

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

- - -

Jacqueline Corley, Magistrate Judge

Robert S. Mueller, III, Settlement Master

IN RE: VOLKSWAGEN "CLEAN )  
DIESEL" MARKETING, SALES )  
PRACTICES, AND PRODUCTS ) Case No. 3:15-MD-02672-CRB  
LIABILITY LITIGATION )  
\_\_\_\_\_ )

San Francisco, California  
Tuesday, February 14, 2017

**TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued on next page)

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(Multiple counsel present in the courtroom as reflected in the minutes)

1 Tuesday - February 14, 2017

8:05 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Calling 15-MD-02672, In re: Volkswagen  
5 "Clean Diesel" Marketing, Sales Practices, and Products  
6 Liability Litigation.

7 Counsel please state your appearances for the record.

8 **MS. CABRASER:** Good morning, Your Honor. Elizabeth  
9 Cabraser -- Lieff, Cabraser, Heimann & Bernstein -- on behalf  
10 of the Plaintiff Steering Committee. With me this morning is  
11 my partner, David Stellings.

12 **THE COURT:** Good morning.

13 **MR. VAN EATON:** Good morning, Your Honor. Joshua  
14 Van Eaton for the Justice Department with my colleague, Bethany  
15 Engel.

16 **MR. AKERS:** Good morning, Your Honor. Nicklas Akers  
17 on behalf of the California Air Resources Board and the  
18 California Attorney General's Office. I'm joined by my  
19 colleague, Laurel Carnes.

20 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen  
21 for the Federal Trade Commission.

22 **MR. GIUFFRA:** Good morning, Your Honor. Robert  
23 Giuffra, Sullivan & Cromwell, for the Volkswagen defendants.  
24 With me is my partner, Sharon Nelles, my partner Diane  
25 McGimsey, and our colleague, Elena Coronado.

1 I wanted to thank the Court, given that today is  
2 Valentine's Day, I don't know if you're responsible for the  
3 flowers, but we all appreciate it. I can't think of a group  
4 I'd rather spend Valentine's Day with.

5 **THE COURT:** I just want to assure people -- because we  
6 have CourtCall, a lot of people are calling in -- that the  
7 flowers that are on the table are not at taxpayers' expense and  
8 they were not furnished by any of the parties. They were  
9 furnished by the Court because I think that you have -- the  
10 Court has importuned you to miss any number of occasions --  
11 Christmas and Thanksgiving and on and on -- so at the very  
12 least, I wanted to express the Court's appreciation to the  
13 lawyers on this Valentine's Day.

14 **MS. KENNEDY:** Good morning, Your Honor. Kara Kennedy  
15 with Alston & Bird, for the Porsche defendants.

16 **MR. SLATER:** Good morning, Your Honor. Matthew Slater  
17 of Cleary Gottlieb on behalf of defendants Robert Bosch GmbH  
18 and Robert Bosch, LLC. Many thanks for the good cheer in the  
19 courtroom with the flowers. We appreciate it.

20 **THE COURT:** Okay. So I think there is some technical  
21 problem with respect to the presentation which we are now going  
22 to correct, if we can. Meanwhile, I thought that -- because I  
23 know a number of people are listening across the country, and I  
24 thought we could start on those matters that don't need the  
25 visual presentation as well. Let me just sort of set what I

1 understand to be the procedure that we're going to follow  
2 today.

3 First of all, this is a hearing to determine whether the  
4 Court should grant preliminary approval to two settlements:  
5 one being the Volkswagen settlement with respect to -- I call  
6 it "the Volkswagen," but it's really the Plaintiff Steering  
7 Committee class counsel's settlement with respect to the  
8 3-liter vehicles; and a second involves a co-defendant with  
9 Volkswagen, Bosch, and there's a proposed settlement with  
10 respect to them as well.

11 So we should keep track that we're really going to be  
12 talking about at least two, as I understand it, settlements.  
13 There may also be an update from the interested parties with  
14 respect to any consent decrees, and we will get to that a bit  
15 later in the process.

16 So let me call on Ms. Cabraser, if you wish to sort of  
17 give an overview as to where we are.

18 **MS. CABRASER:** Thank you, Your Honor. Elizabeth  
19 Cabraser for plaintiffs.

20 We are here this morning on two motions made by the  
21 Plaintiffs' Steering Committee as proposed settlement class  
22 counsel requesting the Court's consideration and grant of a  
23 preliminary view and approval of two settlements: A proposed  
24 settlement with Volkswagen, Porsche, and Audi on the 3-liter  
25 vehicles; and a settlement with co-defendant Bosch and the

1 Bosch entities on both 2- and 3-liter vehicles.

2 The 3-liter settlement, as the Court is aware, is the  
3 product of very intensive and extensive negotiations between  
4 and among the defendants, the various federal and state  
5 regulators, and the Plaintiff Steering Committee, and those  
6 negotiations began last year when we were in the 2-liter  
7 settlement approval cycle and continued with increasing  
8 intensity as 2016 drew to a close.

9 That proposed settlement warrants, we submit, a detailed  
10 summary and walk-through, which we will try to do with  
11 PowerPoint today, because the proposed 3-liter settlement is a  
12 complex one. It's driven by the cars themselves, divided into  
13 two generations: Generation One vehicles, which are much like  
14 the 2-liter vehicles with which the Court is familiar, in that,  
15 in the view of the federal and state regulators, while they may  
16 be modified for reduced emissions and thus allowed to continue  
17 to operate, they don't have the potential to be repaired to  
18 their originally-certified standards, and so the 3-liter  
19 settlement provisions, procedures, and benefits for the  
20 Generation One owners and lessees will be familiar to the Court  
21 as they largely replicate the 2-liter settlement.

22 With respect to the Generation Two vehicles, the  
23 regulators have determined that those cars may be brought into  
24 compliance with their originally-certified NOx standards. I'm  
25 not using technical language now, but that's the general

1 concept, and because of that, have determined to provide an  
2 opportunity, albeit a limited monitored and regulated  
3 opportunity, to bring those cars into full compliance. And so  
4 the class action settlement provisions for the Generation Two  
5 vehicles track that process but provide specific time limits  
6 and payments and consequences if that effort cannot be timely  
7 met.

8         So the Generation Two settlement provides cash  
9 compensation to owners and lessees, also provides for a  
10 contingent buyback if there is not timely compliance on the  
11 schedule we'll detail with that original certification repair.

12         This has been the subject of much discussion and  
13 negotiation among the parties. It's been discussed with the  
14 Court in earlier status conferences, and we'll detail it today.

15         But suffice it to say that the terms and provisions of the  
16 3-liter settlement for both Generation One and Generation Two  
17 are driven by the designs and the prospects for environmental  
18 compliance of the cars themselves and the decisions that have  
19 been and will be made by the regulators and by this Court as  
20 the process goes on.

21         By contrast, the proposed Bosch settlement is quite  
22 straightforward, much more conventional in terms of a consumer  
23 class action settlement for the simple reason that Bosch is not  
24 involved with modifying the cars, repairing the cars, or buying  
25 back the cars. Bosch is a co-defendant.

1           As we were negotiating the 3-liter settlement under the  
2           auspices of the Settlement Master and his team, we were  
3           similarly negotiating the monetary terms of the Bosch  
4           settlement.

5           We were finally able to reach a monetary figure for that  
6           settlement of \$327.5 million, and the Federal Trade Commission  
7           conducted an independent analysis, economic analysis, from the  
8           standpoint of full consumer compensation to undertake and to  
9           recommend to the parties and to the Court an allocation of that  
10          327.5 million. In so doing, the FTC also looked at the  
11          prospects of a fee application and considered the amount of a  
12          fee application, which it would not oppose.

13          If the Court grants final approval to the settlement, if  
14          the fees and costs application is granted in full and it's  
15          requesting approximately 15.6 percent of the fund, then owners  
16          and lessees of both 2- and 3-liter cars will receive checks for  
17          net payments under the FTC's allocation, which provides  
18          approximately \$163.3 million to the 2-liter owners and lessees  
19          and approximately \$113.3 million to the 3-liter class members.

20          Eligible owners in the 2-liter class action would receive  
21          a check in the amount of \$350 apiece. Eligible lessees would  
22          receive a check in the amount of \$200 apiece. And in the  
23          situation of multiple owners, those amounts would be split as  
24          they were in the 2-liter settlement.

25          With respect to the 3-liter class action settlement,



1 eligible owners would receive \$1,500 each. Eligible lessees  
2 would receive \$1,200 each, and again, the amounts would be  
3 split among multiple owners in that circumstance.

4 Because we have data on the vast majority of the 2-liter  
5 class members from the previous settlement, we are able to  
6 simplify the distribution process for Bosch. So people who  
7 stayed in the 2-liter class would automatically get their  
8 checks unless they decide to opt out of the Bosch class.

9 Everyone who makes a claim to participate in the 3-liter  
10 settlement, if it's approved, would also get their check  
11 automatically, unless they opt out of the Bosch settlement.

12 And those who opted out of the 2-liter settlement would be  
13 able to make a claim to get their payment, as well as anyone  
14 who opted out of the 3-liter settlement.

15 And there is a claim deadline for those who opted out of  
16 those settlements of August 15th, 2017. But if preliminary  
17 approval is granted to the Bosch settlement, the notice program  
18 is ready to go, would go out immediately, as you'll hear later  
19 in the hearing, and there will be plenty of notice for people  
20 on how the claims process works for those who need to make a  
21 claim for Bosch.

22 Again, it's a straightforward settlement. It's not  
23 divided up among years or models of cars. It's simply if  
24 you're a 2-liter owner or a 3-liter owner, you're able to know  
25 in advance the precise amount of your check.

1           It's a non-reversionary settlement. If there isn't a  
2 hundred percent participation in the class, money will be  
3 redistributed to the class members who are participants as long  
4 as it is economically and administratively feasible to do so.  
5 And if we reach a point where that can't occur, the Court would  
6 be asked to consider a cy pres distribution under the  
7 prevailing cy pres rules of the Ninth Circuit.

8           We are requesting that both the Bosch settlement and the  
9 3-liter settlement, if both are granted preliminary approval,  
10 proceed on the same notice, briefing, and hearing schedule  
11 because they involve largely the same people. That would  
12 enable the major aspects of this litigation as it relates to  
13 the owners and lessees to the consumers to be resolved on a  
14 coordinated schedule.

15           We are still in the process of administering the 2-liter  
16 settlement. That claims deadline is September 18th. The  
17 3-liter settlement would follow along and have a similar period  
18 so that would end toward the end of 2019.

19           The decision dates, which you'll hear more about, to  
20 determine whether as to Generation Two there will be a  
21 compliant repair, original certification repair or a buyback,  
22 start to occur later this year, beginning with October 23rd,  
23 running through November, December.

24           If we are -- are we technologically prepared -- no.

25           **THE COURT:** Not yet.

1           **MS. CABRASER:** Not yet.

2           **THE COURT:** But I can turn, perhaps, to some of the  
3 other people.

4           **MS. CABRASER:** Absolutely.

5           **THE COURT:** But I leave that in your hands,  
6 Ms. Cabraser.

7           **MS. CABRASER:** Absolutely, Your Honor. And, in fact,  
8 there are two things that we're asking the Court to do this  
9 morning with respect to each of these proposed settlements.

10           The first is to grant preliminary approval to the  
11 settlement, meaning simply that the notice of that proposed  
12 settlement can go out to class members for their consideration  
13 and decision, and a hearing on final approval be scheduled,  
14 which we request be scheduled in May of this year after notice  
15 is complete. And that the Court preliminarily approve, for the  
16 purposes of these settlements, only the Bosch class, which  
17 comprises both 2- and 3-liter members, and the 3-liter class,  
18 which comprises the Generation One and Generation Two members.

19           I'm going to ask Mr. Paul Geller from the PSC to give you  
20 a very brief presentation on preliminary class certification  
21 for those settlement purposes.

22           **THE COURT:** Thank you. Mr. Geller.

23           **MR. GELLER:** This way I don't have to follow Mr. Rice  
24 so it makes my job easier.

25           So as I did with the 2-liters, just run through Rule 23

1 because the requirements of Rule 23 ensure protection to absent  
2 class members. And we want to assure the Court that all of the  
3 requirements are met here as they were in the 2-liter  
4 settlement.

5 With respect to the 3-liter settlement, it's very similar  
6 to the 2-liter, except as Ms. Cabraser mentioned and as  
7 Mr. Rice will provide details once technologically available,  
8 there are two generations. But what's important for the Court  
9 to note from a Rule 23 perspective, the difference in the  
10 generations that lead to differences in the remedies available  
11 don't create a conflict between the two generation vehicle  
12 owners or lessees. There's no zero-sum game. An extra dollar  
13 to a Gen One owner does not mean a dollar less for a Gen Two  
14 owner.

15 So all of the requirements of 23(a) -- numerosity,  
16 commonality, common issues predominating, typicality, and  
17 adequacy of representation -- are all met. 23(b)(3), the extra  
18 two requirements of predominance of the common questions and  
19 superiority of the class action mechanism are met.

20 So for the same reasons that the Court granted  
21 certification in the 2-liter settlement, we would ask you to  
22 grant certification of the 3-liter settlement as one cohesive  
23 class.

24 The Bosch settlement, just following on what Ms. Cabraser  
25 said, is really -- it's all the vehicle owners and lessees, the

1 2-liters and the 3-liters, plus the addition of those who opted  
2 out of 2-liters, but again going through 23(a), the four  
3 requirements, as well as the two extra requirements of  
4 23(b)(3), they're met. I can address them in more detail if  
5 the Court would like, but other than that, we ask for those two  
6 certifications. Thank you.

7 **THE COURT:** Thank you.

8 **MS. CABRASER:** Your Honor, the parties have spent  
9 considerable time focusing on communications to the class  
10 members about these proposed settlements and the class action  
11 notice program. We submitted to you the declaration of Shannon  
12 Wheatman of Kinsella Communications who designed and  
13 implemented the notice plan in the 2-liter settlement and has  
14 again designed and proposed a similar notice plan, revamped a  
15 bit because technology always advances and we like to keep up  
16 with the state of the art in communications with class members.  
17 Dr. Wheatman is available to the Court to answer any questions  
18 regarding her declaration and notice plan.

19 We have with us this morning from the Keller Rohrback PSC  
20 firm Gretchen Cappio who worked very, very closely with  
21 Kinsella, with defendants' counsel to develop and shepherd the  
22 notice program and also the class action notice documents  
23 themselves, both the -- what we call the long-form class action  
24 notice, the official class action notice, which is quite  
25 comprehensive, detailed, has all of the schedules for estimates

1 of compensation for owners and lessees in both generations and  
2 under all contingencies, and what we are also calling postcard  
3 notice, which is a large format color postcard in the case of  
4 the 3-liter settlement which is designed to be noticed in the  
5 mail because we're trying to do two things: To comply with the  
6 formal requirements of Rule 23 on notice, which is to use the  
7 best practicable notice. We have mailing addresses so we're  
8 going to use them. We also have email addresses for most class  
9 members, and as we did last time in 2-liters, we're going to  
10 use those, too, both to send an alert-type notice and a fuller  
11 notice.

12 The postcards are designed to get the attention of people  
13 in their mail so that people can be alert for the long-form  
14 notice, both in their emails and on the settlement website. We  
15 have a vwsettlement.com website, a boschsettlement.com website.  
16 Those are really the hubs of all of the information for class  
17 members, which is the system that we have used with respect to  
18 the 2-liter system and of course will be expanded with all of  
19 the information on 3-liters.

20 And so I'm going to ask Ms. Cappio --

21 **THE COURT:** Before you leave, let me ask you, in terms  
22 of the court's website, do you contemplate putting some type of  
23 summary on the court's website so that a consumer can go to the  
24 court's website and simply get notice as to what essentially  
25 the details are of the settlement, at least in some form?

1           **MS. CABRASER:** Yes, Your Honor, we do. As we did with  
2 the 2-liter settlement, we will submit proposed executive  
3 summaries of the 3-liter settlement and the Bosch settlement  
4 for the Court's consideration for posting on the court's  
5 website.

6           We found last time that that was an important resource for  
7 class members and the public to get into the gist, the  
8 essentials, of the settlement and then also to be linked to the  
9 settlement website. So it is part of the system. We don't  
10 count it as part of a formal notice program because we can't  
11 quantify its reach, but it's been very important for class  
12 members so far in the litigation, and we would urge the Court  
13 to do that here.

14           The executive summaries of the settlement and the  
15 transcripts of the hearings and status conferences in this  
16 litigation so far have been very widely used and relied upon by  
17 class members to keep up -- absolutely up-to-date with what's  
18 going on, and as we like to tell people that contact us, they  
19 will know what's going on in the case essentially as soon as  
20 any of us do.

21           We greatly appreciate the fact that the court reporters  
22 have gotten the transcripts available on a same-day basis for  
23 all of the hearings so people are very up-to-date, and the  
24 court's website is quite up-to-date as well. It's widely used  
25 and it's greatly appreciated.

1           And before I turn to Ms. Cappio, I don't want to forget,  
2 while I'm expressing appreciation, to express great  
3 appreciation on behalf of the PSC and our clients, the class  
4 members, to Settlement Master Mueller and his team who have  
5 been unceasing in keeping us on track in terms of settlement  
6 discussions, in enabling those settlement discussions not only  
7 to occur, but to intensify as needed, and I cannot imagine that  
8 we would have gotten from the beginning of this litigation to  
9 where we are today without their daily assistance.

10           Ms. Cappio.

11           **THE COURT:** Before you start, I would just add my own  
12 personal observation to Ms. Cabraser's. I think that Director  
13 Mueller and Mr. Quarles, who are here today, obviously to the  
14 Court -- in the Court's observation, their efforts have been  
15 unceasing. Something about retaining the services of the  
16 former Director of the Federal Bureau of Investigation sends  
17 some subtle message. Maybe perhaps not too subtle, but he has  
18 been tireless in herding people together and making sure that  
19 they don't walk away, leave without a task and without a date  
20 to return to complete the task and to continue with the  
21 deliberations. I think that type of effort was instrumental in  
22 bringing us to where we are today.

23           So obviously the Court is quite grateful for his service,  
24 Mr. Quarles' service.

25           Yes, Ms. Cappio.



1           **MS. CAPPIO:** Good morning, Judge Breyer, Judge Corley.  
2 Gretchen Freeman Cappio of Keller Rohrback for the PSC, and  
3 it's my honor today to address notice.

4           As the Court has observed, making this right with  
5 consumers is at the heart of this litigation. With that in  
6 mind, we have put considerable effort and energy into making  
7 sure consumers receive accurate and timely information about  
8 their settlements.

9           The 3-liter notice program builds on what we learned in  
10 the 2-liter settlement notice program. That program  
11 represented the state of the art in notice practices, and we  
12 are applying the lessons we have learned.

13           The program consists of three main parts: Direct notice,  
14 paid and earned media, and an informational and interactive  
15 website, [vwcourtsettlement.com](http://vwcourtsettlement.com), that is available in English  
16 and in Spanish.

17           The program is informed by our work in the 2-liter  
18 settlement and updated and tailored to the geography of the  
19 3-liter class.

20           First I'll talk a little bit about the direct notice. It  
21 will arrive to class members by U S. mail and electronic mail  
22 or email. First, the short-form notice will be mailed to class  
23 members. As Ms. Cabraser said, we are very fortunate, as in  
24 the 2-liter settlement, that we have the names, addresses, and  
25 vehicle information for virtually all class members, whether

1 they are owners, lessees or independent dealers. For owners  
2 and lessees, we also know which generation of 3-liter vehicle  
3 they have.

4 Each will receive a glossy full color oversized  
5 eight-and-a-half by eleven, we're calling it a postcard, but  
6 it's obviously a bit larger, that provides the basics of the  
7 benefits for their generation of vehicle, the key dates and  
8 deadlines and where to find more information, including the  
9 long-form notice. Because dealers may have multiple  
10 generations, they will receive a postcard that summarizes the  
11 details for both generations of vehicles.

12 The long-form notice will be emailed and available on the  
13 settlement website.

14 Two settlement emails will be sent to everyone who  
15 registered for the goodwill program or who provides their email  
16 address on the settlement website. The first email provides an  
17 overview of benefits, key dates and where to get more  
18 information. The second will attach the long-form notice.

19 The long-form notice has a summary of the settlement in  
20 plain English. Its questions and answers walk class members  
21 through their rights and options according to generation.  
22 Class members can look up the information that relates to their  
23 vehicle or any specific questions they have about the  
24 settlement. They don't have to read the whole thing if they  
25 don't want to.

1           On the website, class members will be able to enter their  
2 VIN or vehicle identification number unique to their vehicle  
3 and learn whether their vehicle is eligible and provide their  
4 email address to receive updates.

5           Emails will also go to non-Volkswagen dealer and fleet  
6 associations plus NADA, the National Automotive Dealers  
7 Association, and the National Association of Fleet  
8 Administrators.

9           The websites will have updated information as of tomorrow.  
10 There is also some available today. Emails can begin shortly  
11 after the Court grants preliminary approval as early as the  
12 16th of this month and mailings can begin about a week later on  
13 the 23rd.

14           Next I would like to just touch on publication and paid  
15 media. While this direct notice program is very comprehensive,  
16 we've also developed an expansive paid media program to ensure  
17 that everyone hears about the settlement. We're employing  
18 print media, and the short-form notice will be published in 45  
19 national and local newspapers. It will appear as a two-color  
20 advertisement with images to attract attention.

21           We are also employing state-of-the-art digital advertising  
22 including banner ads targeted to our class members and social  
23 media with advertising on Facebook, Instagram, Twitter, and  
24 LinkedIn. We're also using keyword searching on major search  
25 engines. Ads will appear on relevant dealer and fleet trade

1 websites.

2 We also expect considerable earned media through press  
3 coverage. We are pleased that traditional press coverage of  
4 the 2-liter approval process was extremely thorough. As we did  
5 last time, we will issue press releases to ensure that the word  
6 gets out, and we appreciate that the press is interested and  
7 engaged in the settlement announcement and approval process and  
8 expect that they will likely cover it comprehensively.

9 We are pleased that media such as Reuters, major  
10 newspapers, local news, and automotive websites have already  
11 covered the proposed terms of the settlement in some detail.

12 And, of course, we have the interactive settlement  
13 website, [vwcourtsettlement.com](http://vwcourtsettlement.com), as well as the court's own  
14 website, which we touched on earlier, that will provide the  
15 relevant court documents for all to review.

16 And finally I would like to say a few words about the  
17 Bosch settlement notice program. Like the 3-liter settlement,  
18 the Bosch notice program is state of the art and reflects  
19 lessons we have learned in the 2-liter process. Because the  
20 settlement is separate from the 3-liter settlement, it will  
21 have an independent notice program.

22 The Bosch notice program appropriately emphasizes the  
23 class members have separate legal rights under the settlements  
24 and lays out where to find more information. There will be a  
25 short-form notice. Like the 3-liter settlement, we will mail

1 first class postcards to all known class members, but in this  
2 case, members in both the 2-liter and the 3-liter settlements.  
3 The 2-liter and 3-liter postcards are slightly different from  
4 each other to reflect the different deadlines and terminology  
5 in those particular settlements.

6 The long-form notice in the Bosch settlement is in a  
7 similar straightforward well-organized Q and A format like the  
8 2- and 3-liter long-form notices, so it will be familiar and we  
9 hope very easy to use. It will be emailed to all class members  
10 for whom we have email addresses and will prominently reside on  
11 the settlement website which is vwboschsettlement.com.

12 We are also using digital ads, and we will purchase social  
13 media ads to run for a 45-day period which we can target  
14 directly to actual Bosch class members as well more broadly to  
15 potential owners and lessees of eligible vehicles.

16 And finally, the timeline for the Bosch program is quite  
17 similar to the VW program I just mentioned for the 3-liters and  
18 will run contemporaneously. The separate Bosch settlement  
19 website will be active by the 15th, tomorrow. Emails will  
20 begin approximately 12 days later on the 27th of this month and  
21 U.S. mailings begin that same day.

22 Thank you, Your Honors.

23 **THE COURT:** Let me ask a question. There were  
24 obvious -- in the experience of the 2-liter settlement, there  
25 were -- on some occasions consumers didn't get notice. Changed

1 their address, dropped out, did certain things which made it  
2 very difficult to reach them.

3 To some extent, I think that you did receive information  
4 back to you that addresses had changed, contacts had changed,  
5 and names had changed and so forth. Are you taking that  
6 information and inputting it into this notice program so that  
7 there is less likely to repeat the problems that we had in the  
8 first program?

9 **MS. CAPPPIO:** Thank you, Your Honor. Yes. We are  
10 using the best, most recent data we have for everyone to ensure  
11 that no one is missed who has given us their data already.

12 **THE COURT:** So, in other words, if somebody said,  
13 *Look, I discontinued that email address or I've changed my name*  
14 *or I've changed my mailing address and so forth, here is my new*  
15 *one, which weren't originally in VW's records, they now are*  
16 *part of the set of records that you're going to use in order to*  
17 *communicate; is that correct?*

18 **MS. CAPPPIO:** That is correct, Your Honor. We are  
19 using the best, most recent data we have for everyone, and we  
20 are replacing any old data we have with the new data provided  
21 to us, and we're also using skip tracing to make sure that  
22 addresses and other information is as up to date as it can  
23 possibly be.

24 **THE COURT:** Thank you, Ms. Cappio.

25 **MS. CAPPPIO:** Thank you.

1           **THE COURT:** Ms. Cabraser.

2           **MS. CABRASER:** Thank you, Your Honor.

3           As with the 2-liter settlement, the negotiations and  
4 decisions and agreements for the 3-liter cars are the product  
5 of an intersecting set of federal regulators, the EPA  
6 represented by the Department of Justice which focuses on and  
7 is in charge of protecting the environment through regulating  
8 vehicle emissions across the country; the California Air  
9 Resources Board represented by the California Attorney General,  
10 who regulate and protect our environment here in California and  
11 serve as a model for a number of other states with respect to  
12 their standards; and the Federal Trade Commission, whose  
13 mission is to protect consumers and to make sure that consumers  
14 are accurately informed and fairly treated, as well as in this  
15 case, fully compensated for their losses.

16           Because of that intersecting set, we continuously have had  
17 to balance, I think to the benefit of the proposed settlement,  
18 considerations of the environment, considerations of consumers'  
19 own economic interests and choices, and considerations of what  
20 is doable in the very real world of automobiles. And we have  
21 on the PSC and are fortunate to have on our PSC attorneys with  
22 considerable experience, not only in the field of class actions  
23 and consumer protection, but in the field of environmental  
24 regulation and litigation, both through their public careers  
25 and now their private practice, so I'm asking Ms. Robin

1 Greenwald, who can speak from that perspective, to comment very  
2 briefly on the environmental benefits of the proposed 3-liter  
3 settlement as these reflect the interests and concerns of the  
4 class members as well as, of course, the regulators.

5 **THE COURT:** Thank you.

6 Ms. Greenwald, I would like you to start just highlighting  
7 your experience in this area. You probably weren't necessarily  
8 prepared to do that, but I think that it does -- it's  
9 informative, and so if you would, I'd --

10 **MS. GREENWALD:** You just want me to know my age to the  
11 whole group.

12 **THE COURT:** No, no. We're all very young, and you're  
13 all younger than I am.

14 **MS. GREENWALD:** So I practiced law for two years and  
15 then I went to U.S. Attorney's Office in the Eastern District  
16 of New York where I really practiced only environmental civil  
17 for a while and then I did criminal prosecutions for 12 years.

18 And then I went to main justice where our colleagues are  
19 now, and I was in the environmental crime section for six  
20 years.

21 And then I went to the Department of Interior where I was  
22 general counsel of the Inspector General so I worked on a lot  
23 of land issues, Bureau of Indian Affairs.

24 So I spent a lot of time with the government. And then I  
25 went to the nonprofit world, and I ran a nonprofit that was



1 protecting water called Waterkeeper Alliance, and then --

2 **THE COURT:** How timely. We will send you to Oroville.

3 **MS. GREENWALD:** There is going to a lot of places to  
4 send us. I think I need to change my practice in the next few  
5 years.

6 So anyway, and then I taught law school, and then I  
7 started this work which has been a wonderful sort of wrapping  
8 the circle of the various ways in which we can protect the  
9 environment from both public sector, nonprofit sector, and what  
10 we do as plaintiffs' lawyers to make sure that what we do  
11 involves and protects both class members from an economic  
12 perspective, but also focus on what we can do for the  
13 environment. And I think this settlement does it beautifully.

14 So I'm not going to give you how many years I was in each  
15 place.

16 Let me just highlight very quickly because I think,  
17 Your Honor, this very much mirrors in some ways the 2-liter  
18 settlement which I had the privilege to talk to you both about  
19 when we had that preliminary approval.

20 So as in the 2-liter, class members who buy these cars,  
21 the 3-liter cars, also bought them in large measure because of  
22 their environmental or supposed environmental benefits. And  
23 this element, again, has important features to make sure that  
24 there are environmental protections folded into it, both from  
25 the perspective of the class settlement, for the public at

1 large, and also in conjunction with the government settlement.

2 So the various highlights of the environmental components  
3 is this settlement requires VW to have a buyback and trade-in  
4 program for all Generation One 3-liter vehicles, as  
5 Ms. Cabraser mentioned. That means these vehicles will be off  
6 the road. And they need to be off the road because of the  
7 emissions of nitrogen oxide, as we all have been hearing about  
8 for the last year and a half.

9 The settlement agreement recognizes the urgency of that so  
10 once again, Volkswagen has agreed to have this buyback and  
11 trade-in program after final approval and before any appeals or  
12 any other objections to the settlement, so again they get off  
13 the road faster than they would if it was a normal case where  
14 you have to wait until all aspects of the litigation are  
15 resolved.

16 Another important aspect I think of this settlement is the  
17 two -- the second generation 3-liter vehicles because under the  
18 belief that those vehicles can be repaired and brought to the  
19 proper standard for emissions, there will be a lot less  
20 vehicles parked around the country, so presuming that the fix  
21 can be made, there are a number of cars that actually can stay  
22 in operation and not be basically flooding parking lots all  
23 around the country. So that's another benefit actually of  
24 being able to fix the second generation 3-liters.

25 Because once the Generation One vehicles are returned to

1 VW, again, similar to the other settlement, it cannot turn  
2 around and resell them or export them, which was also something  
3 I know we talked about when I was here last time. Instead, VW  
4 has to render those vehicles inoperable, and I will explain in  
5 a second what that means.

6 And also they can recycle the vehicles to the extent the  
7 law permits recycling of vehicles because as we know, recycling  
8 of vehicles is very complicated because of the various  
9 components of a vehicle.

10 So a vehicle is rendered inoperable and cannot be brought  
11 back into service unless it first receives what's called an  
12 approved emission modification, and that's defined in the  
13 settlement agreement, and only if it receives that  
14 modification, VW then has one of two options. It can resell  
15 those cars in the United States, but it has to identify that  
16 the vehicle has this approved emission modification, or it can  
17 export the vehicle for sale. But, again, it cannot export it  
18 for resale unless it has gone through the modification program.

19 So, again, the settlement not only recognizes our own  
20 American clean air, but it represents -- it recognizes a global  
21 environment which is critically important, I think, for our  
22 mission.

23 And finally, as in the 2-liter, we have the related EPA  
24 and CARB settlement which Ms. Cabraser just talked about which  
25 requires VW to pay an additional \$225 million into a trust for

1 a nationwide nitrogen oxide mitigation measure, and that is in  
2 addition to the 2.7 million -- I'm sorry -- 2.7 billion that VW  
3 paid in the first 2-liter settlement.

4 So that is a large amount of money to basically repay the  
5 environment and the people who depend on a clean environment  
6 for their health and welfare.

7 And then finally, VW has agreed to pay an additional  
8 \$25 million to support zero emission vehicle technology, and  
9 that's above and beyond the 2 billion it agreed to pay in the  
10 2-liter settlement.

11 And these amounts more than amply address the risk and the  
12 problems that the emissions caused in the past.

13 And again, we really appreciate the work of the Department  
14 of Justice and CARB because this part of it is part of their  
15 consent decree, as Your Honor knows, and it has played a  
16 critical role in the significant environmental benefits of  
17 these combined settlements, and we really endorse and support  
18 and appreciate their work in accomplishing these environmental  
19 benefits.

20 So if you don't have any questions --

21 **THE COURT:** Thank you.

22 **MS. GREENWALD:** Thank you very much.

23 **MS. CABRASER:** Your Honors, I think we are ready to  
24 walk through the settlement terms and benefits for consumers in  
25 the two generations of the 3-liter settlement. I'm going to

1 ask Mr. Rice to do that, and there is a PowerPoint, and I think  
2 some folks have it on paper to walk through. We can provide it  
3 for Your Honors on paper.

4 **THE COURT:** I have a copy of it. I just will note  
5 that the PowerPoint will be placed on our website, hopefully  
6 today, so that any consumer or press or otherwise will have  
7 access to it, with the understanding that the PowerPoint is  
8 really for demonstrative purposes; that is, it is plaintiffs'  
9 view of how this somewhat complicated -- I think it's  
10 complicated -- settlement interface with each other and  
11 interface with the 2-liter, and so if it -- if in the next 20  
12 minutes or so they're just so -- even though Mr. Rice, a  
13 seasoned, seasoned trial lawyer who has excelled at taking the  
14 complicated and making it appear clear and simple, even if it  
15 doesn't appear all that simple, it will appear clear but not  
16 that simple, anybody who, you know, has a stake in it or really  
17 interested, can take the time from today on to take a look at  
18 it on the court's website.

19 So thank you. I hope technically we will be able to get  
20 through it, but don't be concerned if we have some problems.

21 **MR. RICE:** I need to add to the thanks. Thanks to  
22 your staff for helping us with the technical difficulties we  
23 had. Technology is changing and the wires change.

24 Your Honor, this settlement was a cooperative effort, and  
25 it was brought about through some very trying times of all

1 parties: Late nights, early mornings, long weekends, and  
2 always in the memory of the machine gun sitting in the office  
3 of the Special Director.

4 Your Honor, the class members here are defined in a way  
5 that recognizes that we had two separate disclosures affecting  
6 these cars. We had a disclosure in September and then we had  
7 another disclosure in November that varied, so because of that,  
8 throughout this settlement, we have to deal with those two  
9 disclosures and we have the ability to have people that had a  
10 car in September that might have sold it before the November  
11 date, and then we had people that might have bought the car  
12 after September but were affected by the second notice.

13 So in dealing with the class membership, those two  
14 disclosures are very important to focus on. And that's why  
15 when you look at the definition, it talks about anyone that  
16 between September 18th, the first disclosure, and November 2nd,  
17 owned or leased a Volkswagen, an Audi, or a Porsche 3-liter  
18 vehicle in the United States or its territories or who, between  
19 November and the claims submission deadline, which is for  
20 Generation One the June 1st date and for Generation Two the  
21 December date, December 2019 date, becomes the owner.

22 And the reason for this, Your Honor, is these cars will  
23 change hands, and after the approval date, we will still have  
24 these cars sometimes changing hands in the private market so  
25 that we could have a class member that buys a car after final

1 approval and that person has the car, we still need to address  
2 the car, so that person becomes a class member, but because  
3 they weren't a class member at the time of the original  
4 opt-out, there is a 30-day period for them to opt out at that  
5 time if they wish to do so.

6 So that's important to understand that we protected the  
7 consumer, but we also followed the car because ultimately  
8 maintaining a repair or modification or getting the car off the  
9 road is the ultimate goal here.

10 Now, again, because of the two dates, we had -- the  
11 exclusions are a little more complicated because you have to  
12 exclude people that -- we call them in and out. If you bought  
13 a car after September, after the first disclosure, but you sold  
14 it before the second disclosure, then you would not be included  
15 in the settlement.

16 I believe that the exclusions are going to be clear in the  
17 long-form notice that is going to go out. I'm not going to go  
18 into those in detail. And we also have the standard exclusions  
19 of court personnel and defendants and folks of that nature.

20 Now, Your Honor, there's a couple of key terms that anyone  
21 trying to understand the settlement and read it and follow it  
22 needs to focus on. And we have the term "approved emissions  
23 modification." And that term can include what we've referred  
24 to as the emissions compliant repair which applies to the  
25 Generation Two cars only and it could apply to the generation

1 sub-generations which we're going to discuss in a moment, but  
2 when we refer to repair, we're talking about taking the car  
3 back to the original Tier 2 Bin 5 certification. And that's  
4 considered an approved emissions modification.

5 But it's possible that we may not get there for Gen Two  
6 and we're not going to get there for Gen One, but there is  
7 still a provision that the government and EPA and CARB are  
8 allowing Volkswagen to submit for a modification that will  
9 reduce the emissions but would not go back to Tier 2 Bin 5, and  
10 that's referred to as the "reduced emission modification." So  
11 the repair and the reduced are both approved modifications, but  
12 the remedy for the consumer will vary depending on which one  
13 occurs to which model car.

14 So as we go through this, we have 19,000 cars that are in  
15 the Generation One, approximately 19,000. And those are  
16 Volkswagen, Audi. We don't get involved in the Porsches until  
17 we get into Generation Two.

18 Then in the Generation Two 3-liter cases, we have 58,000  
19 vehicles. About 47-, 48,000 of those have been owned or are  
20 owned and we have a significant lease population here and that  
21 makes up the difference, and that's why throughout the  
22 settlement, we focus on the lease cars as well because there  
23 are a number of lease cars.

24 When you look at the vehicle themselves in the Generation  
25 Two, we have larger cars, and when you have larger cars, you've



1 got more room to work, and you've got a larger underbody of the  
2 car.

3         These are newer cars than the 2-liter cars. These are  
4 generally the 2012s and forward. And they have different  
5 engines and different systems that have changed, and so we have  
6 sub-generations.

7         So when we look at the modification or the repair, we  
8 could have a different result for each sub-generation of car,  
9 and here we have the passenger cars, we have the 2.1 SUVs, and  
10 then we have a engine change for the 2.2 SUVs, and we have  
11 to -- an owner and a consumer needs to focus specifically on  
12 their model, on their car throughout the settlement to follow  
13 their remedies and their rights.

14         And then we got into a different situation here in the  
15 Generation Two 3-liter cars, and that was the agreement the  
16 regulators entered, and they have exclusive jurisdiction over  
17 the emission standards, so EPA and CARB entered into an  
18 environmental settlement, and that settlement does allow what  
19 some would refer to as a basic automobile recall process. And  
20 if that process is ultimately approved, the cars again go back  
21 to be repaired, and they're Tier 2 Bin 5.

22         But we're not sure if that's going to happen. We believe  
23 it's going to happen. The engineers for the EPA and CARB  
24 obviously believe it's possible, but it hasn't been fully  
25 accomplished.

1           So we felt that there had to be deadlines, there had to be  
2 an end to this process, so we have submission dates that  
3 started February 11th, February 24th, and April 7th, and that's  
4 when Volkswagen comes forward and makes their initial  
5 submission to the regulators and their engineers of how this is  
6 going to work and the disclosure of the various data points  
7 that are required that affect performance and affect torque and  
8 miles per gallon and things of that nature.

9           And then there will be some back and forth, and we have a  
10 final submission date to the government of regulators, and  
11 that's the April 25th, May 12th, and June 23rd dates.

12           But on behalf of the consumers, we said again, this has  
13 got to stop at some point in time. So we negotiated that there  
14 would be what we call "decision dates" where the decision has  
15 to be made as to whether or not we're going to have an approved  
16 compliant repair or are we going to have a modification or are  
17 we going to move to this other remedy which goes into the  
18 buyback.

19           So because of that delay, we felt that the consumers were  
20 being further damaged and needed to be addressed, so we  
21 negotiated what we referred to as a repair payment, and this  
22 payment goes to the consumers that own the vehicles now or  
23 former owners and lessees, and it's on average \$8,592, and it  
24 will have a variance of 27,000 and 16,000, again for the  
25 Generation Two cars.

1           A consumer can come in as soon as approval goes in about  
2 15 days to get it up and running and file their claim and  
3 receive half of that payment now, and then the other half is  
4 paid as the repair is approved and they get the vehicle  
5 repaired, they would receive the second half.

6           The lessee can get a \$2,000 payment. If you're a former  
7 lessee and you no longer have possession of the car, you can  
8 receive a hundred percent of your entitlement. If you are a  
9 current lessee, again, we want to make sure the cars come in  
10 for the ultimate repair so you get half your money now and half  
11 of it when you bring the car in for repair.

12           We -- again still talking about Generation Two. But we  
13 said okay, we're not certain when this repair is approved what  
14 it's going to do with the car. We hear what you tell us.  
15 We've had our engineers meet with your engineers. Everybody  
16 seems to be comfortable that it's not going to have a  
17 significant reduced performance, but it might.

18           So Volkswagen stood up to their representations, and they  
19 said, "Volkswagen makes a representation that the emissions  
20 compliant repair will not result in reduced performance." Now,  
21 there can be small changes. A change in calculated fuel  
22 economy using the EPA formula of more than 3 miles per gallon  
23 would be considered a reduced performance, but if it's one or  
24 two miles a gallon, it's within a variance, or if the decrease  
25 of -- if there is a decrease of greater than five percent in

1 peak horsepower performance or in peak torque.

2           So if we end up in a reduced performance, then the  
3 consumer would get at a minimum an additional \$500 per vehicle,  
4 and that's sort of when we go maybe to 3 miles a gallon to 4  
5 miles a gallon, but there is also another check and balance  
6 here, and that check and balance is if there is a substantial  
7 material adverse degradation to these vehicles above and beyond  
8 what we've referred to as reduced performance, then the class  
9 can seek additional remedies. And those remedies may very well  
10 be to seek immediate buyback because these cars are not what  
11 they were supposed to be and they have been given all efforts  
12 to repair it and to maintain its performance and they have not  
13 been able to do it. Volkswagen reserves the right to oppose  
14 those additional remedies, but those remedies are available to  
15 the class should this repair not get done or should this repair  
16 not timely get done or if this repair results in material  
17 adverse consequences or performance to the car.

18           Again, because we have -- the Generation Two vehicles are,  
19 by necessity, going to be -- continuing to drive into this  
20 decision period, we decided there had to be some protection for  
21 the consumer because some of their warranties will go out and  
22 they should not have to pay to repair something that may  
23 ultimately be a buyback car.

24           So there's an -- eligible owners and lessees of the  
25 Generation Two cars were given what we refer to as a bridge

1 warranty, and they use the original warranty as long as it  
2 lasts, and then if there is a repair needed, there are  
3 extensions to those warranties, covered repairs, accruing after  
4 January 31, '17, so it can't be something that went wrong  
5 before we filed the settlement, proposed settlement, or after  
6 original warranty expiration, use your original warranty first,  
7 and this bridge stops once we get an approval or disapproval of  
8 the emissions compliant repair.

9         So what we really get into is what I refer to as a  
10 Generation Two decision tree, which I hope is up on the screen.  
11 And this could occur at three separate times. We have a  
12 October 23rd decision date for the 2.1 SUVs. If we do not get  
13 a timely emissions compliant repair approved by that time, then  
14 class counsel has the immediate right to come to the Court and  
15 seek remedy, which would most certainly potentially be the  
16 buyback and the trade options, which we're going to go into.

17         However, Your Honor may find, based on the facts and the  
18 evidence, that there is good cause to let them extend that. We  
19 believe that the parties have given adequate time. There is  
20 adequate deadlines, so we'll be arguing at some point in time  
21 potentially about what good cause is, but we think it's got to  
22 be an exceptional situation from our point of view.

23         If Your Honor finds good cause, then there could be an  
24 extension of those decision dates. If Your Honor does not find  
25 good cause, then Volkswagen, because the move from the emission

1 compliant repair to a buyback is a multi-billion dollar  
2 financial issue, Volkswagen does have the right to pay  
3 additional compensation of \$500 per vehicle for every 30 days  
4 extension that they ask for, not to exceed 90 days.

5 So we get this to an end at some point in time, and  
6 there's additional compensation to the consumers if the delay  
7 goes beyond the decision date unless Your Honor finds good  
8 cause.

9 Of course, if they meet the decision, a timely decision,  
10 and the repair is available, then the consumers can start  
11 bringing their cars in, getting the repairs, and receiving  
12 their balance to their compensation, which would be the second  
13 half of the payment if they in fact took the first half.

14 If there is a failure to get the approved repair at the  
15 end, it automatically goes to the same remedy that we've had in  
16 the Generation One to the buyback, the trade-in, or if they can  
17 get a reduced emissions modification, to some other standard,  
18 or if they get an untimely repair, we could have -- that  
19 process could occur.

20 If there's no -- let me back up. Some consumers we know  
21 want to keep these vehicles if they can be modified, so we have  
22 the -- if we don't have a timely repair or even in Gen One if  
23 someone wants to drive their car, which they can do, and give  
24 the regulators and Volkswagen the opportunity to see if they  
25 get an approved reduced emissions modification, they can do so,

1 but again, there has to be a time to end this, so if that is  
2 not -- if they don't have that reduced emissions modification  
3 approved by August 1st of 2018, then the consumers can opt out  
4 at that time and proceed with their legal remedies. They can  
5 continue to wait if they want to, but they have a 30-day  
6 opt-out period available to them at that point in time.

7 Now, up to this point in this presentation, we've been  
8 talking about the process that relates to Generation Two  
9 because of the uniqueness of the potential emission compliant  
10 repair. Now I want to focus on the remedies for Generation  
11 One, and these remedies will be similar for Generation Two.

12 So in Generation One, we have a buyback. And if you do  
13 the buyback, you're going to get your vehicle value, plus  
14 you'll get restitution, plus there is a loan forgiveness  
15 provision similar to the 2L provision. The vehicle value is  
16 frozen at September 2015, not a clean trade value of the  
17 vehicle, and then the restitution kicks in, additional  
18 finances, is a \$6,000 minimum, and it's calculated by the  
19 amount by which the 2015 clean retail exceeds the vehicle value  
20 so it raises it to clean retail.

21 In addition, we have an agreed-to tax chart by every state  
22 of registration so that you'll get back the taxes that you  
23 paid, the percentage that applied in your state, and then there  
24 is an additional fixed payment of \$5,155 for the Generation One  
25 vehicle. In addition, the 30 percent loan forgiveness that is

1 set forth in the settlement agreement would be available to the  
2 consumers.

3 So a buyback option ended up with clean trade value as of  
4 September 18, 2015. It will include adjustments for options  
5 and mileage, if applicable, because sometimes they're not, and  
6 then the restitution.

7 The fixed sum for Generation One is 5,155. The fixed sum  
8 for Generation Two 8,728. We're dealing with different valued  
9 cars, different tax implications, and so the numbers do change.

10 So as you look at the summary of the benefits for  
11 Generation One, you've got the restitution, and for an owner,  
12 the average payment is going to be 29,391 for the vehicle value  
13 and \$10,391 for owner restitution or 50 percent if you  
14 purchased the car after September 18th because there would have  
15 been a seller that had the car at the time of the first  
16 disclosure or former owner and that former owner sold that car  
17 after September 2015 and before the settlement, January 31st,  
18 2017, that person gets 50 percent in the Generation One. And  
19 then the lessee who had that contract would get 5,710 on  
20 average, but their contract does have mileage adjustments and  
21 mileage penalties so those do remain and have to be applied.

22 So if you look for a specific car and throughout the  
23 long-form notice and throughout the documents that are to be  
24 filed on the court's web page, there are multiple examples of  
25 cars so people can follow exactly how it works. This is one



1 example where you had a 2011 Audi Q7 Premium Plus vehicle. The  
2 vehicle value would be 30,000. The clean retail value is  
3 32,825. So we have -- and it's in a Connecticut hypothetical,  
4 and Connecticut has a 6.35 percent tax.

5 So you take the difference in the vehicle value or the  
6 trade versus retail and you add that, 2,825, and you take the  
7 tax and then you take the fixed payment, so this particular  
8 vehicle owner would get the ultimate payment of \$40,064.39.

9 We have restitution payments for Generation One owners who  
10 purchased the cars after the first disclosure. If there is a  
11 former owner that comes forward, it has to be shared because  
12 you've got two people impacted with a car, and because we have  
13 the two different disclosure dates, it's possible that we are  
14 going to have two former owners of a car.

15 So if there is two former owners and if they come forward  
16 and if they file timely and eligible claims, then each of those  
17 two former owners would split that 50 percent so it would be 25  
18 to the first, 25 to the second, and the key holder referred to  
19 or the current owner would get 50 percent. So that two  
20 disclosure makes this somewhat more complicated in following  
21 through.

22 Again, we have the example of the Generation One vehicle  
23 sold after September and the calculation goes through and you  
24 can see it's split with 50/ 50.

25 Because of this potential to have former owners and

1 eligible lessees that no longer have possession of a car, it's  
2 important for the claims facility and for the other class  
3 members to know if those people opt out or if they file a claim  
4 and if they have a valid claim. So in order to really start  
5 the process in robust for all consumers, we have to identify  
6 these former -- eligible former lessees and former owners. So  
7 the settlement does require the former owners to identify  
8 themselves by May 1st. And that's a very basic identification  
9 and that system will be available promptly for them to start  
10 going on and identifying themselves. It's electronic  
11 registration. They can do it by mail. They can do it by fax,  
12 and we get preliminary approval and it starts the next day.  
13 That system is ready to go.

14 The identification is not required for the lessees because  
15 the vendors know who they leased the cars to because you're not  
16 a lessee unless you leased from the defendants or their leasing  
17 facilities. So we can self-identify those folks. But we still  
18 need their claims. And we need their claims to come in early  
19 so that if there is an owner that is entitled to compensation,  
20 we don't delay paying that owner or pay that owner too much and  
21 then we have a subsequent former owner come in, so there is a  
22 60-day, after final approval, deadline for both that lessee and  
23 that former owner to file their valid claim in order to allow  
24 the system to go forward for everybody.

25 There was another provision that we've put in that once

1 the consumer gets past January 31 or gets past the opt-out, we  
2 have wrecks. We have cars that get totaled, unintentional  
3 damaged cars that make them inoperable. So if there is an  
4 accident between September 18th or was an accident between  
5 September 18th and January 31st that results in the vehicle  
6 being transferred to an insurance company because it was  
7 totaled or it was sold or otherwise permanently removed from  
8 commerce, we consider that individual to be an eligible former  
9 owner, and they would still get the 50 percent of the owner  
10 restitution.

11 If there is an accident after January 31, '17, that again  
12 results in the vehicle being transferred to an insurance  
13 company or otherwise permanently removed from commerce, that  
14 person is considered to be an eligible owner because they did  
15 not have anything to do with the fact they lost that right  
16 after the settlement was approved. And we believe that's an  
17 additional benefit to the consumer and protects them.

18 Then we have the Generation One lessee compensation which  
19 works very similar to the 2L and very similar to the former  
20 owner. And I won't belabor the examples there for the Court,  
21 but, again, those will be on the web page for someone to look  
22 through.

23 So then we get to the total economics of the Generation  
24 One. We refer to "Projected Generation One Value" because  
25 we're projecting that a hundred percent of the consumers will

1 participate, and if there is a hundred percent buyback, then  
2 the total buyback payment would be \$779,563,305.

3 In addition, there is a provision for a claims-made  
4 process. If an individual consumer had a warranty that they  
5 bought or a service contract they bought that still has value  
6 but they're giving up the car, then Volkswagen will pay the  
7 value that they're not otherwise eligible to collect back from  
8 their provider of the warranty or service contract. But first  
9 they have to seek any refund they would get under their  
10 contract in the normal course and they have to come forward and  
11 make an administrative claim for that money because we cannot  
12 self-identify those individuals.

13 In addition, while we're going through this process, each  
14 vehicle will be allowed to have one service for AdBlue fuel and  
15 oil change which is paid on top of that by Volkswagen, and  
16 there is a voucher system that has been set up for that so when  
17 they get their offer.

18 So that talks about the Gen One with one exception. There  
19 is a trade-in option. Because, again, of the delay, a consumer  
20 can still have to register, they still have to file their  
21 claim, they still have to show eligibility, and they still have  
22 to establish possession and ownership, but they can go to a  
23 dealership and trade their car and get the same benefits they  
24 would get from the buyback option toward the trade at that  
25 time, and if they were to buy a vehicle in trade that is less

1 valuable than their total benefit value, they will get an  
2 additional check at that time. So that's an addition that was  
3 not in the 2-liter settlement that we were able to work out.

4 I want to turn now to the Generation Two cars. The  
5 process for the buyback is pretty much the same. I want to  
6 point out that we do have an additional issue with these  
7 vehicles. A significant number of these Generation Two  
8 vehicles had options that were unique to the buyer that were  
9 not normally valued in -- when you trade in the car. Somebody  
10 might have put fancy wheel covers on or fancy mats and  
11 different systems, and some of these were expensive.

12 So there's a provision here that we've added based on the  
13 manufactured suggested retail price or factory options outside  
14 of that. We've added a thousand dollars to the car, and that  
15 would add additional compensation for the Generation Two cars  
16 to offset the loss of those options that were valued by the  
17 consumer but are not valued by the automobile industry in the  
18 sale of cars today.

19 One example of a Generation Two owner, if you bought a  
20 2015 Audi A6 Premium Plus, here you've got a vehicle value of  
21 \$46,000. You've got clean retail. It's 50,925. It was in  
22 Utah, which has a 6.69 percent tax. And you're ultimate  
23 compensation as it runs through the formula would be \$64,867.

24 The restitution split between former owners and lessees is  
25 very similar to -- or is the same as Generation One. And we

1 have the same total vehicle protection that we discussed in  
2 Generation One and the same lessee compensation, just the  
3 numbers change because of the value situation.

4 So we have those particular payments, but in addition, as  
5 Ms. Greenwald pointed out, from the consumers' point of view  
6 and from the environment's point of view, we have additional  
7 benefits that this car cannot be resold in the U.S. or removed  
8 from the U.S. unless and until it gets an approved emissions  
9 modification applied. Obviously if you wreck your car and you  
10 transfer it to an insurer or you sell it to the insurer to a  
11 salvage yard, that transaction can take place.

12 The program will start 15 days after final approval. We  
13 need a little time to get things geared up and ready once we  
14 have final approval, and since final approval, if Your Honor  
15 issues, will be at the time Your Honor decides, we just have  
16 got 15 days after that to get ramped up.

17 Volkswagen's responsible for all court-approved fees and  
18 costs.

19 As we did in the 2-liter settlement, class counsel will  
20 affirmatively request a provision in the final approval order  
21 that the statute of limitations is tolled for the class members  
22 because we've got these potential back-end opt-outs, this  
23 potential failure of emission modification or a consumer that  
24 buys after final approval that decides to opt out, we need that  
25 statute of limitations protection.

1           The parties have worked very hard to try to simplify the  
2 claims process. Obviously, when the 2L settlement was  
3 approved, we had a massive response, as Your Honor knows. And  
4 that pointed out some issues that we needed to address in the  
5 claims process.

6           One of the big issues that has caused delay in the 2L  
7 process is when cars were subject to loans and had -- they were  
8 securing debt, we had to have a lot of information from a third  
9 party to know how to calculate the value to be sure the car got  
10 paid off, and that took a lot of time. We've improved that  
11 process tremendously, I believe. In addition, in this  
12 settlement, we are encouraging the consumers to go to their  
13 credit unions and help us get that information which, at the  
14 end, will shorten the period of time for them to accomplish  
15 their remedy.

16           Ms. Greenwald also talked about the additional payment  
17 under the EPA-CARB environmental settlement of the 225.

18           The loan forgiveness works the same as it did in 2L. It's  
19 up to 30 percent. The parties felt that this had sort of  
20 become an expectation, and because it was in the final  
21 settlement that was approved in June 28, 2016, we did not think  
22 it would be appropriate to let anyone game the system by trying  
23 to get a loan after that time that might unfairly put them in a  
24 position to get a loan forgiveness that should not otherwise be  
25 done, so that loan forgiveness deadline is June 28, '16.

1 I discussed the bridge warranty and the reduced  
2 performance protection earlier.

3 If there is an approved emission modification, we do have  
4 the full disclosures that are required. They're also required  
5 under the EPA-CARB settlement, under the FTC settlement.  
6 There's extended warranties for the emission modification as  
7 well as lemon law protection.

8 As we now are in 2017 and as we move forward, the fact  
9 that the value of these cars is frozen in 2015 I think is a  
10 tremendous benefit to the consumer as they go through this  
11 process and try to deal with it.

12 The condition of the car, scratches, normal wear and tear,  
13 will not prevent you from participating. However,  
14 unfortunately we've had some situations where there was just  
15 straight intentional destruction of the car before it was  
16 brought in for buyback which defeated the spirit and the  
17 purpose of the settlement. So here it's perfectly clear that  
18 intentional damage to the vehicle or vandalism can negate your  
19 right to participate in the program.

20 What we're looking for is cars that can be driven lawfully  
21 and safely on the highway. We had situations where doors and  
22 seats were taken out of cars before they were brought back in  
23 and things of that nature, which were just not -- not the  
24 intent.

25 In addition, because again of the delay that we're dealing



1 with, the consumer can drive these cars 15,000 miles a year,  
2 12,500 miles a month, without any mileage penalty. So whenever  
3 you bring your car in, if your remedy is delayed to, you know,  
4 late '17 or early '18, you would take the mileage off as you  
5 value so that you not get that or you could get a benefit of a  
6 mileage increase when the mileage adjustment is done.

7 We talked about the maintenance claims made and the  
8 AdBlue.

9 I want to focus just a moment again on the trade-in option  
10 because this is new. It includes the full economic benefit you  
11 would get from a buyback. But you must stay within your  
12 branded dealer to make it happen. In other words, you've got  
13 to take a Volkswagen to a Volkswagen dealer, an Audi to an Audi  
14 dealer, and a Porsche to a Porsche dealer if the trade-in  
15 becomes available in the Porsche vehicles.

16 And it's important for the consumer to understand when  
17 they go and they know they're entitled to get, you know,  
18 \$41,000 under the buyback formula that has been verified, if  
19 they only buy a car for 35, they stay there until they get  
20 their check. It's been worked out where the process can work  
21 and the money can be available.

22 Your Honor, we are asking the Court to approve the same  
23 claims review committee process that we had in 2L which is a  
24 representative from Volkswagen, a representative from class  
25 counsel, and a court-appointed neutral, and they will resolve

1 disputes, value disputes, eligibility disputes.

2 We have some situations where we have planned for where  
3 people are going to be deployed. Military folks get deployed  
4 overseas and they want to try to get their vehicle dealt with  
5 before, or even civilians who get deployed. The review  
6 committee has been given additional authority to deal with  
7 that. They have also been given additional authority to deal  
8 with the, quote, operable car for the intentional damage  
9 situation.

10 We are asking again that Ankura be appointed as the claims  
11 supervisor that reports to the Court that would monitor the  
12 settlement and participate and respond to the parties and  
13 respond to the Court, and I think Ankura has done a good job in  
14 2L, and we hope Your Honor accepts that.

15 So now we look at the claims process itself. And I  
16 encourage the consumers to pay attention to the definitions  
17 when they look at these long-form notices and they look at the  
18 settlement agreement and follow the definitions carefully  
19 because it does make a difference.

20 The consumer now can get the information of what their  
21 options are, what their rights are. That's what the class  
22 notice is going to be. And then we can have the former owners  
23 identify themselves. That needs to be done. Then we will  
24 await Your Honor's decision on final approval, and 15 days  
25 later, we will begin the process of taking claims.

1           Once the claim comes in, we've narrowed the time that  
2 Volkswagen will review for completeness that everything that  
3 needed to be filed and all the data that needed to be  
4 available, was it made available so that it's ready, and they  
5 have 10 business days to do that.

6           Then they will verify what option has been chosen, and if  
7 there is an option for the buyback or the trade-in, this is  
8 where we ran into some delays before on verification of the  
9 loan payoff, but we've improved that process so we can't  
10 control the response date from the banks or the credit unions,  
11 and, frankly, we got a lot of small financial institutions that  
12 have done loans in these cars that are hard to deal with at  
13 times, just practically. So it's not a deadline and the  
14 consumers have to try to help with that in order to speed up  
15 the process.

16           Then Ankura or the claims supervisor will review what has  
17 been done at the Volkswagen claims facility on eligibility.  
18 While, again, we don't have a set time, the class counsel's  
19 experience and in talking with Ankura, we believe that that  
20 review process can be accomplished within 5 to 10 business  
21 days. We've been assured by Ankura they will push that as fast  
22 as they possibly can. But it's an important step for  
23 verification of the process.

24           Once that comes back, Volkswagen has 15 business days  
25 after the supervisor verification process begins to issue the

1 offer. And if they are a current owner or lessee, that's when  
2 the voucher for the AdBlue and oil change and filters would be  
3 made available automatically sent with the offer.

4 The consumer now is in control of the time. They can  
5 accept the offer that day or they may want to think about it  
6 awhile, but whenever the consumer confirms their acceptance and  
7 returns their release and if it requires a buyback or trade-in,  
8 there has to be a schedule because we can't just have people  
9 show up at the dealers, so the consumer, once they return their  
10 acceptance, can now schedule a repair, if it's a repair  
11 process, or if it's a buyback or trade-in.

12 Volkswagen will provide schedules, and this process should  
13 be complete within 60 days. And then they show up and they  
14 collect their warranty and service. If they make that claim,  
15 they get that additional payment.

16 In the Generation Two, we got a little different situation  
17 because we're going through the repair process potentially, so  
18 you now go in, you can get your repair money now or you wait  
19 for notification of approval or disapproval. If you get  
20 approved, you get the repair, and if we can look at the  
21 Generation Two claims process chart.

22 So if we get an approved emission compliant repair in the  
23 file, then you go in and get your repair and get your money.  
24 If we don't get it, then we go through the process with the  
25 Court, and after the decision of the Court on whether or not

1 good cause and after Volkswagen's decision on whether or not to  
2 seek the extension and pay the additional \$500, we then go  
3 automatically to the buyback, trade-in, and reduced emissions  
4 modification process which would be the same that we've  
5 discussed for Gen One as far as the claims process.

6 So it's going to take a little time. The parties  
7 recognize that they're going to continue to be close pen pals  
8 and discussion partners for several more months to come, but we  
9 believe that it's the best approach that could be done in light  
10 of trying to protect the environment, as Ms. Greenwald pointed  
11 out, and also to provide full and fair compensation to the  
12 consumers, but do it now, as close to today as we can. It's  
13 going to take some time, but we've got a lot of cars that we're  
14 dealing with.

15 And, Your Honor, I will answer any questions that you  
16 have.

17 **THE COURT:** Well, first of all, Mr. Rice, thank you  
18 for that presentation. It demonstrates any number of things,  
19 but one thing that it clearly demonstrates was how complicated  
20 it was to achieve a settlement because you're dealing with many  
21 types of cars and many circumstances that -- whether they  
22 were -- when they were purchased, when they learned about the  
23 issues, and obviously it's complicated. So thank you.

24 The process, I'm sure everybody knows, at least in this  
25 room, is that once the Court issues preliminary approval, then

1 that's the opportunity for any interested individual to weigh  
2 in after they've had the opportunity to read the settlement and  
3 express their views, whatever their views may be, prior to the  
4 Court granting final approval.

5 **MR. RICE:** Your Honor, the consumer will be able to  
6 look at the documents and get a very reasonable expectation of  
7 their economic recovery. It may change because of mileage  
8 changes on some of the cars going forward, but the numbers will  
9 be pretty close.

10 **THE COURT:** Thank you very much.

11 **MR. RICE:** Thank you.

12 **MS. CABRASER:** Your Honor, one of the great benefits  
13 that we had throughout this process on the PSC side was the  
14 ability to work with the diesel experts at West Virginia  
15 University who were instrumental in bringing this problem to  
16 light in the first place. They know these vehicles. They know  
17 diesels in general. They know the emissions requirements. And  
18 we were able to have their good advice and consultation  
19 throughout this process.

20 Information was made available to them for their  
21 evaluation, and we certainly consulted with them in crafting  
22 all of the various contingencies and provisions in the  
23 settlement, including the series of decision date deadlines for  
24 emissions compliance.

25 Mr. Ben Bailey from the PSC has worked closely with the

1 West Virginia University experts on an ongoing basis and was  
2 going to give us a very brief overview of their role in this  
3 and their continuing efforts on behalf of the consumers as the  
4 testing and approval process continues.

5 **MR. BAILEY:** Thank you, Your Honor and Magistrate  
6 Corley and Director Mueller.

7 The complicated agreements that the Court has seen, the  
8 consent decree and the settlement agreement, are all a product  
9 of what a former president and governor from your beautiful  
10 state said "trust but verify." There is a lot of trust that  
11 goes into those documents. There is a whole lot of  
12 verification also required. The Court is familiar with what's  
13 in the consent decree.

14 For our settlement agreement going forward, at  
15 Ms. Cabraser's direction and with the help of my colleagues on  
16 the PSC, we have worked up a protocol with the engineers and  
17 scientists at West Virginia University to verify going forward  
18 in particular the effects on performance that this emissions  
19 compliant repair will have on the vehicles. Our plan -- and it  
20 is contingent upon what happens with approvals from the  
21 government -- is to test representative vehicles belonging to  
22 the class members.

23 Mr. Rice's slides, No. 8 and 12, talked about the reduced  
24 performance considerations in the settlement agreement. We'll  
25 take vehicles from each of the sub-generations, the Q5, the A6,

1 and the A8 out of the 3-liter PC, passenger car classification  
2 and the other cars -- the Cayennes, the Touaregs and the Q7s --  
3 in the SUV categories.

4 We'll get them from our clients, our class members, as  
5 close to the approval dates as possible, and we'll have them  
6 tested. We'll have them tested on the dynamometer. We'll have  
7 them tested on the road, and indeed, we'll have them on the  
8 track. I'm informed by our experts that trying to test how  
9 fast a car can get from 0 to 60 is something you shouldn't do  
10 ordinarily on the streets so we will do it on a track. I have  
11 a big line in my office for people who want to participate in  
12 the test driving, and if anyone here is interested, I'm  
13 starting a list, and we will put you on it for that piece.

14 We will test those cars before the emissions compliant  
15 repair is approved, and when it is approved, then we will take  
16 that exact same car, after the repair is made to it, and do the  
17 same battery of tests to assess whether there has been any  
18 impact on the performance criteria. And the performance  
19 criteria are reduced performance criteria set out in the  
20 settlement agreement: miles per gallon, horsepower and torque.

21 We will also test for the different indicia of consumer  
22 concern that are mentioned in the consent decree with the  
23 government in which Volkswagen and the government report on to  
24 the public. We will do that as soon as possible as we can. We  
25 think that is the best way for us to answer our class members'



1 questions, to advise them when they have decisions to make, to  
2 verify all the representations that have been made in all these  
3 agreements by all the parties so that our class members and the  
4 Court will be informed.

5         So that is our plan. I'll take any questions, but before I  
6 do that, Your Honor, I do want to thank you and Director  
7 Mueller and Magistrate Corley. You sent us the message early.  
8 There are a lot of really talented and experienced lawyers in  
9 this courtroom on every side, and they have been all  
10 professional representing their clients, but they have been  
11 wonderful to work with to a person, and for me -- and I  
12 probably speak for most of my colleagues -- I want to thank you  
13 for what has thus far been a wonderful professional experience,  
14 and we got more to go, but I think it will be the same. Thank  
15 you.

16                 **THE COURT:** Thank you, Mr. Bailey.

17                 Mr. Rice.

18                 **MR. RICE:** Yes, sir. I want to follow up on  
19 Mr. Bailey's comments.

20                 We feel an obligation to the consumer class to make as  
21 much information available for them as possible. And that's  
22 what we will be doing as we go through this process.

23                 But as far as the agreement goes with Volkswagen, the  
24 reduced performance is to be measured. Impacts will be  
25 measured by Volkswagen pursuant to the industry standards in

1 connection with its submission of an emission modification  
2 proposal to the EPA and CARB because they have that  
3 jurisdiction. We don't have that jurisdiction.

4 So I don't want to get confused on the process, but we do  
5 intend to make information available to the consumer so they  
6 can make decisions.

7 Thank you, Your Honor.

8 **THE COURT:** Thank you.

9 **MS. CABRASER:** Your Honor, it's early days in the  
10 process. We have had the benefit of comments and concerns and  
11 communications from the class members and class representatives  
12 for 3-liter. We have learned a lot from the 2-liter settlement  
13 process, and it isn't a surprise that one of the concerns  
14 raised with us by our three-member class representatives,  
15 particularly Generation Two, is the very simple question why  
16 not a buyback now for all cars.

17 **THE COURT:** This is the 3-liter --

18 **MS. CABRASER:** The 3-liter Generation Two. And as  
19 we've noted, the decisions that the regulators have made, the  
20 possibilities for bringing these cars into compliance is really  
21 driven by the designs of the vehicles themselves.

22 We are three months into the 2-liter program in terms of  
23 geared-up buyback. Probably less than three -- certainly less  
24 than three full months of buying back, but already  
25 approximately a third of the cars in the class are in the

1 process of re-acquisition.

2 And on the one hand, that solves one problem. It creates  
3 other issues. That was the choice consumers had because  
4 everyone knew going in to 2-liter that these cars could  
5 possibly be modified to reduce their emissions. People had the  
6 choice of choosing that, and many of them are beginning to make  
7 that choice. But they couldn't reach original compliance.

8 The Generation Two cars can. It is an  
9 environmentally-responsible decision, which we endorse on  
10 behalf of the regulators, to do everything that is possible in  
11 terms of testing and approval within the time limits of the  
12 settlement to achieve that compliance so that people can drive  
13 and enjoy the cars they originally thought they were buying.  
14 They can have the car they thought they were getting in the  
15 first place. And so much of the complication and many of the  
16 contingencies come from that.

17 As you've heard, there is also a concern about whether the  
18 emissions can be corrected, but the performance will suffer  
19 measurably, and that is where all the performance standards and  
20 metrics in the settlement agreement and safeguards come in, and  
21 that is something that we believe the class members will have  
22 questions about, will be concerned about. We'll provide  
23 information.

24 We have every trust in the California Air Resources Board  
25 and the EPA who have the primary jurisdiction in these areas to

1 test these cars for all the parameters that are in those  
2 consent decrees which, as you know, are not only emissions but  
3 many, many performance indicia.

4 We would also note just for the record as an interim  
5 report -- and I know Mr. Giuffra will speak to this more  
6 specifically -- that emissions modifications were not  
7 immediately available for 2-liter. Many, many people chose the  
8 buyback.

9 Now that the first set of emissions modifications is  
10 available for 2-liter, people are making that choice, and I  
11 believe there are nearly 3,000 of those modifications that have  
12 already been made.

13 So this is a series of checks and balances. It's a series  
14 of contingencies. It's a series of very, very carefully  
15 considered and intensively negotiated features. We appreciate  
16 that it is complex and complicated.

17 The only way we think that we could have achieved a very  
18 simple settlement would have been to wait another year or so  
19 until all was known about emissions compliance or emissions  
20 modification and then pick up the pieces at that point.  
21 Sometimes that's all the law can do. Sometimes the law has to  
22 wait and compensate.

23 This time around, we have an opportunity, which we agree  
24 with CARB and EPA and FTC should not be wasted, to fix the cars  
25 or get them off the road, and we appreciate the understanding

1 of our class representatives and our class members in  
2 supporting and helping us go through that process.

3 We've seen a few comments from the public and the media on  
4 this settlement. It's a complicated one, but some of the media  
5 have dug through it and reported on its terms.

6 Mr. Chris Seeger will just give a very brief overview of  
7 that initial reaction.

8 **THE COURT:** Thank you.

9 **MR. SEEGER:** Good morning, Your Honor. Let me just  
10 get my equipment down here.

11 Your Honor, as Ms. Cabraser just said, it's early in the  
12 going, and we do have some feedback from the consumers'  
13 standpoint. If you approve notice, that will be going out, and  
14 it will be getting more information obviously, but I think it's  
15 worth taking maybe a minute or two.

16 Does that move the slide? Is it working? Why don't I  
17 save us the misery and I will just -- I will do this quickly.

18 So we do have a statement by the Sierra Club, Your Honor,  
19 which is very positive of the settlement. They noted that  
20 "Volkswagen's actions were as dangerous as the sickening smog  
21 their vehicles left behind, but this settlement, by removing  
22 and fixing many of the vehicles on the road and compensating  
23 affected consumers, is a strong step toward cleaning up for  
24 Volkswagen's deceit."

25 Consumers advocates have weighed in, specifically *Consumer*

1     *Reports*, where they note that "the payments represent a fair  
2     settlement for owners who trusted VW's fuel economy claims and  
3     a strong disincentive for other companies who have or are  
4     considering such deception."

5             From the media in *AutoWeek*, they note "the cash and  
6     incentives from VW could help push the vast majority of TDI  
7     owners into the driver's seat of a new car."

8             And a very popular website that a lot of car enthusiasts  
9     go on called Jalopnik, which is an interesting name but it's  
10    actually a very popular site, made a very interesting  
11    observation in their review of the settlement. They are  
12    saying, after noting when it's all going to start -- they say,  
13    "After it starts, if you own a 2009 to 2012 Touareg or Q7, you  
14    can sell your car back for big money," they note, "and then  
15    receive a hefty cash restitution payment. And if you're a  
16    Generation Two 3-liter diesel owner, you may be able to get  
17    your car fixed entirely and still get some cash."

18            There are also positive reviews from consumers, but not to  
19    go through all of these because the class itself is just going  
20    to be getting notice and weighing in. And obviously,  
21    Your Honor, at final approval you may hear concerns. But the  
22    initial feedback that we got is actually very positive from the  
23    consumers. So thank you for that.

24            **THE COURT:** Thank you.

25            And I would just say an observation that I think

1 Ms. Cabraser has made and her Plaintiffs' Steering Committee,  
2 is that a couple of options were available. One is to wait, as  
3 Ms. Cabraser points out, a year, two years. A lot of things  
4 will be known at that time. And then legal remedies could be  
5 adopted to address the knowns.

6 And I think that there are a number of things to say about  
7 that, but one thing is clear to the Court. When there is a  
8 situation in which there is an ongoing harm, I think courts  
9 have a responsibility to move quickly -- carefully, but  
10 quickly -- to address that harm. And the fact is that since  
11 these cars were out of compliance on the road, it appeared --  
12 and it especially appeared to the government, the EPA and to  
13 the FTC and to CARB, that we ought to pay attention to what is  
14 happening now, and I think the attorneys in this case,  
15 Volkswagen and obviously the defendants and plaintiffs, are to  
16 be congratulated for spending the effort now to address the  
17 problem, even though the answers are complicated, somewhat  
18 cumbersome in terms of choices and process and so forth,  
19 because you are anticipating the future. And the future is  
20 never certain. And so in order to address that, you have spent  
21 the effort now to try to figure out different permutations of  
22 what can occur.

23 The reason for doing it today is to address the immediate  
24 problem today, and the Court is appreciative of that.

25 Now, some people will say look, we could solve this whole

1 problem just by a buyback, by just by a buyback, and then you  
2 have to ask yourself is that actually environmentally  
3 responsible? If these cars can be brought back to what a  
4 consumer expected in terms of the performance, is it really  
5 environmentally sound to essentially waste money, assets,  
6 material, time, all of those things that led us up to where we  
7 are today? Does that make sense? In the Court's view, though  
8 I'll hear comments from class members and so forth, it doesn't.  
9 It doesn't.

10 So what I particularly note in this settlement as distinct  
11 from the other settlements is that there is a further effort to  
12 be environmentally sound and not to waste assets that have  
13 already been committed to buying and -- to creating,  
14 manufacturing, selling, buying a vehicle.

15 And of course we'll have to see how it develops, but I  
16 certainly hope that consumers, when they look at it and see how  
17 complicated different -- the way the decision tree goes and so  
18 forth, understand that the motivation isn't entirely economic  
19 from the point of view of the parties. It is motivated in part  
20 by a deep concern that we want to try to waste as little as  
21 possible in achieving a settlement. So I certainly appreciate  
22 that point, and it makes a substantial difference in how the  
23 Court views this particular settlement.

24 Ms. Cabraser.

25 **MS. CABRASER:** Thank you, Your Honor.



1           We had heard from 3-liter owners about why the wait and  
2 why the 2-liter settlement came first, and there are a number  
3 of reasons for that of which the Court is aware and the parties  
4 have made clear throughout the status conferences.

5           The regulators need time to fully test these cars. Their  
6 testing processes are very rigorous. It would not make sense  
7 to unreasonably foreshorten that process, so the deadlines in  
8 our settlement were very intensively negotiated, but no one  
9 wanted to create a situation where the process would inevitably  
10 fail. It's an opportunity, a limited opportunity, under all  
11 sorts of safeguards and protections, but it is an opportunity.

12           But meanwhile for those concerned about the wait,  
13 particularly in Generation Two, we were able to negotiate a  
14 system whereby one-half -- assuming an emissions compliant  
15 repair is achieved, one-half of the cash compensation that  
16 would accompany that repair for the Generation Two owner is  
17 actually paid up front, meaning shortly after final approval.

18           We've also tried to accelerate the class action settlement  
19 approval process, to the extent we can, commensurate with the  
20 law, the requirement to give everyone adequate notice, the  
21 requirement to give people adequate time to identify themselves  
22 as former owners, the amount of time that is necessary and  
23 appropriate to get the infrastructure both for the Generation  
24 One buyback/trade-in process and the Generation Two repair  
25 process into place so that people aren't frustrated by delays

1 down the road.

2 When that has been explained to class representatives and  
3 class members, people understand that, and we're going to  
4 continue to try to communicate how these various dates and  
5 deadlines work and why the settlement provisions work the way  
6 they do because they've been designed -- they're complicated.  
7 But they've been designed to work together to achieve something  
8 that both compensates the consumers, which is of primary  
9 importance to us, and fulfills the environmental objectives and  
10 desires of both the regulators and the class members.

11 We were fortunate to work very closely with the Federal  
12 Trade Commission, which also has a consumer mission, and I  
13 would ask Mr. Cohen if he wishes to speak at this juncture on  
14 the proposed Bosch and 3-liter settlements.

15 **MR. COHEN:** Thank you, Your Honor. Jonathan Cohen for  
16 the FTC.

17 We just want to make a few brief points in support of the  
18 overall settlement, and we agree with the Court that the  
19 significance and the value of this settlement to consumers  
20 should not be lost in the complexity. It is an excellent  
21 settlement.

22 Before the Court today are the Volkswagen 3-liter  
23 settlement from the PSC, as well as the PSC's 2- and 3-liter  
24 settlement with Bosch. There is also an FTC order that  
25 resolves the FTC's claims. They are all part of an integrated

1 whole.

2 As Ms. Cabraser explained, the FTC's statutory mission is  
3 one of consumer protection. It is obligated, it is directed by  
4 Congress, to protect consumers. The Commission carefully  
5 considered these settlements, which are all part of an  
6 integrated whole, and found its settlement, which contains  
7 essentially the same provisions as the private settlements, to  
8 be in the public interests. That finding and that  
9 determination has already been made.

10 Probably the most important point from the Commission's  
11 perspective is that all owners are fully compensated. All  
12 owners are made whole. That was true in the 2-liter settlement  
13 as well. And given the gravity of the wrongdoing and the  
14 number of consumers that are affected, that is a truly  
15 remarkable result.

16 Additionally, Your Honor, you've heard references from the  
17 PSC to the Commission's involvement with Bosch, and it is the  
18 case that the Commission engaged with Bosch and the  
19 Commission's internal analysis of the settlement or the  
20 potential settlements considered Bosch's involvement and the  
21 payments that Bosch would make.

22 The FTC performed an independent analysis and an  
23 independent allocation of the payments that Bosch would make to  
24 ensure that they were equitable and in the public interest.

25 In short, Your Honor, I'm happy to answer questions, but

1 it's an excellent settlement. It's a fantastic result for  
2 consumers to have every owner made whole, and we urge the  
3 preliminary approval as soon as possible and then ultimately a  
4 final approval as expeditiously as possible so that the redress  
5 process can begin.

6 Again, Your Honor, I'm happy to answer questions, but the  
7 Commission strongly supports these settlements.

8 **THE COURT:** Thank you, Mr. Cohen.

9 **MS. CABRASER:** Your Honor, thank you very much --  
10 Your Honors, thank you both very much for your patience  
11 throughout the process, and I will try to wrap this up, be very  
12 brief, and then answer any questions that the Court may have.

13 For those who are interested in the range of compensation  
14 for Generation One and Generation Two, assuming a buyback in  
15 Generation One and assuming a current owner, the percentage of  
16 that total amount, including the restitution expressed as a  
17 percentage of the clean -- the clean trade value ranges,  
18 depending on the year and model, from approximately 133 percent  
19 to approximately 143.5 percent, with an average of over 135  
20 percent of clean trade. That translates into an average of  
21 over -- actually close to 123 percent clean retail for those  
22 vehicles which is comparable to the 2-liter settlement.

23 For Generation Two, the range of repair compensation which  
24 Mr. Rice mentioned which ranges from \$7,000 to over \$16,000 and  
25 averages over \$8,000 we also believe is a very ample and

1 generous payment to accompany an emissions compliant repair for  
2 those vehicles, and the ability of owners and lessees to obtain  
3 half of that up front, we hope, is a tangible compensatory  
4 indication both of the good faith of the defendants in moving  
5 forward in their efforts to repair these vehicles and to make  
6 things right with the consumers and the fact that the  
7 Plaintiffs' Steering Committee is also monitoring and watching  
8 the process to make sure everything moves forward on both the  
9 repair and compensatory fronts.

10 With that, I would request, Your Honor, that you consider  
11 appointing for purposes of these two settlements the entirety  
12 of the Plaintiffs' Steering Committee as settlement class  
13 counsel pursuant to Rule 23(g). You haven't heard from all of  
14 us today, but I can tell you that every single one of the PSC  
15 members has devoted their personal time and energy, the  
16 resources, both human and financial, of their firms, and has  
17 always been there, 7 days a week, 24 hours a day, when called  
18 on by the Court, by the Settlement Master, by the class  
19 members, to work on both the litigation and settlement fronts  
20 for these consumers.

21 We field hundreds of calls from class members a day, both  
22 2-liter and 3-liter, calls, emails, communications. They want  
23 information about the cases. They want to be helped through  
24 the 2-liter process, which we do in conjunction with Volkswagen  
25 and the claim supervisor, and they want information. They want

1 lots of information -- this is an informed and interested  
2 class -- about their rights, about their choices, about the  
3 litigation, about what's going on.

4 We consider this to be a participatory class action.  
5 Sometimes we wish the class members wouldn't take the 24 hours  
6 a day so literally, but we have different time zones. We're  
7 there for them. It's an important role that the PSC fulfills,  
8 and it's what's enabled us to reach the quality of the  
9 settlements we've been able to reach with Volkswagen, Porsche,  
10 and Audi.

11 And, frankly, Your Honor, regardless of the various very  
12 serious allegations and admissions of wrongdoing on the part of  
13 various of the defendants, there has also been an ongoing  
14 demonstration by these same defendants, at least as we have  
15 observed it in the settlement negotiation process, that they  
16 know and understand that our class members, our clients, are  
17 their customers as well, and we appreciate that spirit.

18 **THE COURT:** Thank you.

19 Mr. Giuffra.

20 **MR. GIUFFRA:** Thank you, Your Honor. Robert Giuffra  
21 for Volkswagen, the Volkswagen defendants.

22 We urge Your Honor to give preliminary approval to this  
23 settlement. A lot of work went into this settlement, and this  
24 settlement marks an important milestone in Volkswagen's efforts  
25 to make things right in the United States.

1           This settlement, Your Honor, will build on the substantial  
2 progress that Volkswagen is currently making with our 2-liter  
3 settlement, and Ms. Nelles will talk about the details and how  
4 much progress has been made in a moment, but that settlement  
5 involves 475,000 2-liter cars, and only four months into the  
6 settlement -- this is obviously a very big settlement -- four  
7 months into the program, more than 25 percent of the cars have  
8 either been returned or have been fixed. And so I think that's  
9 a substantial achievement and the result of a lot of effort by  
10 the company.

11           Now, I think as Mr. Cohen said, this is a very fair  
12 settlement for consumers. It will deal with the remaining  
13 vehicles on the road. And this settlement reflects  
14 Volkswagen's continuing efforts to make things right, to  
15 rebuild trust with its customers, to rebuild trust with its  
16 regulators, and to rebuild trust with the American public.

17           And I think, Your Honor, it's fair to say that from the  
18 very first court hearing that I've been here, we've focused on  
19 Your Honor's concern about addressing the cars on the road,  
20 dealing with the environmental issues, and that's been the  
21 company's focus at the highest, highest levels of the company.  
22 We did not engage in the kind of time-consuming litigation you  
23 have seen in other comparable cases.

24           So as a result of this settlement, we have now addressed  
25 every single affected vehicle, either through a buyback or

1 trade-in, a lease termination, or through an approved fix or  
2 recall process that's being worked on.

3 Now, I think it's important to recognize the critical role  
4 that the EPA and CARB have in this process. You know, they are  
5 the drivers of the process. They've been the drivers from day  
6 one. And the review of all of the technical emissions  
7 modifications is something that, as has been noted before, is  
8 in their jurisdiction.

9 We also want to thank Director Mueller and the Court  
10 obviously for all that's been done here to make things -- to  
11 get this process moving along.

12 Now, obviously the process has been described as  
13 complicated. But for the individual consumer, I don't think it  
14 is that complicated, and the individual consumer can look on  
15 the website, look in the documents, and get a clear sense as to  
16 what happens for that consumer. It's only complicated because  
17 there is different people who are differently situated, some  
18 people are lessees, some people have, you know, different --  
19 are just not -- different types of cars, and so, you know,  
20 that's the complication.

21 But for the individual consumer, we think this is a  
22 straightforward settlement. You can put your numbers into the  
23 system, and you will get your number fairly close to what it  
24 will be, and just based on what we've seen so far, you know,  
25 more than 25 percent of the 475,000 2-liter owners have had



1 their situation dealt with, cars either bought back or now  
2 being fixed.

3 And this is important to note, that on the 2-liter Gen  
4 Threes, EPA and CARB have approved a fix, and as Your Honor  
5 noted before from an environmental standpoint, it makes a lot  
6 more sense to have the cars fixed than, you know, crushed or  
7 not kept on the road.

8 And there has been some discussion in the press about  
9 where are the cars? Some of them are being stored. But  
10 Volkswagen is taking steps to service those cars, to make sure  
11 those cars are being properly maintained, and this is with --  
12 this is with the 2-liter, Gen One and Twos. We are continuing  
13 to work with the regulators to try to get an approved fix so  
14 that those cars can be put out into commerce.

15 It's also important to note, Your Honor -- and I can't  
16 understate this enough -- we worked incredibly closely with EPA  
17 and CARB on the 3-liter Gen Twos. There has been a lot of  
18 discussion, engineer to engineer, a lot of test results have  
19 been shared, and I think Volkswagen, EPA and CARB are quite  
20 confident that there will be a fix for the Gen Two 3-liters,  
21 and so that is something that we are confident we can meet and  
22 we can fix these cars. We have deadlines we have to meet, and  
23 we are confident we can meet the deadlines.

24 One point I just want to make it clear on the record --  
25 and, again, you know everyone is talking. I haven't jumped and

1 up and said that is not exactly right. The documents  
2 ultimately are where the settlement agreement is reflected, and  
3 in this particular settlement, it's CARB and EPA that will have  
4 the decision-making power, in our view. They're the ones who  
5 have the expertise. They're the ones who have the teams of  
6 engineers who have been looking at this process. And they will  
7 be the ones deciding what is an emissions compliant repair,  
8 what is an emissions modification, and that's what we  
9 negotiated for, and I think that's what makes sense, and so  
10 that's how that will go.

11 On the question of -- there was some discussion about good  
12 cause and what that would mean. The words are in the  
13 agreement, you know. What that will mean at -- we hope it  
14 doesn't get to that, but that will be something for Your Honor  
15 to deal with down the road, and that was obviously a fairly  
16 negotiated, careful term.

17 And the way it works, Your Honor, is if Your Honor thinks  
18 there is good cause for further time because of the  
19 environmental benefits that come from fixing these cars,  
20 Your Honor can say there is good cause shown and therefore we  
21 get more time.

22 If Your Honor says there is not good cause shown,  
23 Volkswagen negotiated for the ability to buy essentially in  
24 monthly clips of 30 days for \$500 a month an additional 90 days  
25 for more time. So that's an important point.

1           In addition -- and I think Mr. Rice corrected the  
2 record -- the question of the performance impacts and how that  
3 is done is specified in the agreement and it's to be done by  
4 Volkswagen pursuant to injury standards.

5           Just a couple of other points. Volkswagen is paying for  
6 options in these cars. And we did have the unfortunate  
7 situation where people were stripping the cars. These cars  
8 have to be brought back with the options. That's something  
9 that was negotiated for in the agreement.

10           It's also again important that the cars -- we're going to  
11 do everything possible to try to come up with a repair for  
12 the -- for the Gen One 3-liter as we are with the Gen One and  
13 Two 2-liter, and we think from the standpoint of the benefits  
14 to the economy, fixing the cars makes some sense.

15           Now, the number that was put out by Mr. Rice on the Gen  
16 One 3-liters which was close to \$800 million, that assumed a  
17 hundred percent buyback. We obviously think a number of  
18 consumers will ultimately accept a fix and we think the fix  
19 makes a lot of good sense.

20           And I think as Ms. Cabraser noted before, we have already  
21 begun modifying the 2-liter Gen Three vehicles. We're working  
22 on the fix for the rest of the 2-liters.

23           And so, you know, Volkswagen is -- to the extent we are  
24 storing those vehicles, we are doing so in a manner that is  
25 environmentally sensitive and we are checking and maintaining

1 those cars.

2 In sum, Your Honor, on behalf of Volkswagen, my  
3 nine-year-old son, we all want this settlement to be approved  
4 by the Court. We think it's a fair settlement. There has been  
5 a lot of work that has gone into it. It's complicated in some  
6 respects, but I think that's only because of the fact that  
7 you're dealing with differently situated people, and as  
8 Mr. Cohen correctly said, this is an excellent settlement for  
9 consumers, and I think that a tremendous amount of work has  
10 been made to make this possible, and I think the settlement, as  
11 Ms. Cabraser noted, reflects the desire of Volkswagen to make  
12 things right in the United States, to do the right thing, and  
13 to move forward as a company.

14 So we urge, Your Honor, swift preliminary approval.

15 And Ms. Nelles will go now into the specifics of what's  
16 been done on the 2-liter settlement.

17 So thank you.

18 **THE COURT:** Thank you.

19 Ms. Nelles.

20 Oh, on behalf of Bosch.

21 **MR. SLATER:** If I may, Your Honor, just while we're on  
22 the pending settlements. Matt Slater on behalf of Robert Bosch  
23 GmbH and Robert Bosch, LLC.

24 I just wanted to affirm that we support preliminary  
25 approval of the settlement involving Bosch. We believe that it

1 meets both the technical and substantive requirements provided  
2 by Rule 23 and we encourage the Court to do so promptly.

3 I did just want to make the comment that the absence or  
4 relative absence of complexity in the Bosch settlement should  
5 not be taken as a detriment, and in particular, I wanted to  
6 emphasize that it is in fact the product of arm's length  
7 negotiations and an adversarial process.

8 I see many members of the PSC in the jury box right now  
9 whom I know from litigation and not from settlement  
10 negotiation. We did ultimately come to a settlement  
11 negotiation. We appreciate Director Mueller and his  
12 colleagues' role in bringing that about and bringing it to a  
13 satisfactory conclusion, and I wanted also to acknowledge the  
14 role of the FTC in helping us bring this to a final resolution  
15 as well. We appreciate their role in getting us to a point  
16 where substantially -- a substantial part of the litigation is  
17 behind us. We encourage you to bring it to final approval.

18 **THE COURT:** Thank you, Mr. Slater.

19 Ms. Nelles.

20 **MS. NELLES:** Thank you. Good morning, Your Honor and  
21 Your Honor.

22 I think I am the last speaker so I will try to be  
23 efficient. It's been a full morning.

24 Going back to the theme Your Honor started with a little  
25 bit ago about efforts being undertaken now, let me tell you a

1 little bit about what is happening now.

2 The 2-liter settlement continues to be implemented at an  
3 unprecedented pace. I think Ms. Cabraser has suggested we were  
4 three months in. Mr. Giuffra four months in. We're, I think,  
5 three and a half months in. But into what is a two-year  
6 program.

7 And as Mr. Giuffra noted -- and I think it's worth  
8 underscoring -- Volkswagen has already modified or removed from  
9 the road more than 25 percent of the affected 2-liter vehicles.

10 And, again, just three and a half months into this  
11 program, Volkswagen has extended individual offers to well over  
12 half the affected consumers, and I'm just going to give you  
13 some quick statistics on that.

14 As of today, in round numbers, of the 475,000 vehicles  
15 covered by the 2-liter settlement, more than 360,000 unique  
16 claimants have made claims. That means they have done the work  
17 to submit their documents to be reviewed through the process.

18 Of those 360,000, more than 300,000 individual offers have  
19 been extended to those claimants. That's across every  
20 category. There are offers in buybacks for approved emission  
21 modifications, for lease terminations. There are offers that  
22 have been made to former owners and former lessees. Every  
23 category.

24 Almost 250,000 of those offers have been accepted. So  
25 that means, as Mr. Rice explained very well, that they are

1 prepared and ready to go through the closing process at the  
2 time they choose.

3 Of those 250,000 that have accepted offers, almost half,  
4 125,000, have been successfully closed. That means the cars  
5 have been modified, they have been bought back, for example.  
6 That's happened at the local dealerships.

7 And almost 90,000 more of those -- of those accepted  
8 offers have scheduled appointments right now so almost 90,000  
9 more closing appointments have been scheduled, and they are  
10 being continued to be -- appointments are being scheduled  
11 daily.

12 It truly does take a village. Several thousands of  
13 persons, from among many others -- Volkswagen, the claims  
14 supervisor team, the PSC, the FTC -- are all working to make  
15 this extraordinary undertaking as efficient and fair and  
16 friendly as possible.

17 And I hope everyone is feeling fairly fondly about these  
18 really important accomplishments on this Valentine's Day.

19 **THE COURT:** Thank you.

20 **MS. NELLES:** Thank you.

21 **THE COURT:** Anything further from the parties? Very  
22 well.

23 Well, the Court has, of course, reviewed the proposed  
24 settlements in both the Bosch and the 3-liter cases and hereby  
25 grants preliminary approval to both settlements and will do the

1 appropriate appointments under Rule 23 of the Plaintiffs'  
2 Steering Committee and certify classes and so forth as  
3 required.

4 The Court will issue very soon, today or tomorrow, its  
5 order setting forth the reasons for the preliminary approval,  
6 but the parties can rely on the fact that preliminary approval  
7 has been granted.

8 The Court sets the date of May 11th, 2017, at 8:00 a.m.  
9 for the final approval hearing, and the dates that are set out  
10 by the parties as to particular deadlines and so forth as it  
11 will appear in the Court's order and the notice and so forth  
12 are hereby adopted. It may be subject to any modification  
13 given what the Court's dates are, but it's essentially the  
14 dates that were selected by the parties.

15 So with that, I don't think there is anything further for  
16 the Court to do except note that this hearing, which is now 2  
17 hours and 20 minutes, lasted a bit longer than my traditional  
18 hearings, but I think it was warranted by the subject matter.

19 And the very good news is that the tulips remain --  
20 they've opened slightly under the atmospheric, but they stand  
21 tall. And I wish everybody a Happy Valentine's Day on behalf  
22 of Hallmark, and I want to thank the parties for their  
23 extraordinary efforts.

24 Thank you. We're adjourned.

25 (Proceedings adjourned at 10:18 a.m.)



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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, February 15, 2017

*Pamela A. Batalo*

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Pamela A. Batalo, CSR No. 3593, RMR, FCRR  
U.S. Court Reporter