher Reinhard argues that Eligible Sellers should not be able to get *any* of the recovery that would otherwise go to the buyer. In his view, the owner should not be punished for "the Eligible Seller's mistake of selling the car 'early.'"

94. Moreover, calculating seller compensation based on each seller's individual vehicle sale would create a substantial administrative burden, requiring individual inquiry as to the circumstances of each sale. As discussed in ¶ 47, line-drawing is inevitable in a settlement like this. Here, the parties chose to provide a 50/50 split. Other divisions were possible, although other allocations no doubt would have led to objections as well. At bottom, the mere fact that the line could have been drawn differently does not, in my view, make the settlement unfair.

e. Class Members Who Purchased With Loans

95. The settlement agreement has a special formula for loan forgiveness. VW agrees to pay the lender "the full amount required to pay off" the outstanding loan, up to 130 percent of the sum of the Clean Trade-In value and restitution. Settlement Agreement, Ex. 1 § 14. In other words, the settlement provides special assistance to borrowers who have fallen behind in their payments. Thus, the 30 percent does not go to the borrower; it goes to the lender to help pay off the loan. While some class members who took out loans are still not happy, *e.g.*, Greta and Russ Miller (payment "should include the interest paid on our loans until [the] cars are bought back"), the more emphatic objections are by those who do *not* benefit—those who are *not* "under water" in their loans. For instance, Leo Bonser complains that such borrowers "should not benefit from the settlement more than those who have maintained their loans in a positive state." Similarly, Christopher Reinhard complains that the borrowers who benefit are doing so "because of their own poor choices." Thus, some of the objections assert not that class members are getting too little, but rather that some are getting too much. But analyzing this issue from the standpoint of fairness (and compassion), I cannot conclude that the settlement is unfair. This part of the settlement simply helps those who are in a difficult loan situation to pay off their loans.

f. Those Who Hired Their Own Attorneys

96. A number of objectors—or lawyers writing on their behalf—seek recovery of attorneys' fees as an element of compensation for individual class members. *E.g.*, Heather and Dallas Manlunas; Norma and Jose Trujillo; Rodney Caldwell; Casandra Lane; Christopher Casey; Steve Hendershot. These requests are unusual because class members are seeking payments not as part of the Rule 23(h) attorneys' fee assessment but as part of the damages awarded to class members. They claim that the failure to provide such fees is unfair.

97. In some instances, the amounts sought are substantial. For example, class member Robert Collins seeks attorneys' fees of $21,000 for work done solely on his case; Cheryl Lawrence seeks $10,380 for attorneys' fees incurred by Teig Lawrence; Heather and Dallas Manlunas seek $7,301.51 for fees incurred in their case; and Vickie and Korey Jones seek attorneys' fees of $5,000 for work done in their case.

98. The failure of the settlement to provide for fees incurred by attorneys representing individual plaintiffs does not, in my view, render the settlement unfair. To the contrary, these requests reinforce the wisdom of a classwide resolution of this matter. Even using the low-end amount of $5,000, which is less than 25 percent of the fees that Collins's attorney has accumulated, a similar request for each class member (about 475,000 x $5,000) would add an additional $2.375 billion to the settlement cost—to pay for attorneys who played no role in settling the case, propounding or responding to discovery, or reviewing the millions of documents produced by VW. And even if (as is more likely) only a small fraction of class members hired lawyers, those who did not will be upset to learn that they could have had reimbursable legal advice, and they no doubt will insist on receiving the $5,000 that they "saved" VW by not hiring their own attorneys.

99. If attorneys for individual class members believe that they are entitled to a fee award, they can raise the issue at the Rule 23(h) hearing, when fees for class counsel will also be addressed. The question before this Court is whether the settlement is fair. To the extent that individual class members hired attorneys to perform services that redounded to the benefit of the class, that will be taken up when they apply for attorneys' fees at the appropriate time. If the attorneys delivered non-class benefits to their clients, that is a matter of private, non-class consideration. And if the attorneys delivered no benefits to their clients, that, too, is a matter of contract fulfillment between each individual client and his or her attorney.

10. Failure to Compensate for Punitive Damages or Intangible Harms

100. Finally, a number of objectors argue that class members should be given added awards, wholly apart from compensatory damages, in light of VW's reprehensible conduct. For example, Stephen Schmidt argues that the $10 billion-plus settlement should be increased to $50 billion. Andrea Torrens and Lawrence Smith opine that VW "should be made to pay at least double, if not triple, the penalty part of the equation." Steve Anderson asks for an additional ten percent of

the purchase price of his vehicle as a punitive component. Alan Powell asks for $5,100 in punitive damages. Others request punitive damages without specifying an amount, arguing that a sizeable punitive award should be included to "send VW and other car companies a message" (Susan Allesi).

101. In addition, several objectors request compensation for pain and suffering, stress, inconvenience, and humiliation. For example, Todd Shenk requests "additional restitution to cover the anxiety and angst we consumers are going through," W. Clinton McSherry, II requests "compensation for the psychological damage inflicted by [VW's] crime," and Greg Slack complains that the settlement fails to provide damages for "stress," his "personal time" monitoring the recall, the fraud's "impact on his health," and the fact that "he loved [his car] and [is] disappointed for losing it." (all capitalization omitted).

102. It is not realistic to expect that VW would agree to pay significant sums in settlement (above the current $10.033 billion) representing punitive damages. Indeed, the settlement makes clear (presumably at VW's insistence) that in settling, VW makes no admission of wrongdoing. Settlement Agreement ¶ 16.16.

103. Courts routinely approve settlements that "offer no or little compensation representing the risk of a punitive damages award." *In re Oil Spill By the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 295 F.R.D. 112, 155 (E.D. La. 2013).[63] Similarly, in my experience settlements of cases involving economic harm rarely earmark separate recovery to award for pain and suffering, inconvenience, and the like.

104. Much of the anger in these objections comes from the sense that, for VW, this settlement is little more than a slap on the wrist. *E.g.*, W. Clinton McSherry, II ("[I]t seems to me that VW is getting a free pass . . . ."); Richard Hay, Jr. ("[VW] does not deserve to be rewarded for [its] fraud."); Linda Webb ("[T]he attorneys in this case just accepted what VW was willing to offer."); Prescott Douglass ("Th[e] low ball compensation offer is insulting and

[63] *Accord, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999) (district court did not abuse its discretion in approving settlement where there was "speculative possibility of punitive damages"); *Draney v. Wilson, Morton, Assaf & McElligott*, No. Civ. 79–1029, 1985 WL 5820, at *3 (D. Ariz. Sept. 30, 1985) (approving settlement and reasoning that "[a]ny award of punitive damages would be highly speculative"); *cf. Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) ("[C]ourts generally determine fairness of an antitrust class action settlement based on how it compensates the class for past injuries, without giving much, if any, consideration to treble damages.").

unacceptable."); Todd Turner ("Volkswagen's buy back settlement does not provide appropriate disgorgement of ill-gotten gains acquired through fraud."). In fact, however, this settlement is anything but a slap on the wrist. In addition to the $10.033 billion funding pool for the private settlement, VW has agreed to pay $2.7 billion to support environmental programs that will reduce NOx levels to what they would have been had the fraud not occurred. In other words, the money will allow the environmental harm caused by VW to be completely remediated. VW will also invest $2 billion for efforts to promote public awareness of emission-free vehicles.

105. This settlement, in short, will inflict substantial pain on VW. Significantly, as plaintiffs' expert, Edward Stockton, has explained, "VW likely received less in gross receipts for these subject vehicles than it must pay in this settlement." Stockton Decl. ¶ 33, at 17. Moreover, "VW's profit on the subject vehicles would have been much lower than its gross receipts." *Id*. VW will not be permitted to resell vehicles that it buys back until those vehicles have "received an approved emissions modification." Settlement Agreement ¶ 4.4.3 (capitalization omitted).

106. Moreover, this settlement is only part of the picture. On the criminal side, one VW engineer pleaded guilty to federal charges earlier this month, and some expect that criminal charges will be filed against other VW officials.[64] Moreover, VW is facing substantial fines. For instance, VW will pay the state of California a $76 million civil penalty.[65] And "the U.S. Department of Justice is assessing how big a *criminal* fine it can extract from [VW] over emissions-cheating without putting the German carmaker out of business . . . ."[66] And, while VW's stock has picked up in recent months, one should not overlook the possibility of long-term harm to the VW brand as a result of the scandal.[67] Thus, while it is clear that VW's conduct was deplorable, the consequences for VW are significant and historic.

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[64] *See* Hiroko Tabuchi & Jack Ewing, *VW Engineer Pleads Guilty in U.S. Criminal Case Over Diesel Emissions*, N.Y. Times (Sept. 9, 2016), http://www.nytimes.com/2016/09/10/business/international/vw-criminal-charge-diesel.html?_r=1.

[65] *See* Chris Perkins, *VW Will Pay California an Additional $86 Million in Diesel Cheating Fines*, Road & Track (July 7, 2016), http://www.roadandtrack.com/new-cars/car-technology/news/a29881/vw-california-emissions-fine/.

[66] Tom Schoenberg & Alan Katz, *U.S. Said to Ponder What Size Diesel Penalty VW Can Stand*, Bloomberg (Sept. 27, 2016), http://www.bloomberg.com/news/articles/2016-09-27/u-s-said-to-ponder-what-size-diesel-penalty-vw-can-withstand (emphasis added).

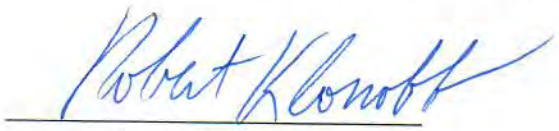
[67] *See, e.g.*, William Boston, *VW Diesel Scandal Hurts Second-Quarter Profit*, Wall St. J. (July 20, 2016), http://www.wsj.com/articles/volkswagen-first-half-earnings-beat-expectations-1469008406 (noting that VW "has a long way to go to overcome its emissions-cheating scandal); Saralyn Lyons, *Road to Recovery: How Does*

VI. CONCLUSION

107. In my opinion, none of the objections challenging the sufficiency of the relief afforded to class members undermines the fairness, reasonableness, and adequacy of the class settlement. That is true whether the objections are viewed individually or collectively.

Volkswagen Bounce Back From Emissions Scandal, HUB (Dec. 7, 2015), http://hub.jhu.edu/2015/12/07/volkswagen-scandal-explained-sylvia-long-tolbert/ (discussing damage to VW's brand).

I declare that the foregoing is based on information known to me and that it is true and accurate to the best of my knowledge, subject to the laws against perjury pursuant to 28 U.S.C. § 1746.



Robert H. Klonoff

September 30, 2016

APPENDIX A: CURRICULUM VITAE

ROBERT H. KLONOFF
Lewis & Clark Law School
10015 SW Terwilliger Blvd.
Portland, Oregon 97219
Tel: 503-768-6601 (Office)
E-Mail: klonoff@lclark.edu

Date of Birth: March 15, 1955
Place of Birth: Portland, Oregon

EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics (Highest Honors)

WORK EXPERIENCE:

Current Position:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991, 2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Elected Member, International Association of Procedural Law

Selected in November 2013 for the J. William Fulbright Specialist Roster

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Member, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Fellow, American Academy of Appellate Lawyers

Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Elected Member, American Law Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West Publishing Co. 2016)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West Publishing Co. 2d ed. 2016) (forthcoming)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2016) (forthcoming)

Klonoff, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2016) (forthcoming)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 4th ed.) (2012)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed.) (2012 and 2013 update) (with teacher's manual)

Klonoff (associate reporter), *Principles of the Law of Aggregate Litigation*, American Law Institute Publications (2010)(along with Samuel Issacharoff, reporter, and associate reporters Richard Nagareda and Charles Silver)

Castanias & Klonoff, *Federal Appellate Practice and Procedure in a Nutshell* (Thomson West) (2008)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (NITA 3d ed.) (2007)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 3d ed.) (2007)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (Thomson West 2d ed.) (2006) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 2d ed.) (2004)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (Lexis Nexis 2d ed.) (2002)

Klonoff & Bilich, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West Group 2000)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West Group 1999)

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie Co. 1990)

Articles and Book Chapters:

Class Actions in the Year 2025: A Prognosis, 65 Emory L.J. 1569 (2016)

Why Most Nations Do Not Have U.S.-Style Class Actions, 16 BNA Class Action Litigation Report, Vol. 16, No. 10, at 586 (May 22, 2015) (selected for presentation at the May 2015 World Congress of the International Association of Procedural Law, Istanbul, Turkey)

Federal Rules Symposium: A Tribute to Judge Mark R. Kravitz -- Introduction to the Symposium, 18 Lewis & Clark L. Rev. 583 (2014) (co-author)

Class Actions for Monetary Relief Under Rule 23(b)(1)(A) and (b)(1)(B): Does Due Process Require Notice and Opt-Out Rights?, 82 Geo. Wash. L. Rev. 798 (2014)

The Decline of Class Actions, 90 Wash. U. (St. Louis) L. Rev. 729 (2013)

Reflections on the Future of Class Actions, 44 Loy. U. Chi. L.J. 533 (2013)

Richard Nagareda: In Memorium, 80 U. Cin. L. Rev. 289 (2012)

Introduction and Memories of a Law Clerk, 47 Houston L. Rev. 529, 573 (2010)

ALI's Aggregate Litigation Project Has Global Impact, 33 ALI Reporter 7 (Fall 2010)

Book Review, *In the Public Interest*, 39 Env. Law 1225 (2009)

The Public Value of Settlement, 78 Fordham L. Rev. 1177 (2009)(co-author)

Making Class Actions Work: The Untapped Potential of the Internet, 69 U. Pitt. L. Rev. 727 (co-author)(2008), adapted and published in 13 J. Internet Law 1 (2009)

The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements, 80 Tul. L. Rev. 1695 (co-author) (2006)

The Twentieth Anniversary of Phillips Petroleum v. Shutts, *Introduction to the Symposium*, 74 UMKC L. Rev. 433 (2006)

The Adoption of a Class Action Rule: Some Issues for Mississippi to Consider, 24 Miss. C. L. Rev. 261 (2005)

Antitrust Class Actions: Chaos in the Courts, 11 Stan. J. L. Bus. & Fin. 1 (2005), reprinted in Litigation Conspiracy: An Analysis of Competition Class Actions (Stephen G.A. Pitel ed. Irwin Law 2006), and 3 Canadian Class Action Review 137 (2006)

The Judiciary's Flawed Application of Rule 23's "Adequacy of Representation" Requirement, 2004 Mich. St. L. Rev. 671 (2004)

Class Action Rules — Are They Driven by Substance?, 1 Class Action Litigation Report 504 (Nov. 10, 2000) (co-author)

Response to May 2000 Article on Sponsorship Strategy, 63 Tex. B.J. 754 (Sept. 2000) (co-author)

A Look at Interlocutory Appeals of Class Certification Decisions Under Rule 23(f), 1 Class Action Litigation Report 69 (May 12, 2000) (co-author)

The Mass Tort Class Action Gamble, 7 Metro. Corp. Counsel 1, 8 (Aug. 8, 1999) (co-author)

"Legal Approaches to Sex Discrimination" (co-author), in H. Landrine & E. Klonoff, *Discrimination Against Women: Prevalence, Consequences, Remedies* (Sage Pub. 1997)

Sponsorship Strategy: A Reply to Floyd Abrams and Professor Saks, 52 Md. L. Rev. 458 (1993) (co-author)

A Trial Lawyer's Roadmap for Handling Bad Facts: The Role of Credibility, 16 Trial Diplomacy Journal 139 (July/Aug. 1993) (co-author)

Opening Statement, 17 Litigation 1 (ABA Spring 1991) (co-author)

Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 Harv. J. Legis. 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979) (co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L. Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as counsel

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Served as a class action expert witness in numerous federal and state cases, including the British Petroleum Deepwater Horizon oil spill class settlement and the National Football League Concussion class action settlement

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Invited Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Invited Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Invited Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Invited Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller, Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Co-operation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on "Sponsorship Strategy" (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER LEGAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Member, Advisory Committee, Lawyers' Campaign for Equal Justice (Portland, Oregon)

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens' Crime Commission (Portland, Oregon) (2007-2011)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers' Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans' rights)

Helped to develop walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.

EXHIBIT 2

Elizabeth J. Cabraser (State Bar No. 083151)
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LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Plaintiffs' Lead Settlement Class Counsel
(Plaintiffs' Settlement Counsel Listed on Signature Page)

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) **DECLARATION OF ELIZABETH J. CABRASER REGARDING 2.0-LITER SETTLEMENT CLASS COMMUNICATIONS** Hearing: October 18, 2016 Time: 8:00 a.m. Courtroom: 6, 17th floor The Honorable Charles R. Breyer

I, ELIZABETH J. CABRASER, declare:

1. I am an attorney admitted to the Bars of the State of California and the Northern District of California, am a counsel of record for plaintiffs in these proceedings, and serve, pursuant to Pretrial Order No. 7, (January 21, 2016) (Dkt. No. 1084), as Lead Plaintiffs' Counsel.

2. I am currently acting, pursuant to this Court's Amended Order Granting Preliminary Approval of Settlement (July 26, 2016) (Dkt. No. 1698), as Settlement Class Counsel for the Proposed 2.0-liter TDI Consumer and Reseller Settlement Class.

3. Since the date of the filing of proposed Class, DOJ/EPA, and FTC settlements, and their posting on the Court's website, on June 28, 2016; continuing through the grant of Preliminary Settlement Approval on July 26, 2016, and through the present day, my firm,

members of other Plaintiffs' Steering Committee/Settlement Class Counsel firms, and other designated Plaintiffs' firms have organized and staffed a Class member response team ("team"), under my supervision. This team has been in daily communication with thousands of class members, providing them with information, including settlement and class notice documentation; answering their questions about the Class Settlement; referring them to this Court's website (cand.uscourts.gov/crb/vwmdl) and to the official settlement website (www.vwcourtsettlement.com); providing them with Eligible Seller forms, and assistance in navigating the settlement registration process as owners or lessees; and generally addressing their oftentimes very specific, detailed and individualized questions and concerns.

4. As of September 30, 2016, the members of the above-described Class member response team have logged over 16,000 such communications, including communications by telephone, by correspondence, and by email with over 8,000 class members. Frequently, the Settlement Call Center (1-844-98-CLAIM), which I am informed has itself received over 105,000 calls, has referred class members to the team for additional information, so that we can answer their specific questions, or deal with their particular circumstances. As a result of these combined resources, class members have had constant access to the settlement documentation, class notice, and information contained on the www.vwcourtsettlement.com website and this Court's website; and access to additional attention and information from Call Center personnel, and from Settlement Class Counsel attorneys and their staff, on a virtually 24-hours-per-day, 7-days-a-week basis.

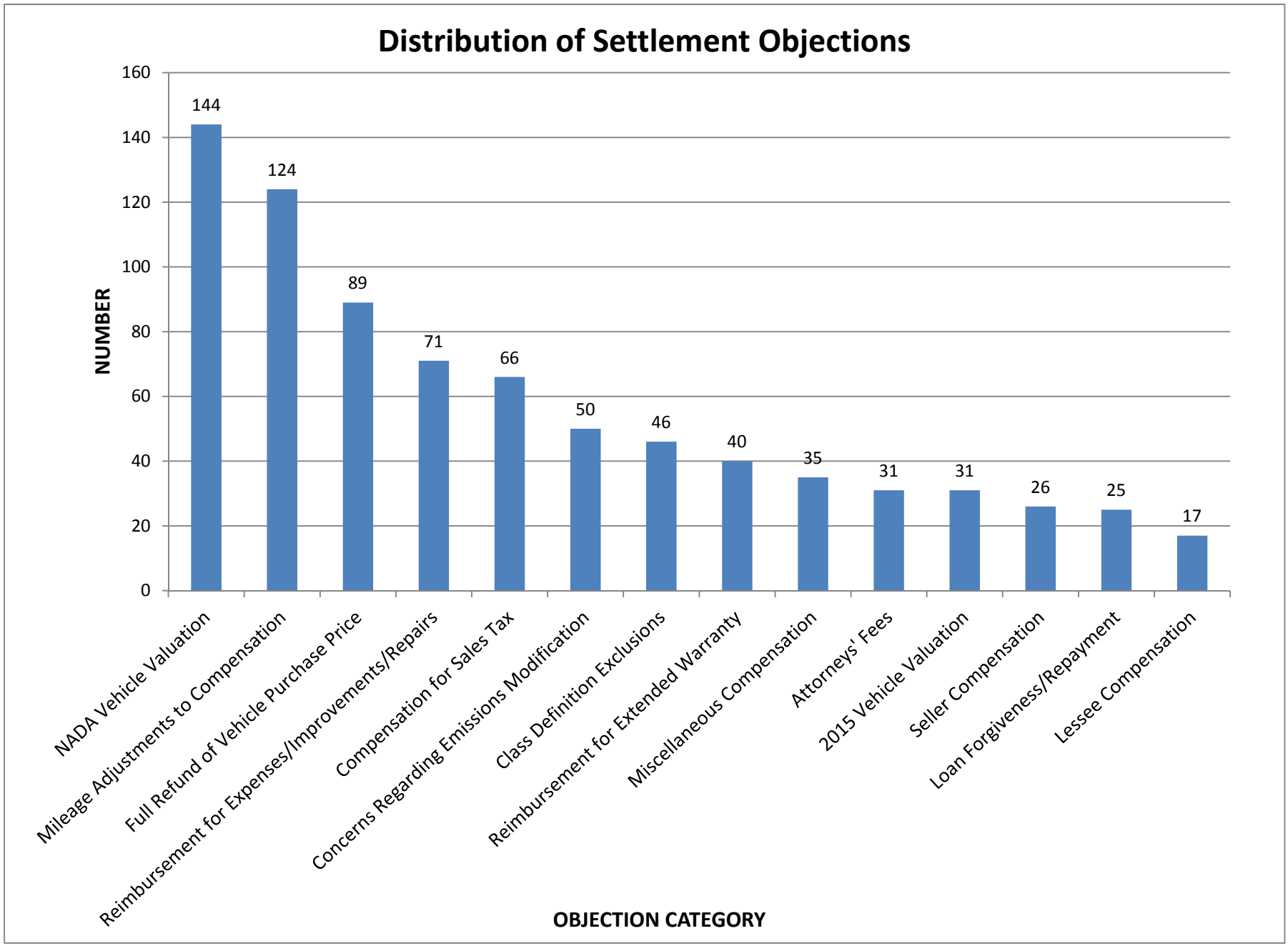
5. We appreciate the fact that for many in the Class, their TDI vehicles, and potential replacement vehicles, represent one of the biggest purchases they will make. We are gratified that they have been so actively involved and have paid such close attention to this settlement, in a way that stands out in the consumer litigation context. We understand and appreciate their need to express their concerns, both for themselves and, notably, also for our environment, and to make their settlement decisions carefully. We are honored to have the opportunity to work with and for them in this case.

6. In addition to access to information and assistance, the Class Notice provided a simple procedure for class members to express concerns or objections to the Settlement, by sending letters to the Court and Class Counsel, with a postmarked deadline of September 16, 2016. Members of the Class response team have reviewed all objections received to inform our reply submissions to this Court. Attached hereto is a list of the 462 timely objections, including both e-filed objections and timely-postmarked letters we received; and a chart, entitled "Distribution of Settlement Objections" showing the general categories into which the objections fall.

7. We are aware that many of these writers have also registered to make settlement claims, and we will continue to assist them, and respond to their requests, as we do for all class members who request it.

I declare under penalty of perjury that the forgoing is true and correct. Executed in San Francisco, California, this 30th day of September 2016.

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser



Note: The sum of all objection categories exceeds the total number of objections because several class members objected to more than one issue.

LIST OF OBJECTORS

1. Adams, Corinne
2. Adams, Joshua
3. Ahlborn, Thomas
4. Ancona, Daniel
5. Aldridge, Amy and Derrick
6. Allesi, Susan
7. Allred, Karl
8. Altvater, Harold
9. Anderson, Robert
10. Anderson, Steve
11. Anderson, William
12. Andrews, Michael
13. Andrianos, Harry, et al.
14. Argomaniz, Ramiro and Joy
15. Argon, Cenk
16. Armour, Thomas
17. Atwell, Richard
18. Aungst, Brandy
19. Autoport, LLC
20. Ayer, David
21. Bacon, David
22. Baldwin, Hilary and David
23. Ball, George
24. Banks, Richard
25. Barrera, Martha, et al.
26. Barrie, Glenn
27. Barry, Kevin
28. Bartlett, Barbara
29. Bateman, Tim
30. Beltz, Justin
31. Bentler, Katarina
32. Berdyck, Jason
33. Bigler, Wallace
34. Black, Donna and Brantlinger, Jeffrey
35. Blake, Beatrice
36. Blankenship, Rachael
37. Blesch, Lauri
38. Bloir, Alexsandra
39. Bodor, Judith
40. Bonser, Leo
41. Borella, Barry
42. Bowell, Edward and Adriana
43. Brace, Constance and Paul Higman
44. Brennan, Sean and Peggy
45. Brereton, Kristine
46. Briggs, Chad
47. Brighton, Hilary
48. Brittain, Glenn, et al.
49. Burdette, Robert
50. Burkhart, Michael
51. Burley, David and Suchi
52. Burns, Michael
53. Burtron, Timothy
54. Buza, James
55. Calandra, Anthony
56. Caldwell, Rodney
57. Camacho, Lizbeth
58. Campbell, Stephen
59. Carlsson, Kristopher
60. Carniglia, S. Davis
61. Carpe, Joseph
62. Carpenter, David
63. Carroll, Betty
64. Carvalho, Sonia Izabel Pinheiro
65. Casey, Christopher
66. Chadwick, Nick and Cristina
67. Chavez, Jose
68. Chechik, Marc
69. Chiacu-Forsythe, Christine
70. Christianson, Jay
71. Chronis, Kathryn
72. Cieri, Steven
73. Clarke, Robert
74. Coetsee, Riaan
75. Coetsee, Shaun Andre
76. Collins, Robert A.
77. Collins, Shannon
78. Comlish, Matthew
79. Conyne-Rapin, Zachary R.
80. Corrigan, Thomas
81. Costa, Joanne
82. Courtney, Robert
83. Covey, Joy
84. Coyle, Walter
85. Cummings, Jr., William Lee
86. Cunningham, Curtis
87. Cutler, Mark
88. D'Angelo, Christopher
89. Daniel, Trae
90. Danuser, Jack and Rhonda
91. Day, Susan and Douglass

92. de Solenni, Mario
93. Demarest, Leo and Mary
94. Denman, Benjamin
95. Denton-Rodriguez, Charles
96. Deseta, Troy
97. DeTardo, Michael Douglas
98. Dickel, Daniel and Deuk Mi Koh
99. Dietrich, Mark
100. DiGiovanni, Dean
101. Disher, Rose
102. Dodge, Deborah
103. Dodson, Kenneth
104. Dooley, W. Kyle
105. Douglass, Prescott
106. Downing, Roger
107. Dryak, Anthony and Loraine
108. Dunn, Daniel
109. Dworak-Fisher, Keenan and Sally
110. Earnest, Randolph
111. Eckman, James
112. Eckstein, Ryan
113. Edge, Robert
114. Ehrat, Daniel
115. Eisert, William
116. Elhillali, Sagid
117. Ellis, Jerry
118. Emerson, Erik and Anne
119. England, Matthew
120. Epler, Robert
121. Estrella, Mark
122. Eubanks, Kurt
123. Evans, William and Faith
124. Fabian, Greg and Andrea
125. Fatupaito, Pita
126. Feher, Bela
127. Fields, Justin
128. Finelli, Christopher M.
129. Fiumara, James
130. Fleshman, Jr., Ronald Clark
131. Fort, Eric
132. Fox, Gary
133. Frane, Donna and Timothy
134. Frankfurth, Daniel
135. Franzen, Robert and Susan
136. Frommelt, Gayle
137. Fuller, Alan and Marilyn
138. Fuller, Dillon
139. Fulwiler, Russ P.
140. Funsten, James
141. Garfinkel, Christi and Gary
142. Garten, Jason
143. Gatto, Jordan David
144. Gibb, Ronald
145. Gibson, Donna and Richard
146. Gleim, Diane
147. Glenn, Kevin
148. Glenn, Vanessa
149. Goeman, Rod
150. Gordon, Kathleen
151. Gosselin, Pauline and Joseph
152. Gottwalt, Mark
153. Gow, Richard and Martha
154. Gowan, Robert and Cara
155. Gratchner, Jay
156. Gremel, Randal Lee
157. Gridley, Gareth and Donna
158. Gromala, Joseph
159. Grossman, Adam
160. Gustafson, Jeanne
161. Habib, Kirk
162. Haines-Murdocco, Sandra
163. Haller, Patrick B
164. Halydier, Aaron
165. Hanson, Antonietta and Gregory
166. Hardinger, David
167. Harris, Terri
168. Hata, Torrey
169. Hay, Jr., Richard
170. Hegener, Karen and Jason
171. Heminway, Lisa J.
172. Hendershot, Steve
173. Henning, Kristin
174. Henry, Michael and Lynn
175. Henry, Robin
176. Henson, Suzette
177. Hill, D. David
178. Hinman, Richard
179. Hoag, James
180. Hooker, Dawn Allysa
181. House, Emma
182. Howard, Anne and James
183. Hueber, Luke
184. Hughes, Daniel
185. Hughes, Raymond
186. Hyatt, Donald
187. Israelsson, Peter and Janani Nathan

188. Jensen, Kitalena
189. J-Hanna, Ariann
190. Johnson, Adam
191. Johnson, Derek
192. Johnson, Jeffery and Marjorie
193. Johnson, Kenneth
194. Johnson, J. Paul
195. Jones, Scott
196. Jones, Vickie and Korey
197. Kangas, Jolian
198. Kaplan, Michael
199. Karnes, Russell
200. Kaser, Wilford Wayne
201. Kaufman, Marsha
202. Keenan, Mary
203. Kelly, William
204. Kelvin, Juhani
205. Kennedy, Gwen
206. Kessler, David
207. Kilgore, Jeffrey
208. Kirchner, Ralph
209. Kirkwood, Kimberly
210. Klippert, Dave
211. Kolovos, John Peter
212. Komaniak, Todd and Debra
213. Krahmer, David
214. Krouse, Jeffrey and Barbara
215. Kurtz, Kelly
216. Kurtz, Terry
217. Kurzydlo, John
218. Labudde, John and Jing
219. Lance, Norman
220. Lane, Casandra
221. Langley, Amanda
222. Larramendy, Lisa
223. Larson, Justina
224. Lasner, Matthew
225. Latham, James
226. Latino, Frank
227. Lawrence, Cheryl
228. Lawson, William
229. Lecrenski, Nathan
230. Ledbetter, Michael
231. Lennon, Colin
232. Lennon, William
233. Letterman, Paul
234. Levernier, Jacob
235. Li, Jessica Grace and Birner, Alexander D.
236. Lieber, Thomas
237. Linnenbank, Kristen
238. Locke, Kevin
239. Lopez, Barry and Gwartney, Debra
240. Luis, Chris
241. Lujan, Jr., Andres and Lujan, Maria
242. Lutes, John
243. Macdonald, David
244. Mace, Stephen
245. MacNeish, Marion
246. Maes, Sarah
247. Magleby, Dee
248. Mahaffey, Anita
249. Mahan, Roger and Emma
250. Maini, Siddharth
251. Manasse, Guy
252. Manlunas, Heather and Dallas
253. Marks, Joshua
254. Martin, Chris and Sheila
255. Martin, John and Julie
256. Martinez, Daniel
257. Maslanka, James and Jamie
258. McCasland, Myron
259. McClary, Susan
260. McDougal, Charles
261. McGloon, Kevin
262. McGlynn, Mitchell Kelly
263. McGuinness, Thomas
264. McKinley, Jody
265. McKinnie, Bill
266. McKnight, Don and Kathy
267. McReynolds, Kenneth and Janice
268. McSherry, William
269. Meehan, Robert
270. Meleski, Kenneth
271. Mihaescu, Gunter
272. Milenbach, Jerald and Iorns, Jody
273. Miller, Greta and Russ
274. Miranda, Gregory and Nancy
275. Mjelde, Matthew
276. Moczygemba, Debra
277. Moharram, Shereef
278. Montes, Jennifer and James
279. Moonan, Melisa
280. Morgan, Daniel and Rachel
281. Morita, Fred S.

282. Morse-Buszard, Michelle
283. Mosher, Ronald
284. Moss, Glen
285. Murphy, Allison
286. Murphy, Kerri
287. Muschio, Henry
288. Myers, Nicholas
289. Naas, Jeffrey and Alvarez, Michelle
290. Nadeau, Michael
291. Nedwick, James and Patricia
292. Newick, Karl
293. Nicolai, Scott
294. Niehaus, Thomas
295. Nielson, Erika
296. Nightingale, Daniel
297. Nippoldt-Baca, Lisa
298. Nitayangkul, Kathy
299. Noble, Steven
300. Oates, James
301. Oberhelman, Leslie and Harry
302. Obijiski, Regis
303. Odor, Merritt and Klaren
304. Offenberg, Jr., John
305. Ogburn, Robert
306. O'Hara, Shaun
307. Oppihle, Kevin
308. Osedach, Ron
309. Oshel, Robert
310. Ostrowski, John
311. Oyerly, Philip
312. Page, Margaret
313. Parekh, Chitra
314. Park, Stephen R.
315. Parker, Delaine
316. Pasik, Jr., David D.
317. Paulsen, David
318. Paulson, Robert
319. Pearson, Duane
320. Pecora, Robert
321. Pendleton, David
322. Penney, Mark
323. Pepler, Andre
324. Perea, Nathan A.
325. Perry, Timothy
326. Petre, Michael
327. Petti, Sharon L.
328. Pfister, Justin
329. Pfluger, Gregory
330. Phelps, Robin and Sherman, Nicana
331. Piotrowski, Sarah
332. Piubeni, Steven and Linda
333. Polson, Gary
334. Ponti-Krivinko, Stephanie
335. Poore, Matthew
336. Ports, Jennifer
337. Poulos, Charles A.
338. Powell, Alan
339. Powell, Stephen
340. Pressly, Joel and Teresa
341. Preyer, Kelly
342. Price, Susan
343. Priest, Lauren
344. Quill, Sophia
345. Quinn, Deborah
346. Raevsky, David
347. Rail, Scott and Pascale
348. Randow, Ralph
349. Raymond, Paul J.
350. Redenius, Randall
351. Rehfeldt, James
352. Reichelsdorfer, Richard
353. Reilly, Thomas and Peggy
354. Reinfandt, Mark
355. Reinhard, Christopher
356. Replogle, Stephen
357. Reynolds, Ernest and Felicia
358. Rice, Linda
359. Rich, Ally
360. Riehle, Matthew
361. Rizzuto, Patricia Claire Dupuy
362. Roberts, R. Kent
363. Roberts, Sharon
364. Roche, James
365. Rock, John
366. Romo, Luis F.
367. Rosato, James
368. Rosborough, Spencer
369. Rothenberg, Glenn
370. Rush, Frederick
371. Salvi, Rick
372. Sass, Jay
373. Schaaf-Richards, Michelle and Ramon Richards
374. Schaffner, Jorn Michael
375. Schmidt, Stephen
376. Schmitz, Matthew

377. Schouten, Richard
378. Schuh, Keith
379. Schumacher, Mindi
380. Schwagel, Donald
381. Schweitzer, Philip R.
382. Scott, Peter
383. Seig, Deena
384. Self, Christopher
385. Self, John
386. Sharpe, George and Debi
387. Shelton, Ralph and Debra
388. Shenk, Todd Douglas
389. Sherman, David
390. Shoemaker, Lawrence and Mary Lou
391. Shore, Patricia and Russell
392. Shuman, Scott
393. Siewert, Greg
394. Siewert, Scott
395. Slack, Greg
396. Sloan, Peter
397. Smith, Clayton
398. Smith, James
399. Smith, Joseph
400. Smith, Kathleen
401. Sodamin, Rudolf
402. Somer, Lenore
403. Speelman, Dale
404. Sprague, Matthew
405. St. John, Laura
406. Steele, Gene
407. Stewart, Blair
408. Stockbridge, Kenneth
409. Straessle, Gregory
410. Strauss, Richard A.
411. Strebel, Leslie
412. Suhr, Jeremy
413. Sweeney, Christopher
414. Tallant, Wallace and Margaret
415. Tank, James
416. Tarazkar, Yassaman
417. Taylor, David
418. Taylor, Kimberly Ann
419. Taylor, William D.
420. Thalasinos, Wayne and Danielle
421. Thomas, Dawn M.
422. Timmons, Hunter
423. Tolbert, James and JoAnn
424. Torrens, Andrea and Smith, Lawrence
425. Treakle, Kevin
426. Trefethen, Salley
427. Trujillo, Norma and Jose
428. Trujillo-Pertew, Ruth
429. Tumasyan, Armine
430. Turner, Todd
431. Ulmo, Mary
432. Vance, Shelby
433. Vanderheyden, John Edward
434. Vejar, Rachel
435. Verrico, Roland
436. von Manowski, Sean
437. Wallace, Kelsey Ann
438. Warren, Donna and Verhegge, David
439. Washington, Paul
440. Webb, Daniel
441. Webb, Linda
442. Weese, Marcia
443. Wegman, Alice
444. Wehrly, David
445. Weinkauf, Sadie
446. Weiss, Michael
447. Welborn, Eric
448. Wertzler, Meredith and Dennis
449. Wheels Inc.
450. Whitcomb, Jan and Koeppel, Joan
451. White, George
452. Winkler, Dusty
453. Winters, Andrew
454. Wise, Thomas
455. Wolf, Bryan
456. Woodward, Chris
457. Woodward, Timothy
458. Yanicky, Richard
459. Yutzy, Glenn Robert
460. Zafian, Peter
461. Zellermayer, Foga
462. Ziegler, Edith and Wilde, Richard

EXHIBIT 3

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KY 40601
(502) 696-5300
FAX: (502) 564-2894

1 T1 P1 **********AUTO**5-DIGIT 40014
JAMES BRUNER
109 HI GROVE HILL RD
BEDFORD KY 40006-8705

September 15, 2016

Dear James Bruner,

Earlier this year, my office sued Volkswagen, Audi, and Porsche over the emissions scandal involving the automakers' purported "Clean Diesel" vehicles. We filed suit to ensure that Kentucky consumers receive fair compensation from the automakers, and to hold those automakers accountable for their actions. As your Attorney General, it is my duty to protect you from the deceptive conduct of any person or business. We have fulfilled that duty here.

Before agreeing to settle our case, we evaluated the options for Kentucky consumers under the national class action settlement, to make certain they would be adequate – they are. Under proposed settlement, which has received the preliminary approval of a federal court, consumers will have the following options:

- A buyback of the vehicle (based on pre-September 18, 2015 market value adjusted for options and mileage), plus a restitution payment, and possible loan forgiveness;
- A lease termination without penalty, plus restitution if currently leasing the vehicle, or restitution if you formerly leased the vehicle; or
- A free approved emissions modification, plus restitution (for owners and lessees).

By now, you should have received notice of the proposed settlement and your options. I strongly encourage you to carefully review the notice and take advantage of your options. Also, please be aware of the following dates that could affect your rights under the proposed settlement:

- Other Class Members must submit their claims prior to September 1, 2018; and
- The Court will hold a final approval hearing on October 18, 2016.

For more information, please visit www.vwcourtsettlement.com and our web site at ag.ky.gov. The Office of the Attorney General cannot represent you privately in this matter and you may want to consult a private attorney to discuss any rights you may have in this matter.

Sincerely,

Andy Beshear

Andy Beshear

EXHIBIT 4

Elizabeth J. Cabraser (SBN 083151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

Lead Counsel for Plaintiffs
(Plaintiffs' Steering Committee Members
Listed on Signature Page)

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)

REPLY DECLARATION OF EDWARD M. STOCKTON

INTRODUCTION

1. My name is Edward M. Stockton. I am the Vice President and Director of Economics Services of The Fontana Group, Inc. ("Fontana"), a consulting firm located at 3509 North Campbell Avenue, Tucson, Arizona 85719. I also serve on the Board of Directors of Fontana and its parent company, Mathtech, Inc. Fontana provides economic consulting

services and expert testimony regarding the retail motor vehicle industry and other industries throughout the United States and Canada.

2. I previously filed a Declaration in this matter on August 22, 2016 ("August Declaration"). My August Declaration describes my qualifications and experience. Plaintiff Steering Committee ("PSC") attorneys requested that I file this Reply Declaration on the topics of (i) sales taxes associated with vehicle replacement purchases by buyback participants and (ii) the question of whether potential higher-mileage behavior among diesel owners receives consideration in the settlement.

Tax Rates:

3. The analytical and negotiating process during settlement discussions included consideration of taxes potentially incurred by buyback participants on replacement vehicle purchases. Paragraph 10 of my August Declaration notes that data available and considered in my analysis includes "relevant tax rates." Paragraph 28 of the same document states that "the buyback formula, in general, would have enabled consumers to buy back their own vehicles in September 2015, in clean retail condition, and pay taxes and other transaction costs on those purchases."

4. The bases for the statements referenced in the prior paragraph included review of state and local tax rate data. The conclusion in paragraph 28 of the August Declaration considered the likelihood that consumers would incur some tax-related replacement costs. That consideration took into account relevant localized tax rates.

Diesel Vehicles and Mileage Adjustment:

5. I am not aware of a standardized industry resource that differentiates mileage tables for diesel-within-model (a diesel option within a model choice) passenger vehicles. However, to the extent that a) diesel passenger vehicle owners drive more miles and expect to drive more miles than non-diesel passenger vehicle owners and b) select vehicles intended to accommodate these behaviors, which the market believes do accommodate these behaviors, then the settlement provides value in line with these conditions. It does so in two ways.

6. First, if before the disclosure, the market perceived that the subject vehicles could be driven for more miles over their lifetimes than corresponding non-TDI vehicles, then the September 2015 NADA CTI values would reflect this positive vehicle attribute through gentler depreciation of TDI models than non-TDI models. Tying compensation amounts to pre-disclosure valuations means that any pre-disclosure perceived positive value of TDI vehicles is captured in the settlement. Second, the mileage adjustment adopted by the settlement can be reasonably expected to provide a more generous mileage adjustment than would conventional market-based mileage adjustments. In this way, it more closely approximates higher-mileage behavior than would conventional market-based mileage adjustments. This is because the mileage adjustment incorporated into the settlement relies upon the September 2015 NADA mileage table, not the mileage table adjustments in effect at the time that the consumer participates in the settlement. While I of course did not have access to future mileage tables, I confirmed, based upon reasonable extrapolations from prior mileage tables, that applying the September 2015 NADA

mileage table to the September 2015 CTI values would result in more generous mileage adjustment than like would result from using then-current mileage tables. Thus, aside from the fact that September 2015 NADA vehicle values already take into account perceived positive attributes of TDI vehicles, the settlement's method for calculating the mileage adjustment likely will provide additional value to consumers who own high mileage vehicles.

Executed this 29th day of September, 2016.

Edward M. Stockton

Edward M. Stockton

EXHIBIT 5

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

A to Z Autosports, LLC,

Plaintiff.

No: 3:15-md-2672

DECLARATION OF SUZANNE SARHAN

Hon. Charles R. Breyer

I, Suzanne Sarhan, declare as follows:

1. I am the Store Manager of A to Z Autosports, LLC, one of the named plaintiffs in the Volkswagen "Clean Diesel" Products Liability Litigation.
2. I have been in regular communication with Attorney, Eric J. Haag, of Atterbury, Kammer & Haag, S.C., and also with members of the Beasley Allen law firm, throughout this case.
3. A to Z has been informed of the proposed settlement and has filed its seller identification form on a timely basis.
4. A to Z was stuck with a VW vehicle that declined in value, was not generating interest from buyers, and was costing us money the longer we held onto it. We got rid of it as fast as we could and sold it prior to June 28, 2016. We understand the need to have a cut-off date in order for the case to move forward efficiently.
5. A to Z supports the proposed settlement and is appreciative of the speed with which

Class Counsel was able to get this case resolved so that we are able to obtain some compensation now instead of waiting for years.

6. A to Z actually provided substantive information that was used by Class Counsel in order to modify the definition of an eligible seller. After the initial proposed draft of the settlement documents were reviewed, we were asked for our input on how dealers take ownership or possession of vehicles after acquisition at auction or upon trade-in, and we suggested language to try and help accurately capture the process and ensure that all resellers would be appropriately included. Class Counsel spent time discussing that issue with us and ultimately implemented many of our suggestions.
7. Counsel has explained the settlement and provided us with documents to review relating to the settlement and we are in favor of the settlement. We believe the settlement to be fair and in the best interests of the reseller class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 29, 2016, in Madison, Wisconsin.

Suzanne Sarhan

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	**No: 3:15-md-2672**
This document relates to: ALL CONSUMER AND RESELLER ACTIONS	**DECLARATION OF ABDULRAHMAN AL DACHACH**
MSI Auto Sales & Repair, LLC, Plaintiff.	Hon. Charles R. Breyer

I, Abdulrahman Al Dachach, declare as follows:

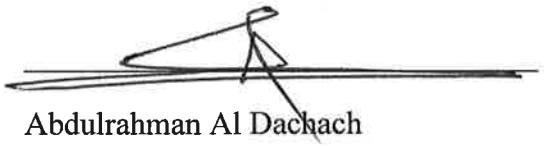
1. I am the owner of MSI Auto Sales, LLC, one of the named plaintiffs in the Volkswagen "Clean Diesel" Products Liability Litigation.
2. I have been in regular communication with Attorney, Eric J. Haag, of Atterbury, Kammer & Haag, S.C., and also with members of the Beasley Allen law firm, throughout this case.
3. I have discussed the proposed settlement with counsel and I have filed a seller identification form on a timely basis.
4. MSI had a VW class vehicle on our lot that declined in value, was not generating interest from buyers, and was costing us money the longer we held onto it. We sold it prior to June 28, 2016. I understand the need to have a cut-off date in order for the case to move forward efficiently.
5. MSI is satisfied with the way the case has been resolved and is particularly

appreciative of the speed with which Class Counsel was able to get this case settled so that we do not have to wait for years to recoup our losses.

6. After the initial proposed draft of the settlement documents were reviewed, MSI was asked for our input on how dealers take ownership or possession of vehicles after acquisition at auction or upon trade-in, and we described the details of that process to help Class Counsel craft the appropriate language to protect the reseller class.
7. Counsel has explained the settlement and provided us with documents to review relating to the settlement and we are in favor of the settlement. I believe the settlement to be fair and in the best interests of the reseller class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 29, 2016, in Fitchburg, Wisconsin.



Abdulrahman Al Dachach