

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

CARRIE VASSEL, KAREN
BURNAUGH, TOM GARDEN, ADA
AND ANGELI GOZON, PATRICIA A.
HENSLEY, CLYDIENE FRANCIS,
PETER LOWEGARD, and GRANT
BRADLEY individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

Motion Date: April 22, 2024

**PLAINTIFFS' UNOPPOSED
MOTION FOR APPROVAL OF
ATTORNEY'S FEES,
EXPENSES, AND CLASS
REPRESENTATIVE SERVICE
AWARD**

PLEASE TAKE NOTICE that on April 22, 2024, at 2:00 P.M., or as soon thereafter as the matter can be heard, Plaintiffs Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada Gozon and Angeli Gozon, Peter Lowegard, and Patricia Hensley ("Plaintiffs"), individually and on behalf of all others similarly situated, will move this Court before Hon. Noel L. Hillman, U.S.D.J., pursuant to Federal Rule of Civil Procedure 23 to enter the proposed Order Granting Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards, awarding (1) attorneys' fees and expenses in the amount of \$2,200,000 to

Class Counsel; and (2) a service award in the amount of \$5,000 per Class Vehicle to the Plaintiffs as the named Class Representatives.

In support of this motion, Plaintiffs rely upon the accompanying Memorandum of Law and the authorities cited therein; the declarations of Tarek Zohdy, Russell D. Paul, and Adrian Karimi, submitted herewith; the declaration of Marcia A. Uhrig, submitted herewith; the Settlement Agreement and Release; the proposed Order, submitted herewith; and all files, records, and proceedings in this matter.

Dated: February 21, 2024

Respectfully submitted,

/s/Russell D. Paul

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

**PLAINTIFFS' BRIEF IN SUPPORT OF
THEIR UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS'
FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

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I. INTRODUCTION

After litigating this case on a wholly contingent basis since April 30, 2021 and successfully negotiating a settlement that creates substantial benefits for the settlement class, Plaintiffs¹ seek to recover reasonable attorneys' fees and expenses of \$2,200,000. Plaintiffs also move for service awards of \$5,000 per Class Vehicle² for their service on behalf of the class. The negotiated attorneys' fees and expenses are part of a nationwide Settlement that resolves Plaintiffs' allegations that certain model year 2012-2017 Audi vehicles equipped with the Audi 2.0T engine imported and distributed by Defendant Volkswagen Group of America, Inc. ("Defendant" or "VWGoA") had pistons and/or piston heads in the vehicles' engine that are defective, causing excessive oil consumption and/or engine malfunction.

As detailed below, Class Counsel successfully pursued this case in which Plaintiffs alleged violations of the consumer statutes of their states of residence

¹ The named Plaintiffs who are Parties to the Settlement Agreement, individually and as representatives of the Settlement Class, are Plaintiffs Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada Gozon and Angeli Gozon, Peter Lowegard, and Patricia Hensley (collectively, "Plaintiffs"). "Parties" is defined as Plaintiffs and Defendant Volkswagen Group of America, Inc. Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement ("S.A."), ECF No. 82-3, attached to the Declaration of Tarek H. Zohdy as Exhibit 1.

² Each Settlement Class Representative seeks to be paid \$5,000 as the owner or lessee of one Class Vehicle each, except for Ada and Angeli Gozon, who seek to collectively receive a single \$5,000 service award because they are co-purchasers of one Class Vehicle. S.A. § VIII.C.1.

(including California, Florida, Georgia, Illinois, Louisiana, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Texas, and Washington), breach of express and implied warranties, fraud by concealment, fraud by omission, and/or fraud in the inducement. As a result of efforts by Plaintiffs' Counsel and Plaintiffs, they have achieved a Settlement providing for substantial benefits to Settlement Class Members, including an extensive warranty extension and a reimbursement of certain previous past-paid out-of-pocket repair expenses for Settlement Class Members.

Critically, the Parties negotiated the attorneys' fees, expenses, and service award at arms' length and reached an agreement regarding these terms only after they had agreed upon all other material terms of the Settlement. Class Counsel's request is especially reasonable because the fees and awards will be paid directly by Defendant and will not reduce any of the reimbursement funds available to Settlement Class Members. *See, e.g., Haas v. Burlington Cnty.*, 2019 WL 413530, at *9 (D.N.J. Jan. 31, 2019) (“[T]he amount of attorneys’ fees was negotiated as a separate aspect of the settlement agreement, which further supports reasonableness.”)

As discussed below, given the amount of work performed by Plaintiffs' Counsel, the outstanding results achieved and other applicable factors, the fee and expense requests are reasonable and should be approved. The service awards requested by Plaintiffs are also within the range of those awards approved by this

Court and are warranted here to recognize the substantial time and effort Plaintiffs committed to this case, which was indispensable to its successful resolution. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *19 (D.N.J. Mar. 22, 2013) (approving incentive awards of \$5,000-\$6,000). Accordingly, Plaintiffs respectfully request that the Court grant the Motion and approve the requested amounts.

II. FACTUAL BACKGROUND AND SETTLEMENT HISTORY

A. Plaintiffs' Experiences with the Class Vehicles and Pre-Suit Investigation

This nationwide class action arises out of an alleged defect in certain model year 2012-2017 Audi vehicles equipped with the Audi 2.0T engine. Plaintiffs allege that the pistons and/or piston heads in the vehicles' engine are defective, causing excessive oil consumption or piston fracture, and in some instances, can potentially lead to engine damage ("Defect" or "Piston Defect"). Each of the settling Plaintiffs asserts that he or she purchased a Settlement Class Vehicle³ that experienced

³ Settlement Class Vehicles include certain of the following models and model years: 2012, 2013, and 2014 Audi A4, A5, A6, and Q5 vehicles; model year 2012, 2013, 2014, 2016 and 2017 Audi TT vehicles, and model year 2015, 2016 and 2017 Audi A3 vehicles. A complete list of the Vehicle Identification Numbers of included Settlement Class Vehicles is attached as Exhibit 4 to the Settlement Agreement. Due to the voluminous nature of the VIN list (.xlsx file approximately 4,100 pages long in PDF form), it was not included on the public docket, and on the Exhibit sheet, the Parties indicated it would be provided at the Court's request. *See* ECF 82-7. Class Members may use a VIN lookup tool on the Settlement Website at <https://secure.pistonsettlement.com/vinlookup>.

excessive oil consumption or a piston issue, requiring repair. Certain Plaintiffs allege that they paid out of pocket for repairs to address these issues, and others contend that they were unable to afford such repairs. Defendant asserts these engines are not defective, and the cause of damage was due to lack of or improper maintenance, improper usage of the subject vehicles and/or other outside influence.

Specifically, Plaintiff Tom Garden purchased a new 2014 Audi Q5 equipped with the subject 2.0T engine in April 2014 in Minnesota. *See* First Amended Consolidated Class Action Complaint (“Complaint”), ECF No. 67 at ¶ 83. In October 2019, Plaintiff Garden took his vehicle to an authorized Audi dealership, complaining of excessive oil consumption, but did not receive a repair to the engine. *Id.* at ¶ 87. He took the vehicle to both an independent mechanic and returned it to the Audi dealership, paying over \$3,000 for various repair attempts and additional oil for his vehicle, but has never received a repair which remedied the excessive oil consumption caused by the Piston Defect in his vehicle. *Id.* at ¶¶ 88-92.

Plaintiff Carrie Vassel purchased a used 2012 Audi Q5 equipped with the subject 2.0T engine in October 2020 in Illinois. *Id.* at ¶ 57. She began to experience oil consumption problems within a few weeks of her purchase. She contacted Audi to complain, and took her vehicle to an Audi dealer, which diagnosed her vehicle as needing new pistons, piston rings, and all other associated hardware. *Id.* at ¶¶ 61-63. An Audi representative told her this was a defect for her year and model of vehicle

and she would have to pay for it herself. *Id.* at ¶ 63. She has lost use of her vehicle and cannot afford to repair her vehicle, which continues to exhibit the Piston Defect. *Id.* at ¶¶ 65-66.

Plaintiff Karen Burnaugh purchased a new 2012 Audi A4 equipped with the 2.0T engine in May 2012 in Louisiana and subsequently experienced repeatedly low levels of oil, even after taking the vehicle to authorized Audi dealerships and paying for repairs. *Id.* at ¶¶ 69-81.

Plaintiff Grant Bradley purchased a new 2012 Audi A4 Avant equipped with the subject engine in March 2012, in Oregon. *Id.* at ¶ 154. He periodically complained to an Audi dealership about the excessive oil consumption of his vehicle, was told there was no problem, and then subsequently was told his vehicle required a full piston replacement, for which VWGoA only paid for half. *Id.* at ¶¶ 159-164.

Clydiene Francis purchased a used 2012 Audi A4 equipped with the subject engine in August of 2020, in Pennsylvania. *Id.* at ¶ 130. Her vehicle began to display symptoms of the Piston Defect within a month of purchase and she complained repeatedly to the Audi dealership representatives. *Id.* at ¶¶ 134-139. Although an Audi mechanic contacted VWGoA, which recommended a total piston replacement, VWGoA denied her request for assistance in paying for the repairs. *Id.* at ¶ 139. She has not received an actual repair for the Piston Defect because of the cost. *Id.* at ¶ 140.

Plaintiffs Ada Gozon and Angeli Gozon co-purchased a new 2013 Audi A4 equipped with the subject engine in April 2013, in Nevada, and experienced mechanical issues related to the Piston Defect. *Id.* at ¶¶ 97, 101. Although they paid to have the piston and piston rings replaced, because the replaced pistons and piston rings were identical to the ones that failed, this failed to repair the Piston Defect, and their vehicle continues to exhibit the Piston Defect, which has never been repaired by VWGoA. *Id.* at ¶¶ 103-104.

Plaintiff Peter Lowegard purchased a new 2013 Audi Q5 equipped with the subject engine in June 2013, in Texas. *Id.* at ¶ 145. He incurred over \$12,000 for repairs necessitated by the damage the Piston Defect caused to his vehicle's engine. *Id.* at ¶ 150.

Plaintiff Patricia Hensley purchased a used 2015 Audi A3 Cabriolet equipped with the subject engine in May 2016, in Pennsylvania. *Id.* at ¶ 118. Her vehicle later displayed symptoms of the Piston Defect while she was driving as it went into limp mode, lost power steering, and the engine blew without prior warning. *Id.* at ¶ 122. After diagnosing her vehicle as having piston failure, the Audi dealer contacted VWGoA while repairing her vehicle; however, VWGoA agreed to cover only 25% of the cost of engine replacement. *Id.* at ¶¶ 123-124.

Class Counsel also thoroughly investigated the alleged defect prior to filing the lawsuit. *See* Declaration of Tarek H. Zohdy (“Zohdy Decl.”) ¶ 9. Class Counsel

analyzed Plaintiffs' issues, interviewed many other putative Class Members, reviewed vehicle repair records, analyzed Technical Service Bulletins addressing the relevant issues, analyzed symptoms of the Defect in the Class Vehicles, analyzed owners' and warranty manuals for the Class Vehicles, researched publicly available documents and reviewed other materials, to determine the extent to which the alleged Piston Defect affected the putative Class, as well as VWGoA's alleged knowledge. Zohdy Decl. ¶¶ 9-10. In addition, Class Counsel continued to respond to inquiries from many putative Class Members and investigate their complaints. *Id.* at ¶ 11.

B. Overview of the Litigation, Discovery, and Settlement Negotiations

The Complaint asserting a nationwide putative class action was originally filed on April 30, 2021, and was amended on May 6, 2021 (First Amended Complaint) and July 26, 2021 (Second Amended Complaint) adding multiple named plaintiffs, including most of the Plaintiffs here. *See* ECF 11 and 36; Zohdy Decl. ¶¶ 2-3. On August 5, 2021, Plaintiff Hernan A. Gonzalez, represented by Class Counsel, filed *Gonzalez v. Volkswagen Group of America, et al.*, in Superior Court of the State of New Jersey, Mercer County, Law Division, under Docket No. L-001632-21. Zohdy Decl. ¶ 4. On August 9, 2021, Defendant filed a notice of removal of the *Gonzalez* action to this Court. *See Gonzalez v. Volkswagen Group of America, et al.*, Civil Case No. 1:21-cv-15026-NLH-MJS, ECF 1. On September 30, 2021,

pursuant to Consent Motion of the Parties, this Court entered an order consolidating *Gonzalez* with and into this action, and directing the filing of a Consolidated Class Action Complaint, which was filed on October 12, 2021. ECF 42, 45; Zohdy Decl. ¶ 5. Defendant filed a motion to dismiss the Consolidated Class Action Complaint on December 3, 2021. ECF 53; Zohdy Decl. ¶ 6. Substantial briefing on that motion thereafter ensued, with Plaintiffs filing an extensive opposition on January 14, 2022 (ECF 55; Zohdy Decl. ¶), and VWGoA filing a reply on February 11, 2022. ECF 59; Zohdy Decl. ¶ 7.⁴ On May 4, 2023, the Court granted in part and denied in part the motion to dismiss, with leave to amend. ECF 66; Zohdy Decl. ¶ 8. As a result, on June 2, 2023, Plaintiffs filed the First Amended Consolidated Class Action Complaint. ECF 67; Zohdy Decl. ¶ 9.⁵

⁴ On June 23, 2022, *Mishkin v. Volkswagen Group of America, Inc.* was filed in U.S. District Court for the Eastern District of Missouri involving the same vehicles and alleging the same defect and underlying allegations on behalf of a Missouri Plaintiff and a putative Missouri-only class. Since *Mishkin*'s Missouri-only putative class members were already encompassed within this action's putative nationwide class, the Missouri court, on October 11, 2022, transferred *Mishkin* to this Court, and that action was assigned to Judge Hillman under 1:22-cv-06127-NLH-EAP. Other than VWGoA's motion to dismiss (*Mishkin* ECF 41), which this Court granted in part and denied in part (*Id.*, ECF 52), there has been no litigation activity in the *Mishkin* action, nor did *Mishkin*'s counsel, who was well aware of this action, ever object to Class Counsel's appointment as Rule 23(g) interim class counsel for the nationwide class. ECF 66. The nationwide Class Settlement herein encompasses *Mishkin* and his putative Missouri-only class. On November 6, 2023, all proceedings in *Mishkin* were stayed pending the Court's final determination of whether to approve this nationwide Class Settlement. ECF 67.

⁵ On October 10, 2023, Plaintiff Jeni Rieger, Jodie Chapman, Aloha Davis,

In spring 2023, the Parties initially discussed the possibility of settlement, and the Parties agreed to participate in mediation before an experienced mediator. Zohdy Decl. ¶ 13. In light of settlement negotiations, the parties informally exchanged information, including technical information, regarding the nature of the alleged issues, condition of the Settlement Class Vehicles, and Defendant’s ameliorative actions. *Id.* at ¶ 14. Defendant had been trying to fix the problem since at least 2013 by issuing Technical Service Bulletins (“TSBs”). *Id.* at ¶ 15; ECF No. 67 ¶¶ 270-271.

On July 7, 2023, following extensive settlement negotiations, the Parties engaged in a vigorous day-long mediation before Bradley A. Winters, Esq., a respected and experienced neutral class action Mediator with JAMS, during which the Parties reached agreement on the material terms of a settlement in principle. *Id.* at ¶ 16. The Parties continued negotiations, exchanging additional information and finalizing the details of this nationwide settlement. *Id.* at ¶ 17. Following further review of the information exchanged and extensive investigation of the claims, the Parties finalized the terms of the settlement and reduced those terms to a formal Settlement Agreement. *Id.* at ¶ 18.

The parties also simultaneously pursued discovery necessary for the litigation, including inspections of five of the named Plaintiffs’ Class Vehicles. Plaintiffs

and Hernan A. Gonzalez filed voluntary dismissals of their claims. *See* ECF 81.

drafted a Proposed Joint Discovery Plan and initiated an initial conference under Fed. R. Civ. Proc. 26(f) with defense counsel on June 9, 2023. The parties also negotiated a Stipulation and Protective Order, which the parties submitted to the Court on July 7, 2023. ECF 71; Zohdy Decl. ¶ 19. On July 10, 2023, Plaintiffs served initial disclosures on Defendant. Zohdy Decl. ¶ 20. Additionally, on July 11, 2023, Plaintiffs served a first set of document requests on Defendant. *Id.* at ¶ 21. Based on the information exchanged pursuant to settlement negotiations as well as a thorough investigation begun prior to filing the Complaint and continuing through the course of the litigation, including interviewing putative Class Members, researching publicly available materials, and inspecting Class Vehicles, Class Counsel gained a thorough understanding of both the strengths and weaknesses of Plaintiffs' claims and believe the proposed terms of the Settlement Agreement represents a substantial recovery on behalf of the putative Class. *Id.* at ¶ 22.

Only after agreeing to the structure and material terms for settlement of the Class claims, the Parties negotiated, including during an additional mediation with Mr. Winters on August 21, 2023, and ultimately agreed upon an appropriate request for service awards and Plaintiffs' attorneys' fees and expenses. Zohdy Decl. ¶ 23. All the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides. *Id.* at ¶ 24. The settlement is set forth in complete and final form in the Settlement

Agreement. *Id.* ¶ 25, Ex. 1.

On October 20, 2023, the Court granted Preliminary Approval of Class Action Settlement, certifying a Settlement Class consisting of:

All persons and entities who purchased or leased, in the United States or Puerto Rico, certain specific model year 2012, 2013, and 2014 Audi A4, A5, A6 and Q5 vehicles, certain model year 2012, 2013, 2014, 2016 and 2017 Audi TT vehicles and certain model year 2015, 2016 and 2017 Audi A3 vehicles, which are specifically designated by Vehicle Identification Number (VIN) in Exhibit 4 to the Settlement Agreement and were imported and distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico (hereinafter, “Settlement Class”).

ECF No. 84 (“Preliminary Approval Order”), at 2.⁶

⁶ Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class. *See* S.A. § I.V.; Preliminary Approval Order, ECF 84, at 2-3.

III. MATERIAL TERMS OF THE SETTLEMENT

A. Benefits to the Settlement Class

The Settlement provides to the Settlement Class substantial benefits that squarely address the Piston Defect issues raised in this litigation. The Settlement provides for an extensive warranty extension and a reimbursement of certain previous past-paid out-of-pocket repair expenses, as follows.

1. Warranty Extension for Current Owners and Lessees of Settlement Class Vehicles

Effective on the Court-ordered date by which the Claim Administrator shall mail the Class Notice of this Settlement to the Settlement Class (“Notice Date”), VWGoA will extend the New Vehicle Limited Warranties (“NVLWs”) for the Settlement Class Vehicles to cover 75% of the cost of repair (parts and labor), by an authorized Audi dealer, of the following during a period of up to nine (9) years or ninety-thousand (90,000) miles (whichever occurs first) from the Settlement Class Vehicle’s In-Service Date: (1) for Model Year 2012-2014 Audi A4, A5, A6, Q5 and Model Year 2012-2014 Audi TT Settlement Class Vehicles only – a diagnosed condition of excessive oil consumption by an authorized Audi dealer, as confirmed by an authorized Audi dealer’s oil consumption test,⁷ or (2) for Model Year 2015-

⁷ If an oil consumption repair is performed under the warranty extension, then the cost of the oil consumption test that led to said repair shall likewise be covered at the same percentage (75%) as provided under the warranty extension.

2017 Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only

– a diagnosed condition of a fractured piston by an authorized Audi dealer. S.A. § II.A.

The Warranty Extension shall also cover a percentage, based on a Sliding Scale detailed in the Settlement, of the cost of repair (parts and labor), by an authorized Audi dealer, of a diagnosed condition of engine damage which was directly caused by excessive oil consumption (for Model Year 2012-2014 Audi A4, A5, A6, Q5, and Model Year 2012-2014 Audi TT Settlement Class Vehicles only), or a diagnosed condition of engine damage other than to a piston which was directly caused by a fractured piston (for Model Year 2015-2017 Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only), during the aforesaid period of nine (9) years or ninety-thousand (90,000) miles (whichever occurs first) from the applicable Settlement Class Vehicle's In-Service Date. As to all Settlement Class Vehicles, the Warranty Extension is conditioned upon the Settlement Class Member providing, to the dealer, Proof of Adherence to Maintenance Requirements. *Id.* The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired. S.A. § II.A.

Further, if a Settlement Class Vehicle's Warranty Extension time period from

the In-Service Date has already expired as of the Notice Date, then for that Settlement Class Vehicle only, the Warranty Extension time and mileage limitations shall be for a period of up to seventy (70) days after the Notice Date or ninety-thousand (90,000) miles from the Settlement Class Vehicle's In-Service Date (whichever occurs first), subject to the same conditions and limitations set forth above. *Id.* Prior to the Notice Date, VWGoA will advise authorized Audi dealers of the Settlement's Warranty Extension, so that the Warranty Extension may be implemented in accordance with the terms and conditions of this Settlement Agreement. *Id.* at § IV.B.8.

2. Reimbursement of Certain Past Paid Out-of-Pocket Repair Expenses

In addition to the substantial Warranty Extension, the Settlement provides that Settlement Class Members who timely mail to the Settlement Claim Administrator a Claim for Reimbursement (*i.e.*, a fully completed, dated and signed Claim Form together with all Proof of Repair Expense and Proof of Adherence to Maintenance Requirements documentation), shall be eligible for 75% reimbursement of the paid (and unreimbursed) cost (*i.e.*, parts and labor) of a past repair (limited to one (1) past repair) that was performed on a Settlement Class Vehicle prior to the Notice Date and within nine (9) years or ninety-thousand (90,000) miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, to address the following:

(i) for Model Year 2012-2014 Audi A4, A5, A6, Q5 and Model Year 2012-2014

Audi TT Settlement Class Vehicles only – a diagnosed condition of excessive oil consumption as confirmed by an authorized Audi dealer’s oil consumption test, or (ii) for Model Year 2015-2017 Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only - a diagnosed condition of a fractured piston(s). S.A. § II.B.1.

Reimbursement shall also include a percentage, determined by the same percentages of coverage set forth in the Sliding Scale in the Settlement, of the past paid (and unreimbursed) cost (*i.e.*, parts and labor) of repair (limited to one (1) past repair), performed prior to the Notice Date and within nine (9) years or ninety-thousand (90,000) miles (whichever occurred first) from the Settlement Class Vehicle’s In-Service Date, of: (1) for Audi A4, A5, A6, Q5 and 2012-2014 Audi TT Settlement Class Vehicles only – engine damage which was diagnosed to be directly caused by excessive oil consumption, or (2) for Audi A3 and 2016-2017 Audi TT Settlement Class Vehicles only - engine damage other than to a piston which was diagnosed to be directly caused by a fractured piston. S.A. § II.B.1.

B. Release of Claims/Liability

In consideration of the Settlement benefits, VWGoA and its related entities and affiliates (the “Release Parties,” as defined in S.A. § I.U.) will receive a release of claims and potential claims related to the Piston Defect in the Settlement Class Vehicles that are the subject of this litigation and Settlement, including the claims

that were or could have been asserted in the litigation (the “Released Claims,” as defined in S.A. § I.T.). The scope of the release properly reflects the issues, allegations and claims in this case, and specifically excludes claims for personal injury and property damage (other than damage to the Settlement Class Vehicle itself). *Id.*

C. Proposed Attorneys’ Fees, Litigation Expenses, and Service Awards

The Parties did not discuss the issues of Class Representative service awards or reasonable Class Counsel attorneys’ fees and expenses until after agreement was reached on the material terms of the Settlement. Thereafter, the Parties, at arm’s length and with the assistance of an experienced mediator, were able to negotiate sums for attorneys’ fees, expenses, and service awards separately, with the amount finally awarded by the Court not affecting the Class benefits in any way. *See* S.A. § V.III.C; *see also* Zohdy Decl. ¶¶ 16-18, 23-25. Subject to Court approval, VWGoA has agreed to not oppose Class Counsels’ application for attorneys’ fees and documented costs of a combined collective sum up to \$2,200,000. *Id.* at ¶ 26. Also subject to Court approval, the Settlement Agreement provides for service awards to the named Class Representatives for their efforts to secure relief on behalf of the Settlement Class, in the amount of \$5,000.00, each,⁸ to be paid separately from the

⁸ The Settlement Class Representatives Tom Garden, Carrie Vassel, Karen

benefits to the Settlement Class. S.A. § VIII.C.1. VWGoA pays that to Class Counsel to distribute – the Claim Administrator does not pay out the service awards. S.A. §§ VIII.C.2.

D. Notice to Settlement Class Members and Response

Notice has been disseminated to Settlement Class Members pursuant to the Notice Plan as described in the Settlement Agreement, § IV. *See* Declaration of Marcia A. Uhrig (“Uhrig Decl.”), ¶¶ 3-9. JND Legal Administration, preliminarily appointed by the Court as the Claim Administrator (Preliminary Approval Order, ¶ 5), mailed the Class Notice to approximately 533,570 Settlement Class Members on January 29, 2024 via first class mail. *Id.* at ¶ 4. Settlement Class Members were located based on the Settlement Class Vehicles’ VINs and using the services of a third-party data aggregation service to acquire contact information for current and former owners and lessees of the Settlement Class Vehicles based on vehicle registration information from the state Departments of Motor Vehicles (“DMVs”) for all fifty states and U.S. Territories. S.A. § IV.B.2; Uhrig Decl. at ¶ 4. The Claim Administrator performed address research using the United States Postal Service National Change of Address database to obtain the most current mailing address information for potential Settlement Class Members. *Id.* at ¶ 7.

Burnaugh, Grant Bradley, Clydiene Francis, Peter Lowegard, and Patricia Hensley will be paid \$5,000 each. Settlement Class Representatives Ada and Angeli Gozon will collectively receive a single \$5,000 service award. S.A. § VIII.C.1.

In addition to the mailed Class Notice, on January 29, 2024, the Claim Administrator also established a dedicated Settlement website, www.PistonSettlement.com, which includes details about the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how and when to submit a claim for reimbursement; instructions on how to contact the Claim Administrator by e-mail, mail or (toll-free) telephone; copies of the Class Notice, Claim Form, the Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). S.A. § IV.B.6; Uhrig Decl. at ¶ 10. As of February 8, 2024, the Settlement website has tracked 5,933 unique users with 15,084 page views. *See* Uhrig Decl. at ¶ 11.

Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, the Claim Administrator also provided timely notice to the U.S. Attorney General and the applicable State Attorneys General (“CAFA Notice”) so that they may review the proposed Settlement and raise any comments or concerns to the Court’s attention

prior to final approval. S.A. § IV.A; Uhrig Decl. at ¶ 3.

Pursuant to the Preliminary Approval Order, Settlement Class Members have until February 28, 2024 to object or to request exclusion from the Settlement Class. Settlement Class Members have until April 15, 2024 to submit reimbursement claims. As of February 8, 2024, there were no objections to the Settlement⁹ and no requests for exclusion. *See* Uhrig Decl. at ¶¶ 17-18. Plaintiffs will file any supplemental papers addressing any subsequently filed objections by April 3, 2024, per the terms of the Preliminary Approval Order.

IV. ARGUMENT

A. Legal Standard

Courts “may award reasonable attorney’s fees and nontaxable costs that authorized by law or by the parties’ agreement,” where a settlement is obtained for the class. Fed. R. Civ. P. 23(h). “The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous.” *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *15 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir. 2001)). When awarding fees in a class action settlement, the Court is “required to clearly articulate

⁹ The subsequent Objection of Paul Nowyj, ECF No. 89, does not involve attorneys’ fees or service awards. Plaintiffs will address the objection in Plaintiffs’ Brief in Support of Final Approval of Class Settlement.

the reasons that support its fee determination.” *Henderson*, 2013 WL 1192479, at *14 (citations omitted). By negotiating the fee at arm’s length, the parties followed the Supreme Court’s directive that “[i]deally, of course, litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Further, courts in this Circuit “routinely approve incentive awards” to named plaintiffs. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000).

Pursuant to the Settlement Agreement, Class Counsel seek a fee and expense award of \$2,200,000, accounting for both attorneys’ fees and expenses. Plaintiffs also seek approval of \$5,000 service awards for each of the Settlement Class Representatives, except for two, Ava and Angeli Gozon, who will receive \$5,000 collectively.¹⁰ The requested awards are reasonable in light of the work performed and the results achieved by the Settlement and are consistent with awards approved by other courts in this District. The Settlement is the result of the dedicated efforts of Class Counsel and includes a thorough pre-litigation investigation by Class Counsel, involving a case with complex issues of fact and law. Moreover, the requested fees, expenses, and service awards will be paid separately from the benefits made available to the Settlement Class, resulting in no reduction of the amounts available to Settlement Class Members via reimbursement.

¹⁰ The service awards of \$5,000 are to be distributed as one service award per Class Vehicle. Ava and Angeli Gozon co-purchased a single Class Vehicle together.

In class action settlements, attorneys' fees are assessed either through the percentage-of-recovery method or through the lodestar method. *Granillo v. FCA US LLC*, 2019 WL 4052432, at *3 (D.N.J. Aug. 27, 2019) (quoting *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006)). Which of these two methodologies to use is "within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997). Here, where there is no common fund, the lodestar method is typically used to assess fees. *See, e.g., Phillips v. Philadelphia Hous. Auth.*, 2005 WL 1899504, at *3 (E.D. Pa. Aug. 8, 2005) (utilizing lodestar method when there was no common fund); *Talone v. Am. Osteopathic Ass'n*, 2018 WL 6318371, at *16 (D.N.J. Dec. 3, 2018) (same).

The Court should apply the lodestar method to determine a reasonable fee because the fees and expenses will be paid in addition to the benefits provided directly to the Settlement Class. "Here, the settlement benefits are not derived from a set pool of funds, and no specific monetary figure has been set aside to provide relief to the Class Members." *Granillo*, 2019 WL 4052432, at *3.¹¹ When applying this method, the Court "determines an attorney's lodestar by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing

¹¹ As such, it is common for the lodestar method to be used by Courts in class action settlement against automobile manufacturers where settlement benefits are not derived by a common fund. *Id.*; *Skeen v. BMW of N. Am., LLC*, 2016 WL 4033969, at *18 (D.N.J. July 26, 2016); *Henderson*, 2013 WL 1192479, at *16; *Gray v. BMW of N. Am., LLC*, 2017 WL 3638771, at *6 (D.N.J. Aug. 24, 2017).

rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Court “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys” without “scrutiniz[ing] every billing record.” *Henderson*, 2013 WL 1192479, at *15 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306- 07 (3d Cir. 2005)); see *Fox v. Vice*, 563 U.S. 826, 838 (2011) (“[T]rial courts need not, and indeed should not, become green-eyeshade accountants.”).

To evaluate the reasonableness of the fee, the district court is to consider ten factors, most of which were first identified in *Gunter*: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigation; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (10) any innovative terms of settlement. *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citing

Gunter, 223 F.3d at 195, n.1, and *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009)).

These factors are not considered exhaustive, nor should they be applied formulaically. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 301-02. The district court has discretion to award fees, so long as it applies the correct legal standard and procedures and makes findings of fact that are not clearly erroneous. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 727.

B. The Court Should Approve the Fee Award the Parties Have Agreed Upon

“In a certified class action, the court may award reasonable attorney’s fees and . . . costs that are authorized by law or by the parties' agreement.” Fed. R. Civ. P. 23(h). Here, the parties agreed that Defendant will not oppose Class Counsel’s fee motion requiring Defendant to pay \$2,200,000 for Class Counsel fees and expenses and \$40,000 to the Settlement Class Representatives separate and apart from the benefits provided to Settlement Class Members. S.A. § VIII.C(1)-(2).

Courts generally prefer that litigants agree to a fee award. *See Hensley*, 461 U.S. at 437. (“Ideally, of course, litigants will settle the amount of the fee.”); *In re Ford Motor Co. Spark Plug Engine Prod. Liab. Litig*, 2016 WL 6909078, at *9 (N.D. Ohio Jan. 26, 2016) (“Negotiated and agreed-upon attorneys' fees as part of a class action settlement are encouraged as an ‘ideal’ toward which the parties should strive.”). Where, as here, the fee award is to be paid separately by the defendant

rather than as a reduction to a common fund, the “Court’s fiduciary role in overseeing the award is greatly reduced, because there is no potential conflict of interest between attorneys and class members.” *Rossi v. Proctor & Gamble Co.*, 2013 WL 5523098, at *9 (D.N.J. Oct. 3, 2013); accord *Granillo*, at *2 (“[O]ne important consideration in this Court’s analysis is the . . . provision that any awards of attorneys’ fees and costs is wholly separate and apart from the relief provided for the Settlement Class; thus relief will not be reduced by an award of the fees.”); *Haas*, 2019 WL 413530, at *9 (“[T]he amount of attorneys’ fees was negotiated as a separate aspect of the settlement agreement, which further supports reasonableness.”). As such, the Court should find that the agreed fee award amounts are reasonable.

C. Counsel’s Lodestar Amount Is Reasonable

Class Counsel’s lodestar plus expenses is \$1,289,456.12. Zohdy Decl. ¶¶ 27, 29-33.; Declaration of Russell D. Paul in Support of Fee Motion ¶¶ 11, 18 (“Paul Decl.”); Declaration of Adrian Karimi in Support of Fee Motion ¶¶ 4, 6-7 (“Karimi Decl.”). Counsel billed their time at their actual billing rates contemporaneously charged to hourly clients and those rates are consistent with the hourly rates routinely approved in this Circuit in complex class action litigation. See *Maldonado v. Houstoun*, 256 F.3d 181, 184-85 (3d Cir. 2001) (finding an attorney’s usual billing rate to be a starting point for assessing reasonableness); *Loughner v. Univ. of*

Pittsburgh, 260 F.3d 173, 180 (3d Cir. 2001) (“The court ‘should assess the experience and skill of the prevailing party’s attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’”) (quoting *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir.1990)). The first step is to ascertain the appropriate hourly rate, based on the attorneys’ customary billing rate and the “prevailing market rates” in the relevant community. See *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *17 (D.N.J. Mar. 26, 2010). The rates of \$475 to \$1,050 per hour noted for the attorneys working on this matter are within the ranges of rates approved by other courts in this Circuit. See *Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *8 (E.D. Pa. Apr. 21, 2021) (approving hourly rates of \$235 to \$975); *In re Imprelis Herbicide Mktg., Sales Practices & Prod. Liab. Litig.*, 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at \$1,200 and several attorneys’ rates were at or above \$900); *Granillo*, 2019 WL 4052432, at *4 (approving rates ranging from \$245 to \$725).

The second step considers whether the billable time was reasonably expended. *Id.* “Time expended is considered ‘reasonable’ if the work performed was ‘useful and of a type ordinarily necessary to secure the final result obtained from the litigation.’” *Saini v. BMW of N. Am., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d

1179, 1188 (3d Cir. 1995)). The Zohdy Declaration recounts the time and expenses incurred by Class Counsel and indicates that the professional time devoted to this case was reasonable. Zohdy Decl. at ¶¶ 27, 29, 32. As discussed *supra*, Class Counsel has performed many tasks including a significant pre-litigation investigation including reviewing documents produced by Defendant, interviewing many other putative Class Members, reviewing vehicle repair records, analyzing Technical Service Bulletins addressing the relevant issues and symptoms for the Class Vehicles, analyzing owners' and warranty manuals for the Class Vehicles, researching publicly available documents and reviewing other materials. Additional work commencing and pursuing the litigation included drafting the highly technical complaint; filing and eventually consolidating a related action in state court; opposing a motion to dismiss; coordinating five completed vehicle inspections and providing notice and opportunity for at least two additional inspections; drafting and serving initial disclosures and document requests; negotiating and documenting the settlement; and responding to inquiries from Settlement Class Members. Zohdy Decl. at ¶¶ 7-12, 19-22, 28. *See McLennan v. LG Electronics USA, Inc.*, 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012) (time spent investigating the case, responding to class members, working with experts, opposing motion to dismiss, and negotiating and crafting settlement was compensable).

As of February 19, 2024, Class Counsel have already devoted 2,181.6 hours

of contingent work litigating this matter. Zohdy Decl. at ¶ 29. Using the requested fee amount of \$2,200,000 yields a 1.7 multiplier of Class Counsel’s actual lodestar plus expenses of \$1,289,456.¹² See *Saini v. BMW of N. Am., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) (“The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount.”). The multiplier will decrease over time as Class Counsel continue to perform additional work on behalf of the Settlement Class, including supervising the ongoing administration of the Settlement claims process and responding to class member inquiries.

Courts routinely find that a multiplier of one to four is fair and reasonable in complex class action cases. See *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 341(3rd Cir. 1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, §14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has “approved a multiplier of 2.99 in a relatively simple case.” *Milliron v. T-Mobile USA, Inc.*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742)¹³; see also *In re Schering-Plough Corp. Enhance ERISA Litig.*,

¹² The lodestar figure is “presumptively reasonable” when it is calculated based on a reasonable hourly rate as applied to a reasonable number of hours expended. *Planned Parenthood of Cent. N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).

¹³ The Third Circuit has also said of the *Cendant PRIDES* fee award, “we approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated

2012 WL 1964451, at *8 (D.N.J. May 31, 2012) (finding a multiplier of 1.6 “is an amount commonly approved by courts of this Circuit”); *McLennan*, 2012 WL 686020, at *10 (finding a multiplier of 2.93 appropriate where, inter alia, “[c]lass counsel prosecuted this matter on a wholly contingent basis, which placed at risk their own resources, with no guarantee of recovery”); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448,479 (D.N.J. 2008) (finding a multiplier of almost 2.3 to be reasonable). As such, the 1.7 multiplier here is reasonable and should be approved.

D. The Percentage of Recovery Method Cross-Check Also Supports the Requested Fee

“Regardless of the method chosen, [the Third Circuit has] suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. In lodestar cases, courts often apply the percentage-of-recovery method to “cross-check” the reasonableness of the fee. *See, e.g., Granillo*, 2019 WL 4052432, at *8 (applying lodestar method before conducting a cross-checking “using the percentage of recovery method”); *In re Philips*, 2012 WL 1677244, at *17 (same).

Since this is a claims made settlement, the deadline for submitting claims for reimbursement has not yet expired, and it is not yet known how many claims will be

‘was neither legally nor factually complex.’ The case lasted only four months, ‘discovery was virtually nonexistent,’ and counsel spent an estimated total of 5,600 hours on the case.” *In re AT&T Corp. Secs. Litig.*, 455 F.d 160, 173 (3d Cir. 2006).

submitted or the amounts and validity of such claims, a valuation of this Settlement cannot yet be made. However, given that there are approximately 205,152 Settlement Class Vehicles, even if the Settlement were valued only at \$100 per vehicle or \$20.5 million total, and we believe it would be higher, it would clearly support Class Counsel's reasonable lodestar with the very modest multiplier sought herein. And this early resolution provides a substantial and immediate benefit to the Settlement Class that might otherwise not be available or substantially reduced or delayed if this matter was litigated to conclusion.

E. The *Gunter* Factors Support the Requested Fee

Here, a close review of the *Gunter* factors also supports Class Counsel's fee request as reasonable.

1. The Benefit to the Class Is Significant

The single most important factor in assessing fees is the size of the funds available to the class and the benefit provided to the class. See *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *7 (E.D. Pa. Apr. 5, 2019) (citation omitted); *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011). The total amount made available is the proper measure for evaluating the value of a settlement. See *Alin v. Honda Motor Co.*, 2012 WL 8751045, *19 (D.N.J. Apr. 13, 2012) (court held that the value should be based on the benefits made available to class members, and concluded that "even though the [replacement

offered by the new warranty] payout will likely be far less than the maximum permissible, the fact remains that there is no cap on the size of the available fund in this case and full participation represents a ceiling on the value of the fund available to class members.”); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-480 (1980) (the right of class members “to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.”) Plaintiffs negotiated a settlement with robust relief for Settlement Class Members, including 75% reimbursement of the paid out-of-pocket cost of a past repair and a very substantial Warranty Extension. This confers a significant benefit upon the Class.

2. There Is Only One Objection to the Settlement

Pursuant to the Court’s Preliminary Approval Order, the deadline to make an objection or request an exclusion is February 28, 2024. ECF No. 84 at 11. Although the time period for filing objections has not yet expired, to date, there is only one objection to the Settlement.¹⁴ Accordingly, the fact that no objections to attorneys’ fees or service awards have been filed to date supports the requested fee and incentive award. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (finding that “silence constitutes tacit

¹⁴ The objection will be addressed separately in Plaintiffs’ Brief in Support of Final Approval of Class Action Settlement as the objection does not relate to attorneys’ fees or service awards.

consent” to the requested award); *see also In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) (“[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable.”). The reaction of the Class thus weighs strongly in favor of settlement.

3. Class Counsel Are Efficient and Highly Skilled

Courts of this Circuit measure the skill and efficiency of class counsel “by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and performance and qualify of opposing counsel.” *In re Viropharma Inc. Secur. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (quoting *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998)).

The Settlement Agreement designates Berger Montague PC, Capstone Law APC (“Capstone”), and the Ladah Law Firm, all experienced and respected class action firms, as co-Class Counsel. Class Counsel have significant experience litigating consumer class actions, including automobile-defect class actions. *See* Zohdy Decl. ¶¶ 31, 34-36; Paul Decl. ¶¶ 4-7; Karimi Decl. ¶¶ 8-10; *see also* ECF 82-8 (Capstone Firm Resume), 82-10 (Berger Montague PC Firm Resume), 82-12 (Ladah Law Firm Resume). Class Counsel have invested considerable time and resources into the prosecution of this action. They have a wealth of experience in

litigating complex class actions and were able to negotiate an outstanding settlement for the Class. The extensive experience of Class Counsel is discussed more fully in their Declarations filed concurrently herewith. Without the experience of Class Counsel, it is doubtful that the successful settlement of this matter could have been achieved, and that this outcome would have been resolved so efficiently.

Further, Defendant retained a nationally renowned law firm with a reputation for vigorous advocacy in the defense of complex civil cases. To obtain any recovery at all, Class Counsel had to overcome legal opposition of the highest quality. As such, this factor weighs in favor of approval of the fee award.

4. The Complexity, Expense and Duration of Automotive Defect Litigation

This factor weighs “the probable costs, in both time and money, of continued litigation.” *See In re General Motors*, 55 F.3d at 812 (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974)). Resolution of automotive defect class action cases often comes after years of intense litigation. *See Granillo*, at *10 (resolution after four years of litigation); *Yaeger v. Subaru of Am., Inc.*, 2016 WL 4547126, at *2 (D.N.J. Aug. 31, 2016) (two years of litigation); *Skeen v. BMW of North America, LLC*, No. 13-1531 (WHW), 216 WL 4033969 at *24-25 (D.N.J. July 26, 2016) (three years of litigation). Moreover, automotive defect class action litigation is particularly complex and it is not unusual for cases to be litigated for a decade. *See, e.g., Neale v. Volvo Cars of N. Am., LLC*, Case No. 2:10-cv-04407

(D.N.J.) (filed August 27, 2010 and dismissed with prejudice August 20, 2021 without a class wide resolution).

In contrast, Class Counsel here have efficiently secured relief for the Class that is available now, and not simply the “speculative promise of a larger payment years from now.” *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *16. As such, this factor weighs in favor of reasonableness.

5. The Risk of Nonpayment for Class Counsel’s Efforts Was High

“Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7. At the outset of the case, Class Counsel faced substantial risk that the lawsuit would produce little or no fees for their efforts. As such, this factor weighs strongly in favor of the reasonability of the fee award, as courts of this District routinely hold. *See Granillo*, 2019 WL 4052432, at *10 (“Class Counsel undertook this case on a purely contingent basis and faced a risk of receiving no compensation at all if the litigation was unsuccessful.”); *Saini*, 2015 WL 2448846, at *18 (“This Court observed that ‘Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.’”) (citation omitted).

6. Class Counsel Has Devoted Significant Time to the Cases

Class Counsel has already devoted 2,181.6 hours to prosecute the case (Zohdy

Decl. ¶ 29), a reasonable amount of time with which to secure the full reimbursement relief achieved for the Class. *See, e.g., Granillo*, 2019 WL 4052432, at *11 (2,000 hours); *Saini*, 2015 WL 2448846, at *18 (1,200 hours). As noted by the Third Circuit, “a prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice.” *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 101-102 (3d Cir. 1985). Here, Class Counsel has worked efficiently and expeditiously to achieve significant results that favor the Class. As such, this factor weighs in favor of approving the fee request.

7. The Requested Fee Is Consistent with Awards in Similar Cases

In reviewing awards in similar cases, the Court must “(1) compare the actual award requested to other awards in comparable settlements; and (2) ensure that the award is consistent with what an attorney would have received if the fee were negotiated on the open market.” *Saini*, 2015 WL 2448846, at *18. The first of this analysis—a review of attorneys’ fees in similar class actions—demonstrates that the fee request here is manifestly reasonable. *Skeen*, 2016 WL 4033969, at *24-25 (awarding \$2,100,000 in attorneys’ fees in a three-year class action alleging timing chain defect); *Henderson*, 2013 WL 1192479, at *18 (\$3,000,000 in attorneys’ fees was fair and reasonable where class action settlement provided warranty extensions and reimbursements to class members in connection with alleged defects in automobiles’ transmission systems); *McGee v. Cont’l Tire N. Am.*, 2009 WL 539893

(D.N.J. Mar. 4, 2009) (\$2,274,983.70 in fees and expenses representing a multiplier of 2.6, justified in a consumer class action); *O'Keefe v. Mercedes-Benz*, 214 F.R.D. 266, 304 (E.D. Pa. 2003) (\$4,896,783.00 in fees justified in class action involving allegedly defectively design rear lift-gate latch).

The second part of the analysis looks at whether the fee request reflects the “market price for attorney services.” *Saini*, 2015 WL 2448846, at *19. For fees calculated by the lodestar method, the Court analyzes whether “the hourly billing a rates are consistent with hourly rates routinely approved by this Court in complex class action litigation.” *Id.* As stated above, Class Counsel’s rates are entirely consistent with the rates approved in other cases. As such, this factor weighs in favor of approving the fee request.

8. The Entire Settlement Value Is the Result of Class Counsel’s Efforts

The value and benefits of the entire settlement have been secured through the efforts of Class Counsel. Such benefits are not attributable “to the efforts of other groups, such as government agencies conducting investigations.” *In re AT&T Corp.*, 455 F.3d 160, 165 (3rd Cir. 2006). Class Counsel were the only ones investigating the claims at issue in this case and initiated and actively litigated this action. They were not “aided by the efforts of any governmental group.” *Id.* at 173. Instead, “the entire value of the benefit accruing to class members is properly attributable to the efforts of class counsel.” *Id.* As such, this factor weighs in favor of approval.

9. The Requested Fee Is Commensurate with Customary Percentages in Private Litigation

If Class Counsel had agreed to litigate on behalf of the individual, the customary contingency fee would be between thirty and forty percent of the recovery. *See Wallace v. Powell*, 288 F.R.D. 347, 375 (“In private contingency fee case, attorneys routinely negotiate agreements for between thirty percent (30%) and forty percent (40%) of the recovery.”) (citing cases). Further, where, as here, Class Counsel has sought approval of the fee by the class representatives at the time of the attorney’s retention, it will support approval. *See, e.g., Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *9 (E.D. Pa. Dec. 9, 2016). Here, in light of the relief for a large class of owners/lessees, Class Counsel is seeking fees under the lodestar calculation, which supports the reasonableness of the fee.

10. The Innovation of the Terms of the Settlement Is a Neutral Factor

In the absence of innovative terms, this final *Gunter-Halley* factor is neutral. *See McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 655 (E.D. Pa. 2015). Together with the other factors which weigh in favor of approval, the requested fee clearly meets the threshold for reasonability.

F. The Court Should Approve Plaintiffs’ Counsel’s Expenses

There is little question that “[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Careccio v. BMW of*

N. Am. LLC, 2010 WL 1752347, at *7 (D.N.J. Apr. 29, 2010) (quoting *In re Safety Components Int'l, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001); see also *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 124-25 (D.N.J. 2012) (recognizing the same principle, and approving an expense request of \$394,192.76).

In this case, Class Counsel have incurred \$16,944.12 in properly documented expenses for the common benefit of Class Members, which Defendant agreed to pay separately from the class relief. *See* Zohdy Decl. ¶ 32.

Class Counsel advanced these necessary out-of-pocket costs without assurance that they would ever be repaid. The requested amount is therefore reasonable and should be approved. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *19 (approving expenses that were “adequately documented and reasonably and appropriately incurred in the prosecution of the case.”); *In re Datatec Sys. Sec. Litig* 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007) (approving “costs associated with experts, consultants, investigators, legal research, mediation, meals, hotels, transportation, word processing, court fees, mailing, postage, telephone, telephone, and the costs of giving notice”).

G. The Court Should Approve Plaintiffs’ Service Awards

Plaintiffs also request that the Court approve the payment of a service award to the Settlement Class Representatives in the amount of \$5,000 each, with the exception of Ada and Angeli Gozon to collectively receive a single \$5,000 service

award, all of which is to be paid separate and apart from the Class relief. Court routinely approve incentive awards to class representatives because they: “(1) ... have conferred a benefit on all class members by their willingness to bring the litigation; 2)... should be rewarded for taking action that is in the public interest; and 3) public policy favors compensation for class representatives for taking on risks of litigation on behalf of absent class members.” *Sullivan v. DB Investments, Inc.*, 2008 WL 8747721, at *37 (D.N.J. May 22, 2008).

Here, the Plaintiffs spent a significant amount of their own time and efforts litigating these cases for the benefit of the absent members of the Settlement Class and should be compensated for their contributions. Zohdy Decl. ¶¶ 37-38. Plaintiffs underwent lengthy initial and follow-up interviews by Class Counsel to gather their facts and communicate the problems of their vehicles with Class Counsel; reviewed the complaint; searched for and provided documents relevant to their claims in the litigation to Class Counsel; agreed to and did participate in evidence preservation obligations for both hardcopy and electronically stored information in the early stages of litigation as well as once discovery had commenced, in anticipation of written discovery requests; provided information for initial disclosures; reviewed and approved the settlement agreement; and stayed abreast of significant developments in the case, including for mediation and to review the settlement agreement. The amount requested is similar to amounts awarded by this Court to

class representatives in other class action settlements involving automotive manufacturers. *See Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *23-24 (D.N.J. Apr. 8, 2011) (approving incentive award payments of \$10,000 to each of the named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 125 (approving incentive awards totaling \$85,000 – which amounted to \$5,000 to each of the class representatives); *Henderson*, 2013 WL 1192479, at *19 (approving incentive awards between \$5,000 to \$6,000 each of six class representatives). Moreover, the requested award is similar to awards in other class actions, even those in which the plaintiffs were not deposed. *See Diaz v. BTG Int’l, Inc.*, 2021 WL 2414580, at *9 (E.D. Pa. June 14, 2021) (\$10,000 service awards where plaintiffs were not deposed); *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *14 (E.D. Pa. Feb. 28, 2020) (same); *Granillo*, at *12 (approving \$5,000 service awards). The requested service awards should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant in full Class Counsel’s Motion and award fees and expenses of \$2,200,000 to Class Counsel, as well as service awards of \$5,000 to each Settlement Class Representative, with the exception of Ada and Angeli Gozon who will collectively receive a single \$5,000 service award.

Dated: February 21, 2024

Respectfully submitted,

/s/ Russell D. Paul

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*Attorneys for Plaintiffs and the Proposed
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CARRIE VASSEL, KAREN
BURNAUGH, TOM GARDEN, ADA
AND ANGELI GOZON, PATRICIA A.
HENSLEY, CLYDIENE FRANCIS,
PETER LOWEGARD, and GRANT
BRADLEY individually and on behalf of
a class of similarly situated individuals,

Plaintiffs,

v.

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

**DECLARATION OF TAREK H. ZOHDY IN SUPPORT OF UNOPPOSED
MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND
CLASS REPRESENTATIVE SERVICE AWARDS**

I, Tarek Zohdy, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before the courts of the State of California and all Federal District Courts in California. I am also a Senior Counsel at Capstone Law APC which, along with Berger Montague PC and Ladah Law (collectively, "Class Counsel"), are counsel of record for Plaintiffs Carrie Vassel, Karen Burnaugh, Tom Garden, Ada and Angeli Gozon, Patricia A. Hensley, Clydiene Francis, Peter Lowegard, and Grant Bradley ("Plaintiffs") in

the above-captioned action. Unless the context indicates otherwise, I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of the Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Class Representative Service Awards.

2. This nationwide class action arises out of an alleged defect in certain model year 2012-2017 Audi vehicles equipped with the Audi 2.0T engine. On April 30, 2021, original Plaintiff Jeni Rieger filed this class action asserting various individual and putative class claims alleging that defects in the pistons and/or piston heads of the putative class vehicles may allegedly result in engine malfunctions and/or excessive oil consumption.

3. She amended the Complaint on May 6, 2021, and filed a Second Amended Complaint on July 26, 2021, adding multiple named plaintiffs, including most of the Plaintiffs here.

4. On August 5, 2021, Plaintiff Hernan A. Gonzalez filed *Gonzalez v. Volkswagen Group of America, et al.*, in Superior Court of the State of New Jersey, Mercer County, Law Division, under Docket No. L-001632-21. On August 9, 2021, Defendants in that action filed a notice of removal to this Court. *See Gonzalez v. Volkswagen Group of America, et al.*, Civil Case No. 1:21-cv-15026-NLH-MJS, ECF No. 1.

5. On September 30, 2021, pursuant to Consent Motion, the Court entered an order consolidating *Gonzalez* with and into this action, and directing the filing of a Consolidated Class Action Complaint, which was filed on October 12, 2021.

6. Defendant Volkswagen Group of America (“VWGoA”) filed a motion to dismiss the Consolidated Class Action Complaint on December 3, 2021.

7. Substantial briefing on the Motion thereafter ensued, with Plaintiffs filing an extensive response in opposition to the motion to dismiss on January 14, 2022. Plaintiffs voluntarily sought to dismiss the foreign defendants Volkswagen AG and Audi AG from the action, on February 2, 2022. VWGoA filed a reply on February 11, 2022, in support of its motion to dismiss.

8. On May 4, 2023, the Court granted in part and denied in part the motion to dismiss, with leave to amend.

9. As a result, on June 2, 2023, Plaintiffs filed the First Amended Consolidated Class Action Complaint solely against VWGoA. This complaint alleged a nationwide class as well as various state sub-classes for class members who purchased or leased class vehicles in California, Florida, Georgia, Illinois, Louisiana, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Texas, and Washington.

10. Class Counsel thoroughly investigated the alleged defect prior to

filing the lawsuit.

11. Class Counsel documented Plaintiffs' Class Vehicle issues, interviewed many other putative Class Members, reviewed vehicle repair records, analyzed Technical Service Bulletins addressing the relevant issues, symptoms for the Class Vehicles, analyzed owners' and warranty manuals for the Class Vehicles, researched publicly available documents and reviewed other materials, to determine the extent to which the alleged vehicle issues affected the putative Class, as well as VWGoA's alleged knowledge.

12. In addition, Class Counsel continued to respond to inquiries from many putative Class Members and investigate their complaints.

13. In Spring 2023, the Parties initially discussed the possibility of settlement, after which the Parties agreed to participate in mediation before an experienced mediator.

14. In light of settlement negotiations, the parties informally exchanged information, including technical information, regarding the nature of the alleged issues, condition of the Settlement Class Vehicles, and Defendant's ameliorative actions.

15. Defendant had been trying to fix the problem since at least 2013 by issuing Technical Service Bulletins ("TSBs").

16. On July 7, 2023, the Parties engaged in a vigorous day-long mediation

before Bradley A. Winters, Esq., a respected and experienced neutral class action Mediator with JAMS, during which the Parties reached agreement on the material terms of a settlement in principle.

17. The Parties continued negotiations, exchanging additional information related to a potential settlement.

18. Following further review of the information exchanged and investigation of the claims extensively, the Parties participated in a second mediation on August 21, 2023. The return to mediation resulted in a class-wide Settlement. Mediator Winters helped the Parties to bridge the gap between their respective positions and agree to a settlement in principle. The terms of this Settlement have since been memorialized in the Settlement Agreement.

19. The parties also simultaneously pursued discovery necessary for the litigation, including inspections of five of the named Plaintiffs' Class Vehicles. Plaintiffs drafted a Proposed Joint Discovery Plan and initiated an initial conference under Fed. R. Civ. Proc. 26(f) with defense counsel on June 9, 2023. The parties also negotiated a Stipulation and Protective Order, which the parties submitted to the Court on July 7, 2023.

20. On July 10, 2023, Plaintiffs served initial disclosures on Defendant.

21. Additionally, on July 11, 2023, Plaintiffs served a first set of document requests on Defendant.

22. Based on the information exchanged pursuant to settlement negotiations, as well as a thorough investigation begun prior to filing the Complaint and continuing through the course of the litigation, including interviewing putative Class Members, researching publicly available materials, and inspecting Class Vehicles, Class Counsel gained a thorough understanding of both the strengths and weaknesses of Plaintiffs' claims and believe the Settlement Agreement represents a substantial recovery on behalf of the putative Class.

23. After agreeing to the structure and material terms for settlement of the Class claims, the Parties negotiated and ultimately agreed upon an appropriate request for incentive awards and Plaintiffs' attorneys' fees and expenses.

24. All the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides.

25. The settlement is set forth in complete and final form in the Settlement Agreement. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**.

26. Subject to Court approval, VWGoA has agreed to not oppose Class Counsels' application for attorneys' fees and documented costs of a combined collective sum up to \$2,200,000.

27. Class Counsel's lodestar plus expenses is \$1,289,456.12.

28. As discussed *supra*, Class Counsel has performed many tasks including a significant pre-litigation investigation including reviewing documents produced by Defendant, interviewing many other putative Class Members, reviewing vehicle repair records, analyzing Technical Service Bulletins addressing the relevant issues and symptoms for the Class Vehicles, analyzing owners' and warranty manuals for the Class Vehicles, researching publicly available documents and reviewing other materials, drafting the highly technical complaint, opposing a motion to dismiss, negotiating and documenting the settlement, and responding to inquiries from Settlement Class Members.

29. As of February 19, 2024, Class Counsel have already devoted 2,181.6 hours of contingent work thus far to prosecute this action and secure benefits for the Class, exclusive of the hours that will be spent preparing further briefing (including any supplement in support of the motion for final approval and supervising the continued administration of the settlement).

30. Below is a chart showing Capstone's total hours expended on this litigation through February 19, 2024, and corresponding lodestar computed at the current rates charged by Capstone.

Lawyer	Title	CA Bar Yr	Rate	Hours	Fees
Raul Perez	Partner	1994	\$950	22.3	\$21,185.00
Steven Weinmann	Fmr. Senior Counsel	1997	\$825	17	\$14,025.00

Liana Carter	Senior Counsel	1999	\$800	34.5	\$27,600.00
Tarek Zohdy	Senior Counsel	2006	\$675	228.8	\$154,440.00
Cody Padgett	Senior Counsel	2011	\$600	165.3	\$99,180.00
Ninel Kocharyan	Associate	2014	\$550	19.8	\$10,890.00
Theresa Carroll	Senior Counsel	1995	\$545	82.5	\$44,962.50
Laura Goolsby	Associate	2018	\$475	76.9	\$36,527.50
Total				647.1	\$408,810.00

31. The Settlement Agreement designates Berger Montague PC, Capstone Law APC (“Capstone”), and the Ladah Law Firm, all experienced and respected class action firms, as co-Class Counsel. Class Counsel have significant experience litigating consumer class actions, including automobile-defect class actions. A true and correct copy of Class Counsel Capstone Law APC’s firm resume was filed at ECF 82-8.

32. In this case, Class Counsel have incurred \$16,944.12 in properly documented expenses for the common benefit of Class Members, which Defendant agreed to pay separately from the class relief.

33. To date, Capstone has already expended \$4,690.93 in unreimbursed out-of-pocket expenses in the matter, as summarized in the chart below:

Cost Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$223.25
Court Fees, Courier Fees, Filings & Service of Process	\$1,275.03
Mediation Fees	\$2,706.58
Research Services (PACER, Westlaw, etc.)	\$486.07
Total	\$4,690.93

34. Capstone is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

35. Capstone, as lead or co-lead counsel, has obtained final approval of sixty class actions valued at over \$100 million dollars. Recognized for its active class action practice and cutting-edge appellate work, Capstone's recent accomplishments have included three of its attorneys being honored as California Lawyer's Attorneys of the Year in the employment practice area for 2014 for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014).

36. Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019). Capstone has negotiated numerous class action settlements providing relief to owners/lessees in the last five years. *See, e.g., Weckwerth, et al. v. Nissan North America, Inc.*, No. 3:18-cv-00588 (M.D. Tenn, Mar. 10, 2020) (finally approving settlement on behalf of millions of Nissan drivers with alleged transmission defects); *Wylie, et al. v. Hyundai Motor America*, No. 8:16-cv-02102-DOC (C.D. Cal. Mar. 02, 2020) (finally approving settlement

on behalf of tens of thousands of Hyundai drivers with alleged transmission defects); *Granillo v. FCA US LLC*, No. 16-00153-FLW (D. N.J. Feb. 12, 2019); *Morishige v. Mazda Motor of Am., Inc.*, No. BC595280 (Los Angeles Sup. Ct. Aug. 20, 2019); *Falco v. Nissan N. Am. Inc.*, No. 13-00686-DDP (C.D. Cal. July 16, 2018), Dkt. No. 341 (finally approving settlement after certifying class alleging timing chain defect on contested motion); *Vargas v. Ford Motor Co.*, No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Batista v. Nissan N. Am., Inc.*, No. 14-24728-RNS (S.D. Fla. June 29, 2017), Dkt. 191 (finally approving class action settlement alleging CVT defect); *Chan v. Porsche Cars N.A., Inc.*, No. No. 15-02106-CCC (D. N.J. Oct. 6, 2017), Dkt. 65 (finally approving class action settlement involving alleged windshield glare defect); *Klee v. Nissan N. Am., Inc.*, No. 12-08238-AWT, 2015 WL 4538426, at *1 (C.D. Cal. July 7, 2015) (settlement involving allegations that Nissan Leaf's driving range, based on the battery capacity, was lower than was represented by Nissan); *Asghari v. Volkswagen Group of America, Inc.*, Case No. 13-cv-02529-MMM-VBK, 2015 WL 12732462 (C.D. Cal. May 29, 2015) (class action settlement providing repairs and reimbursement for oil consumption problem in certain Audi vehicles).

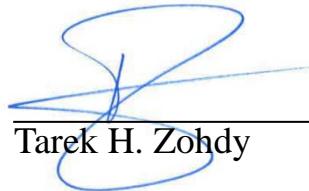
37. Additionally, Plaintiffs here spent a significant amount of their own

time and efforts litigating these cases for the benefit of the absent members of the Settlement Class and should be compensated for their contributions.

38. Plaintiffs underwent lengthy initial and follow-up interviews by Class Counsel to gather their facts and communicate the problems of their vehicles with Class Counsel, searched for and produced documents relevant to their claims in the litigation, and stayed abreast of significant developments in the case, including for mediation and to review the settlement agreement.

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

Dated: February 20, 2024



Tarek H. Zohdy

EXHIBIT 1

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (the “Settlement Agreement” or the “Agreement”), is made and entered into as of this 10th day of October, 2023, by and between (i) Plaintiffs Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada Gozon and Angeli Gozon, Peter Lowegard, and Patricia Hensley (collectively, “Plaintiffs”), individually and as representatives of the Settlement Class defined below, and Volkswagen Group of America, Inc. (“VWGoA”) (“Defendant”) (all collectively referred to as the “Parties”).

RECITALS

WHEREAS, on April 30, 2021, Plaintiffs filed a putative class action entitled *Jeni Rieger individually, and on behalf of a class of similarly situated individuals v. Volkswagen Group of America, Inc., et al.*, 1:21- cv - 10546 (NLH)(MJS), United States District Court, District of New Jersey, asserting various individual and putative class claims alleging that defects in the pistons and/or piston heads of the putative class vehicles may allegedly result in engine malfunctions and/or excessive oil consumption (hereinafter, “the Action”);

WHEREAS, on May 6, 2021, Plaintiffs filed an Amended Complaint (ECF 11), and on July 26, 2021, Plaintiffs filed a Second Amended Class Action Complaint (ECF 36);

WHEREAS, on September 30, 2021, the Court entered an Order consolidating an action entitled *Gonzalez v. Volkswagen Group of America, Inc., et al.*, 21-cv-15026 (NLH)(MJS), United States District Court, District of New Jersey, with and into the Action, and directing the filing of a Consolidated Class Action Complaint (ECF 42);

WHEREAS, on October 12, 2021, Plaintiffs filed their Consolidated Class Action Complaint (ECF 45);

WHEREAS, on December 3, 2021, VWGoA filed a motion to dismiss Plaintiffs' Consolidated Class Action Complaint (ECF 53), which, by decision and order dated May 4, 2023 (ECF 66), the Court granted in part and denied in part, with leave to amend;

WHEREAS, on June 2, 2023, Plaintiffs filed a First Amended Consolidated Class Action Complaint (ECF 67);

WHEREAS, VWGoA denies the Plaintiffs' allegations and claims with respect to both liability and damages, and maintains, *inter alia*, that the putative class vehicles function properly and are not defective, that no applicable warranties (express or implied) were breached, that no common law or legal duties or applicable statutes, laws, rules or regulations were violated, that the subject vehicles' components and systems were properly designed, tested, manufactured, distributed, marketed, advertised, warranted, and sold, and that the Action is not suitable for class treatment if it were to proceed through litigation and trial;

WHEREAS, the Parties, after investigation and careful analysis of their respective claims and defenses, and with full understanding of the potential risks, benefits, expense, and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were asserted or could have been asserted in the Action by or on behalf of Plaintiffs and members of the Settlement Class;

WHEREAS, the Parties agree that neither this Settlement Agreement and exhibits, the underlying Settlement itself, nor its negotiations, documents, or any filings relating thereto, shall constitute or be construed as, (i) any admission or evidence of liability, damages, or wrongdoing on the part of Defendant or any Released Party, and/or (ii) the existence or validity of any fact, allegation and/or claim that was or could have been asserted in the Action, all of which are expressly denied by Defendant.

WHEREAS, this Settlement Agreement is the result of vigorous and extensive arm's length negotiations of highly disputed claims, with adequate knowledge of the facts, issues, and the strengths or weaknesses of the Parties' respective positions, and with the assistance of an experienced neutral Mediator from JAMS; and

WHEREAS, the Settlement is fair, reasonable, and adequate; in all respects satisfies the requirements of Fed. R. Civ. P. 23; and is in the best interests of the Settlement Class;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, the Parties hereby agree as follows:

I. DEFINITIONS

A. "Action"

"Action" refers to the consolidated putative class action entitled *Jeni Rieger, et al. v. Volkswagen Group of America, Inc., et al.*, No. 1:21-cv-10546 (NLH)(MJS), pending in the United States District Court for the District of New Jersey.

B. "Agreement," "Settlement," or "Settlement Agreement"

"Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement including all terms, provisions and conditions embodied herein and all attached Exhibits (which are an integral part of, and incorporated by reference in, this Settlement Agreement).

C. "Claim Administrator" or "Settlement Administrator"

The "Claim Administrator" or "Settlement Administrator" shall mean JND Legal Administration.

D. "Claim" or "Claim for Reimbursement"

"Claim" or "Claim for Reimbursement" means the timely and proper submission of the required fully completed, signed, and dated Claim Form, together with all required Proof of Repair Expense documents (as defined in Section I.S. of this Agreement), in which a Settlement Class

Member (as defined in Section I.V. of this Agreement) seeks to claim reimbursement for a percentage of certain past paid and unreimbursed out-of-pocket expenses pursuant to the terms, conditions and limitations set forth in Section II.B. of this Settlement Agreement.

E. “Claim Form”

“Claim Form” means the form that must be fully completed, signed, dated, and timely mailed to the Claim Administrator, together with all required Proof of Repair Expense documentation, in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which Claim Form will be substantially in the form attached hereto as Exhibit 1.

F. “Claim Period”

“Claim Period” means the period of time within which a Claim for Reimbursement under this Settlement must be mailed (postmarked) to the Claim Administrator, which period shall expire seventy-five (75) days after the Notice Date.

G. “Class Counsel” or “Plaintiffs’ Counsel”

“Class Counsel” or “Plaintiffs’ Counsel” shall mean Berger Montague PC, Capstone APC, and the Ladah Law Firm.

H. “Class Notice”

“Class Notice” means the Class Notice, which will be substantially in the form attached hereto as Exhibit 2.

I. “Class Notice Plan” or “Notice Plan”

“Class Notice Plan” or “Notice Plan” means the plan for disseminating the Class Notice to the Settlement Class as set forth in Section IV of this Settlement Agreement, and includes any further notice provisions that may be agreed upon by the Parties.

J. “Court”

“Court” means the United States District Court for the District of New Jersey, located in Camden, New Jersey.

K. “Defense Counsel”

“Defense Counsel” means Michael B. Gallub, Esq., Brian T. Carr, Esq. and Homer B. Ramsey, Esq. of Shook, Hardy & Bacon L.L.P.

L. “Effective Date”

“Effective Date” means the third business day after: (1) the Court enters a Final Order and Judgment approving the Settlement Agreement, substantially in the form agreed upon by counsel for the Parties, and (2) all appellate rights with respect to said Final Order and Judgment, other than those related solely to any award of attorneys’ fees, costs or service/incentive payments, have expired or been completely exhausted in such a manner as to affirm such Final Order and Judgment.

M. “Fee and Expense Application”

“Fee and Expense Application” means Class Counsel’s application for an award of reasonable attorneys’ fees, costs, and expenses (“Class Counsel Fees and Expenses”), and for Class Representative service awards.

N. “Final Fairness Hearing”

“Final Fairness Hearing” means the hearing at or after which the Court will determine whether to grant final approval of the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).

O. “Final Order and Judgment”

“Final Order and Judgment” means the Final Order and Judgment granting final approval of this Settlement Agreement and dismissing the Action with prejudice, the form of which will be agreed by the Parties and submitted to the Court prior to the Final Fairness Hearing.

P. “In-Service Date”

“In-Service Date” means the date on which a Settlement Class Vehicle was first delivered to either the original purchaser or the original lessee; or if the vehicle was first placed in service as a “demonstrator” or “company” car, on the date such vehicle was first placed in service.

Q. “Notice Date”

“Notice Date” means the Court-ordered date by which the Claim Administrator shall mail the Class Notice of this Settlement to the Settlement Class, substantially in the form attached hereto as Exhibit 3. The Notice Date shall be a date that is up to one-hundred (100) days after the Court enters a Preliminary Approval Order.

R. “Proof of Adherence to Maintenance Requirements”

“Proof of Adherence to Maintenance Requirements” means documents or records evidencing the Settlement Class Member’s adherence to the oil maintenance aspects of the Settlement Class Vehicle’s maintenance schedule set forth in the Warranty and Maintenance Booklet during the time he/she/it owned and/or leased the vehicle up to the date/mileage of the repair or replacement, within a variance of ten percent (10%) of each scheduled time/mileage oil maintenance interval. If, however, the Settlement Class Member is unable to obtain said documents or records despite a good faith effort to obtain them, the Settlement Class Member may submit a Declaration, signed under penalty of perjury, detailing: (i) the good faith efforts that were made to obtain the records including why the records are not available, and (ii) attesting to adherence to the oil maintenance aspects of the vehicle’s maintenance schedule during the time he/she/it owned or leased the vehicle, up to the date/mileage of the replacement/repair, within the ten percent (10%) variance set forth above

S. “Proof of Repair Expense”

“Proof of Repair Expense” shall mean all of the following: (1) an original or legible copy of the repair invoice for the subject repair, containing the claimant’s name, the make and model and Vehicle Identification Number (VIN) of the Settlement Class Vehicle, the name and address of the dealer or repair shop that performed the repair covered under this Agreement, the date of the covered repair and vehicle mileage at the time of the repair, a description of the repair work including the parts repaired or replaced and a breakdown of parts and labor costs for the covered repair; proof of payment and the amount paid for the covered repair; and, if the person claiming reimbursement is not the person to whom the Claim Form was mailed, proof of ownership or lease of the Settlement Class Vehicle at the time of the covered repair. In addition, if reimbursement is sought for repair of a damaged engine pursuant to Section II.B of this Agreement, then the repair documentation must, in addition to the above information, also show that such damage was directly caused by (i) excessive oil consumption (for reimbursement only for Audi A4, A5, A6, Q5, or Model Year 2012-2014 Audi TT Settlement Class Vehicles) or (ii) a fractured piston (for reimbursement only for Audi A3 or Model Year 2016-2017 Audi TT Settlement Class Vehicles).

T. “Released Claims” or “Settled Claims”

“Released Claims” or “Settled Claims” means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action, costs, expenses, and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, and regardless of any legal or equitable theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members (including their successors, heirs, assigns and representatives) which, in any way, arise from or relate to the Settlement Class Vehicles’ pistons (including the piston, piston seals, and related components), rate and/or extent of oil consumption, and/or any engine damage resulting or

claimed to result therefrom, and any other consequences, damage or loss relating thereto, including but not limited to all matters that were asserted or could have been asserted in the Action, and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, arising under any state, federal or local statute, law, rule and/or regulation including any consumer protection, consumer fraud, unfair or deceptive business or trade practices, false or misleading advertising, and/or other sales, marketing, advertising and/or consumer statutes, laws, rules and/or regulations, under any common law cause of action or theory, and under any legal or equitable causes of action or theories whatsoever, and on any basis whatsoever including tort, contract, products liability, express warranty, implied warranty, negligence, fraud, misrepresentation, concealment, false or misleading advertising or marketing, unfair, deceptive and/or inequitable business practice, consumer protection, express or implied covenants, restitution, quasi-contract, unjust enrichment, injunctive relief of any kind and nature, including but not limited to the Magnuson-Moss Warranty Act, each and every federal, state and local consumer protection, consumer fraud, deceptive trade practices, unfair practices and/or related statute, law, rule and regulation in the United States and Puerto Rico, all other or similar federal, state or local statutes, laws, rules or derivations thereof, any state Lemon Laws, secret warranty, and/or any other theory of liability and/or recovery whatsoever, whether in law or in equity, and for any and all injuries, losses, damages, remedies (legal or equitable), costs, recoveries or entitlements of any kind, nature and description, under statutory and/or common law, and including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, injunctive relief, costs, expenses and/or counsel fees, and any other legal or equitable relief or theory of relief. This Settlement Agreement expressly

exempts claims for personal injuries and property damage (other than for damage to the Settlement Class Vehicle itself).

U. “Released Parties”

“Released Parties” means Volkswagen Group of America, Inc., Audi AG, Volkswagen AG, Audi of America LLC, Audi of America, Inc., Volkswagen de México S.A. de C.V., Volkswagen Group of America Chattanooga Operations, LLC, Volkswagen Credit, Inc., all designers, manufacturers, assemblers, distributors, importers, retailers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, repairers and servicers of the Settlement Class Vehicles and each of their component parts and systems, all of their past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns and representatives, and all of the aforementioned persons’ and entities’ attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successors, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives.

V. “Settlement Class” or “Settlement Class Members”

“Settlement Class” or “Settlement Class Members” means: “All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in Section I.X. of this Agreement, in the United States of America and Puerto Rico.”

Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that

acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

W. “Settlement Class Representatives”

“Settlement Class Representatives” means Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada and Angeli Gozon, Peter Lowegard and Patricia Hensley.

X. “Settlement Class Vehicles”

Settlement Class Vehicles means certain model year 2012, 2013, and 2014 Audi A4, A5, A6, and Q5 vehicles, model year 2012, 2013, 2014, 2016 and 2017 Audi TT vehicles, and model year 2015, 2016 and 2017 Audi A3 vehicles, that were imported and distributed by VWGoA for sale or lease in the United States or Puerto Rico and are specifically designated by Vehicle Identification Number (“VIN”) on Exhibit 4 to this Agreement.

The benefits afforded by this Settlement Agreement differ among certain models/model years of the Settlement Class Vehicles. Therefore, each Settlement benefit set forth in the Section II below will delineate the particular model/model year of Settlement Class Vehicle(s) to which that benefit applies.

II. SETTLEMENT CONSIDERATION

In consideration for the full and complete Release of all Released Claims against the Defendant and all Released Parties, and the dismissal of the Action with prejudice, Defendant VWGoA agrees to provide the following consideration to the Settlement Class:

A. Warranty Extension for Current Owners and Lessees of Settlement Class Vehicles

Effective on the Notice Date, VWGoA will extend the New Vehicle Limited Warranties (NVLWs) to cover 75% of the cost of repair (parts and labor), by an authorized Audi dealer, of the following during a period of up to nine (9) years or ninety-thousand (90,000) miles (whichever occurs first) from the Settlement Class Vehicle's In-Service Date:

(1) for Audi A4, A5, A6, Q5 and Model Year 2012-2014 Audi TT Settlement Class Vehicles only – a diagnosed condition of excessive oil consumption by an authorized Audi dealer, as confirmed by an authorized Audi dealer's oil consumption test,¹ or

(2) for Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only – a diagnosed condition of a fractured piston by an authorized Audi dealer.

As to all Settlement Class Vehicles, the Warranty Extension is conditioned upon the Settlement Class Member providing, to the dealer, Proof of Adherence to Maintenance Requirements.

The Warranty Extension shall also cover a percentage (as set forth in the Sliding Scale below) of the cost of repair (parts and labor), by an authorized Audi dealer, of a diagnosed condition of engine damage which was directly caused by excessive oil consumption (for Audi A4, A5, A6, Q5, and Model Year 2012-2014 Audi TT Settlement Class Vehicles only), or a diagnosed condition of engine damage other than to a piston which was directly caused by a fractured piston (for Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only), during the aforesaid period of nine (9) years or ninety-thousand (90,000) miles (whichever

¹ If an oil consumption repair is performed under the warranty extension, then the cost of the oil consumption test that led to said repair shall likewise be covered at the same percentage (75%) as provided under the warranty extension.

occurs first) from the applicable Settlement Class Vehicle’s In-Service Date, subject to (i) the Proof of Adherence to Maintenance Requirements, and (ii) the following Sliding Scale percentages of coverage which are based upon the age and mileage of the Settlement Class Vehicle at the time of such repair:

Time from In-Service Date	Less than 50,000 miles	50,001 to 60,000 miles	60,001 to 70,000 miles	70,001 to 90,000 miles
4 years or less	100%	70%	60%	50%
4-5 years	70%	60%	50%	40%
5-6 years	60%	50%	40%	35%
6-7 years	50%	40%	35%	30%
7-9 years and “Timed-Out” Settlement Class Vehicles within 70-Days after Notice Date	40%	35%	30%	25%

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle’s original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover or apply to excessive oil consumption, piston damage or breakage, or engine damage, resulting from abuse, modification or alteration of parts, absence/lack of sufficient oil maintenance (i.e., absence/lack of oil changes performed with the use of the correct Audi recommended oil and within a 10% variation of each time and mileage oil

maintenance interval), a collision or crash, vandalism and/or other impact, damage from an outside source, and/or lack of or improper maintenance with respect to other items that caused or contributed to the damage or need for repair.

If a Settlement Class Vehicle's Warranty Extension time period from the In-Service Date has already expired as of the Notice Date, then for that Settlement Class Vehicle only, the Warranty Extension time and mileage limitations shall be for a period of up to seventy (70) days after the Notice Date or ninety-thousand (90,000) miles from the Settlement Class Vehicle's In-Service Date (whichever occurs first), subject to the same conditions and limitations set forth above.

B. Reimbursement of Certain Past Paid (and Not Reimbursed) Out-Of-Pocket Repair Expense for Repairs Performed Prior to the Notice Date and Within 9 Years or 90,000 Miles (Whichever Occurred First) from the Settlement Class Vehicle's In-Service Date

1. **Reimbursement**: Settlement Class Members who timely mail to the Settlement Claim Administrator a Claim for Reimbursement (fully completed, dated and signed Claim Form together with all Proof of Repair Expense and Proof of Adherence to Maintenance Requirements documentation) shall be eligible for 75% reimbursement of the paid (and unreimbursed) cost (parts and labor) of a past repair (limited to one (1) past repair) that was performed on a Settlement Class Vehicle prior to the Notice Date and within nine (9) years or ninety-thousand (90,000) miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, to address the following:

(i) for Audi A4, A5, A6, Q5 and Model Year 2012-2014 Audi TT Settlement Class Vehicles only – a diagnosed condition of excessive oil consumption as confirmed by an authorized Audi dealer's oil consumption test, or

(ii) for Audi A3 and Model Year 2016-2017 Audi TT Settlement Class Vehicles only - a diagnosed condition of a fractured piston(s).

Reimbursement under this Section shall also include a percentage, determined by the same percentages of coverage set forth in the Sliding Scale above (Section II.A.), of the past paid (and unreimbursed) cost (parts and labor) of repair (limited to one (1) past repair), performed prior to the Notice Date and within nine (9) years or ninety-thousand (90,000) miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, of: (1) for Audi A4, A5, A6, Q5 and 2012-2014 Audi TT Settlement Class Vehicles only – engine damage which was diagnosed to be directly caused by excessive oil consumption, or (2) for Audi A3 and 2016-2017 Audi TT Settlement Class Vehicles only - engine damage other than to a piston which was diagnosed to be directly caused by a fractured piston; all of which is subject to the above Proof of Repair Expense and Proof of Adherence to Maintenance Requirements.

If the covered repair for which reimbursement under this Section is sought was not performed by an authorized Audi dealer, then the maximum paid invoice amount to which the applicable reimbursement percentage shall be applied shall not exceed a maximum of: (1) for Audi A4, A5, A6, Q5 and 2012-2014 Audi TT Settlement Class Vehicles only – \$3,700 for a past paid (and unreimbursed) repair of a diagnosed condition of excessive oil consumption, and \$12,000 for a past paid (and unreimbursed) repair of engine damage which was diagnosed to be directly caused by excessive oil consumption, or (2) for Audi A3 and 2016-2017 Audi TT Settlement Class Vehicles only - \$9,000 for a past paid (and unreimbursed) repair of a diagnosed condition of a fractured piston(s), and for a past paid (and unreimbursed) repair of engine damage other than to a piston which was diagnosed to be directly caused by a fractured piston.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements set forth in Sections II.B.2 and II.B.3 below.

2. Limitations and Other Conditions:

a. Any reimbursement under Section II.B.1. shall be reduced by goodwill or other amount or concession paid by an authorized Audi dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free repair covered under this Agreement, or was otherwise reimbursed the full amount for the covered repair, then he/she/it will not be entitled to any reimbursement.

b. Defendant shall not be responsible for, and shall not warrant, repair/replacement work performed at any service center or facility that is not an authorized Audi dealer.

c. Reimbursement under Section II.B.1. shall not apply to excessive oil consumption, piston damage or breakage, or engine damage, resulting from abuse, modification or alteration of parts, absence/lack of sufficient oil maintenance (i.e., absence/lack of oil changes performed with the use of the correct Audi recommended oil and within a 10% variation of each time and mileage oil maintenance interval), a collision or crash, vandalism and/or other impact, damage from an outside source, and/or lack of or improper maintenance with respect to other items that caused or contributed to the damage or need for repair.

d. If, within the Settlement Class Vehicle's original NVLW time and mileage period, the past paid repair for which reimbursement is sought was performed by a service entity or facility that is not an authorized Audi dealer, then the Settlement Class Member must also submit with his/her/its Claim, in addition to the Proof of Repair Expense and Proof of Adherence to Maintenance Requirements, documentation (such as a written estimate or invoice), or if documents are not available after a good-faith effort to obtain them, a Declaration signed under penalty of perjury, confirming that the Settlement Class Member first attempted to have the said repair performed by an authorized Audi dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

3. Requirements for a Valid and Timely Claim for Reimbursement:

a. In order to submit a valid and timely Claim for Reimbursement pursuant to Section II.B. of this Agreement, the Settlement Class Member must mail to the Settlement Claim Administrator, post-marked within the Claim Period (no later than 75-days after the Notice Date), a fully completed, signed and dated Claim Form, together with the required Proof of Repair Expense, Proof of Adherence to Maintenance Requirements, and any other proof set forth in Section II.B. of this Agreement.

b. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Claim Form, the Claim must contain proof that the claimant is a Settlement Class Member and that the vehicle that is the subject of the Claim is a Settlement Class Vehicle.

c. The Claim Form and supporting documentation must demonstrate the Settlement Class Member's right to reimbursement, for the amount requested, under the terms and conditions of this Settlement Agreement.

III. CLAIMS ADMINISTRATION

A. Costs of Administration and Notice

As between the Parties, VWGoA shall be responsible for the Claim Administrator's reasonable costs of class notice and settlement administration. The Parties retain the right to audit and review the Claims handling by the Claim Administrator, and the Claim Administrator shall report to both parties jointly.

B. Claim Administration

1. Only timely Claims that are complete and which satisfy the Settlement criteria for reimbursement can be approved for payment. For each approved reimbursement claim, the Claim Administrator, on behalf of VWGoA, shall mail to the Settlement Class Member, at the

address listed on the Claim Form, a reimbursement check to be sent within one hundred fifty (150) days of the date of receipt of the completed Claim, or within one hundred fifty (150) days of the Effective Date, whichever is later. The reimbursement checks shall remain valid for 180 days. The Settlement Class Member may make one (1) request for reissuance of an expired un-negotiated check from the Claims Administrator within 225 days of its original issuance.

2. The Claim Administrator's denial of any Claim in whole or in part shall be binding and non-appealable, except that Class Counsel and Defendant's counsel may confer and attempt to resolve in good faith any disputed denial by the Claim Administrator.

3. If the Claims Administrator initially determines that the Claim Form is incomplete, deficient or otherwise not fully completed, signed and/or dated, and/or that supporting documentation is missing, deficient, or otherwise incomplete, then the Claim Administrator will send the Settlement Class Member a letter or notice by regular mail advising of the deficiency(ies) in the Claim Form and/or the documentation. The Settlement Class Member will then have until thirty (30) days after the date of said letter/notice to mail a response to the Claim Administrator that cures all said deficiencies and supplies all missing or deficient information and documentation, or the claim will be denied.

4. If a Claim is denied in whole or in part, either for not meeting the Settlement criteria for reimbursement, or for failure to timely cure any deficiencies or missing or incomplete information/documentation, the Claim Administrator will so notify the Settlement Class Member by sending a letter or notice of the denial by regular mail. Any Settlement Class Member whose claim is denied shall have fifteen (15) days from the date of the Claim Administrator's letter/notice of denial to request an "attorney review" of the denial, after which time Class Counsel and Defense Counsel shall meet and confer and determine whether said denial, based upon the Claim Form and

documentation previously submitted, was correct under the terms of the Settlement, whether the denial should be modified if it is not correct, and/or whether any disputed issues can amicably be resolved. The Claim Administrator will thereafter advise the Settlement Class Member of the attorney review determination, which shall be binding and not appealable.

IV. NOTICE

A. To Attorneys General: In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, the Claim Administrator shall provide notice of this proposed Settlement to the Attorney General of the United States, and the Attorneys General of each state in which a known Settlement Class Member resides. The Claim Administrator shall also provide contemporaneous notice to the Parties.

B. To Settlement Class: The Claim Administrator shall be responsible for the following Settlement Class Notice Plan:

1. On an agreed upon date with the Claim Administrator, but in no event more than one-hundred (100) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual Class Notice, substantially in the form attached hereto as Exhibit 2, together with the Claim Form, substantially in the form attached hereto as Exhibit 1, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Defendant VWGoA may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it and Class Counsel approves all changes and formatting. The Claim Administrator shall be responsible for mailing of the Class Notice.

2. For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from Polk/IHS Markit or an equivalent company (such as Experian) the

names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, based upon the VINs of Settlement Class Vehicles to be provided by VWGoA.

3. Prior to mailing the Class Notice, the Claim Administrator shall conduct an address search through the United States Postal Service's National Change of Address database to update the address information for Settlement Class Vehicle owners and lessees. For each individual Class Notice that is returned as undeliverable, the Claim Administrator shall re-mail all Class Notices where a forwarding address has been provided. For the remaining undeliverable notice packets where no forwarding address is provided, the Claim Administrator shall perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable to the extent any new and current addresses are located.

4. The Claim Administrator shall diligently, and/or as reasonably requested by Class Counsel or Defense counsel, report to Class Counsel and Defense counsel the number of individual Class Notices originally mailed to Settlement Class Members, the number of individual Class Notices initially returned as undeliverable, the number of additional individual Class Notices mailed after receipt of a forwarding address, and the number of those additional individual Class Notices returned as undeliverable.

5. The Claim Administrator shall, upon request, provide Class Counsel and Defense counsel with the names and addresses of all Settlement Class Members to whom the Claim Administrator sent a Class Notice pursuant to this section.

6. The Claim Administrator shall implement a Settlement website that contains the following information:

- (i) instructions on how to submit a Claim for Reimbursement by mail;

(ii) instructions on how to contact the Claim Administrator, Class Counsel and Defense Counsel for assistance;

(iii) a copy of the Claim Form, Class Notice and this Settlement Agreement, the Preliminary Approval Order, the motion for Final Approval, the Class Counsel Fee and Expenses Application, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and

(iv) the deadlines for any objections, requests for exclusion and mailing of claims, the date, time and location of the final fairness hearing, and any other relevant information agreed upon by counsel for the Parties.

7. No later than ten (10) days after the Notice Date, the Claim Administrator shall provide an affidavit to Class Counsel and Defense counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of the Class Notice Plan of this Agreement or those required by the Court and agreed by counsel.

8. Notification to Authorized Audi dealers: Prior to the Notice Date, VWGoA will advise authorized Audi dealers of the Settlement's Warranty Extension, so that the Warranty Extension may be implemented in accordance with the terms and conditions of this Settlement Agreement. Defense Counsel will confirm with Class Counsel that VWGoA has notified authorized dealers of the Settlement's Warranty Extension.

V. RESPONSE TO NOTICE

A. Objection to Settlement

Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement and/or to Class Counsel's Fee and Expense Application must, by the date specified in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, either (i) file any such objection, together with any supporting briefs and/or documents, with the Court either in person at the Clerk's Office of the United States District Court for the District of New Jersey, located at Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, or (ii) file same via the Court's electronic filing system, or

(iii) if not filed in person or via the Court's electronic system, then, by U.S. first-class mail post-marked within the said 30-day deadline, mail the objection, together with any supporting briefs and/or documents, to the United States District Court for the District of New Jersey, located at Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, and also, by U.S. first-class mail post-marked within said deadline, serve same upon the following counsel for the Parties: Russell D. Paul, Esq., Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103, on behalf of Plaintiffs, and Michael B. Gallub, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, New York 10020, on behalf of Defendant.

1. Any objecting Settlement Class Member must include with his or her objection:
 - (a) the objector's full name, address, and telephone number,
 - (b) the model, model year and Vehicle Identification Number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);
 - (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and
 - (d) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;
 - (e) the name and address of the lawyer(s), if any, who is/are representing the objecting Settlement Class Member in making the objection;
 - (f) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Approval Hearing; and

(g) a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements in any court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member and/or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, then he/she/it shall affirmatively so state in the objection.

2. Any Settlement Class Member who has not timely and properly filed an objection in accordance with the deadlines and requirements set forth herein shall be deemed to have waived and relinquished his/her/its right to object to any aspect of the Settlement, or any adjudication or review of the Settlement, by appeal or otherwise.

3. Subject to the approval of the Court, any timely and properly objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain the bases for the objection to final approval of the proposed Settlement and/or to any motion for Class Counsel Fees and Expenses or incentive awards. In order to appear at the Final Fairness Hearing, the objecting Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court, and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and identity of any witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other specifications set forth in the Class Notice, or who has not filed an objection that complies in full with the deadline and other requirements set forth in the Settlement Agreement and Class Notice,

shall be deemed to have waived and relinquished any right to appear, in person or by counsel, at the Final Fairness Hearing.

B. Request for Exclusion from the Settlement

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must timely mail a request for exclusion (“Request for Exclusion”) to the Claim Administrator at the address specified in the Class Notice, by the deadline set forth below and specified in the Preliminary Approval Order. To be effective, the Request for Exclusion must be timely mailed to the specified addresses below and:

- (a) include the Settlement Class Member’s full name, address and telephone number;
 - (b) identify the model, model year and VIN of the Settlement Class Vehicle;
- and
- (c) specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

2. Any Request for Exclusion must be postmarked on or before the deadline set by the Court, which date shall be approximately thirty (30) days after the Notice Date, and mailed to all of the following: the Claims Administrator, Russell D. Paul, Esq., Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103 on behalf of Class Counsel, and Michael B. Gallub, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020, on behalf of Defense Counsel. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion mailed to the proper addresses, shall be subject to and bound by this Settlement Agreement, the Release, and every order or judgment entered relating to this Settlement Agreement.

3. Class Counsel and Defense Counsel will review the purported Requests for Exclusion and determine whether they meet the requirements of a valid and timely Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself/herself/itself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. The Claim Administrator will maintain a database of all Requests for Exclusion, and will send written communications memorializing those Requests for Exclusion to Class Counsel and Defense counsel. The Claim Administrator shall report the names of all such persons and entities requesting exclusion, and the VINs of the Settlement Class Vehicles owned or leased by the persons and entities requesting exclusion, to the Court, Class Counsel and Defense Counsel at least eighteen (18) days prior to the Final Fairness Hearing, and the list of persons and entities deemed by the Court to have timely and properly excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

VI. WITHDRAWAL FROM SETTLEMENT

Plaintiffs or Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

1. Any objection to the proposed Settlement is sustained and such objection results in changes to this Agreement that the withdrawing party deems in good faith to be material (e.g., because it increases the costs of the Settlement, alters the Settlement, or deprives the withdrawing party of a material benefit of the Settlement; a mere delay of the approval and/or implementation

of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

2. The preliminary or final approval of this Settlement Agreement is not obtained without modification, and any modification required by the Court for approval is not agreed to by both parties, and the withdrawing party deems any required modification in good faith to be material (e.g., because it increases the cost of the Settlement, alters the Settlement, or deprives the withdrawing party of a benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

3. Entry of the Final Order and Judgment described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court, except that a reversal or modification of an order awarding reasonable attorneys' fees and expenses, if any, shall not be a basis for withdrawal; or

4. In addition to the above grounds, the Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if more than five-percent (5%) of the persons and entities identified as being members of the Settlement Class exclude themselves from the Settlement Class.

5. To withdraw from this Settlement Agreement under this paragraph, the withdrawing Party must provide written notice to the other Party's counsel and to the Court within ten (10) business days of receipt of any order or notice of the Court modifying, adding or altering any of the material terms or conditions of this Agreement. In the event either Party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in

the Action or any other litigation or proceeding for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendant and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, claim, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

6. A change in law, or change of interpretation of present law, that affects this Settlement shall not be grounds for withdrawal from the Settlement.

VII. ADMINISTRATIVE OBLIGATIONS

A. In connection with the administration of the Settlement, the Claim Administrator shall maintain a record of all contacts from Settlement Class Members regarding the Settlement, any Claims submitted pursuant to the Settlement and any responses thereto. The Claim Administrator, on a monthly basis, shall provide to Class Counsel and Defense Counsel summary information concerning the number of Claims made, number of Claims approved, the number of Claims denied, the number of Claims determined to be deficient, and total dollar amount of payouts on Claims made, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

B. Except as otherwise stated in this Agreement, as between the Parties, the reasonable costs of the Claim Administrator in dissemination of the Class Notice and administration of the Settlement pursuant to the terms of this Agreement shall be borne by VWGoA.

VIII. SETTLEMENT APPROVAL PROCESS

A. Preliminary Approval of Settlement

Promptly after the execution of this Settlement Agreement, Class Counsel shall present this Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as Exhibit 3.

B. Final Approval of Settlement

1. If this Settlement Agreement is preliminarily approved by the Court, and pursuant to a schedule set forth in the Preliminary Approval Order or otherwise agreed by the Parties, Class Counsel shall present a motion requesting that the Court grant final approval of the Settlement and issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) substantially in a form to be agreed by the Parties.

2. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. Such best efforts shall include taking all reasonable steps to secure entry of a Final Order and Judgment, as well as supporting the Settlement and the terms of this Settlement Agreement through any appeal.

C. Plaintiffs' Application for Class Counsel Reasonable Fees and Expenses and Class Representative Service Awards

1. After the Parties reached an agreement on the material terms of this Settlement, the Parties commenced efforts to negotiate the issue of Class Counsel Fees and Expenses and Class Representative service awards. As a result of adversarial arm's length negotiations, the Parties hereby agree that Class Counsel may apply to the Court ("Fee and Expense Application") for a combined award of reasonable attorneys' fees, costs and expenses (hereinafter, collectively, "Class Counsel Fees and Expenses") in an amount up to, but not exceeding, the total combined sum of Two Million Two Hundred Thousand Dollars (\$2,200,000). Class Counsel may apply for such an award, up to and not exceeding that total combined sum, on or before thirty (30) days prior to the deadline in the Preliminary Approval Order for objections and/or requests for exclusion, or as otherwise directed by the Court. Defendant will not oppose a request for Class Counsel Fees and Expenses that does not exceed said total combined and collective sum of up to Two Million Two Hundred Thousand Dollars (\$2,200,000), and Class Counsel shall not seek or be awarded, nor shall Class Counsel accept, any amount of Class Counsel Fees and Expenses exceeding said total combined and collective sum. The award of reasonable Class Counsel Fees and Expenses, to the extent consistent with this Agreement, shall be paid by Defendant as set forth below, and shall not reduce or in any way affect any benefits available to the Settlement Class pursuant to this Agreement.

The Parties also agree that Class Counsel may also apply to the Court for a reasonable Service Award of up to, but not exceeding, Five Thousand Dollars (\$5,000) for each of the following named Plaintiffs who are serving as Settlement Class Representatives: Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada and Angeli Gozon (who will collectively receive a single \$5,000 service award), Peter Lowegard, and Patricia Hensley, to

be paid by Defendant as set forth below. Defendant will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, for a Service Award of up to and not exceeding the above amount for each of the aforesaid Plaintiff-Settlement Class Representatives.

2. The Class Counsel Fees and Expenses and Settlement Class Representative Service Awards, to the extent consistent with this Agreement, shall be paid as directed by the Court by wire transfer to Berger Montague PC within thirty (30) days after the later of the Effective Date of the Settlement or the date of entry of the Final Order and Judgment for attorney fees, expenses, and service awards, including final termination or disposition of any appeals relating thereto. Said payment to Berger Montague PC shall fully satisfy and discharge all obligations of Defendant and the Released Parties with respect to payment of the Class Counsel Fees and Expenses, any attorneys' fees and expenses in connection with this Action, and Settlement Class Representative service awards, and Berger Montague PC shall thereafter have sole responsibility to distribute the appropriate portions of said payment to the other Class Counsel as agreed among them and/or directed by the Court, and to the Settlement Class Representatives.

3. The procedure for, and the grant, denial, allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the Effective Date of the Settlement if it is granted final approval by the Court. Payment of Class Counsel Fees and Expenses and the Settlement Class Representatives' Service Awards will not reduce the benefits to which Settlement Class Members may be eligible under the Settlement terms, and the Settlement

Class Members will not be required to pay any portion of the Class Counsel Fees and Expenses and Settlement Class Representative Service Awards.

D. Release of Plaintiffs' and Settlement Class Members' Claims

1. Upon the Effective Date, the Plaintiffs and each and every Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, completely and forever released, acquitted, and discharged the Defendant and all Released Parties from all Released Claims.

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiffs and all Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Upon the Effective Date, the Action will be deemed dismissed with prejudice.

IX. MISCELLANEOUS PROVISIONS

A. Effect of Exhibits

The exhibits to this Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Agreement.

B. No Admission of Liability

Neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim, allegation or fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind and nature on the part of Defendant and the Released Parties, or any admission by Defendant or any Released Parties of any claim or allegation made in any action or proceeding

against them. The Parties understand and agree that neither this Agreement, any documents prepared and/or filed in connection therewith, nor the negotiations that preceded it, shall be offered or be admissible in evidence against Defendant, the Released Parties, the Plaintiffs or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding, except as needed to enforce the terms of this Agreement, its Release of Claims against the Released Parties, and the Final Approval Order and Judgment herein.

C. Entire Agreement

This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person or party against whom enforcement of the Agreement is sought.

D. Arm's-Length Negotiations and Good Faith

The Parties have negotiated all of the terms and conditions of this Agreement at arm's-length and in good faith. All terms, conditions and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. In addition, the Parties hereby acknowledge that they have had ample opportunity to, and that they did, confer with counsel of their choice regarding, and before executing, this Agreement, and that this Agreement is fully entered into voluntarily and with no duress whatsoever.

E. Continuing Jurisdiction

The Parties agree that the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of this Agreement.

F. Binding Effect of Settlement Agreement

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, attorneys, executors, administrators, heirs, successors and assigns.

G. Extensions of Time

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to Court approval as to Court dates).

H. Service of Notice

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Defense counsel or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other parties in writing, of a successor individual or address:

As to Plaintiffs: Russell D. Paul, Esq.
Berger Montague PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103

As to Defendant: Michael B. Gallub, Esq.
Brian T. Carr, Esq.
Shook, Hardy & Bacon L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, NY 10020

I. Authority to Execute Settlement Agreement

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

J. Return of Confidential Materials

All documents and information designated as “confidential” and produced or exchanged in the Action, shall be returned or destroyed within thirty (30) days after entry of the Final Order and Judgment.

K. No Assignment

The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the litigation or any related action.

L. No Third-Party Beneficiaries

This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of this Agreement. However, this does not apply to, or in any way limit, any Released Party’s right to enforce the Release of Claims set forth in this Agreement.

M. Construction

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

N. Captions

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

ON BEHALF OF PLAINTIFFS:

Dated: October 9, 2023



Russell D. Paul
Berger Montague PC
1818 Market Street, Suite 3600
Philadelphia PA 19103

Dated: October 10, 2023

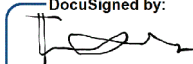


Tarek H. Zohdy
Cody R. Padgett
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles CA 90067

Dated: October __, 2023

Ramzy P. Ladah
Ladah Law Firm
517 S. 3rd Street
Las Vegas NV 89101

10/7/2023
Dated: October __, 2023

DocuSigned by:

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Dated: October __, 2023

Carrie Vassel

Dated: October __, 2023

Karen Burnaugh

Dated: October __, 2023

Grant Bradley

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Clydiene Francis

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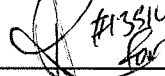


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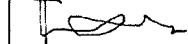
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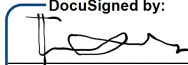
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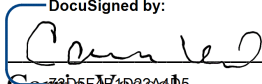
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Tom Garden
DocuSigned by:


Carrie Vassel

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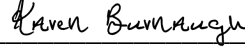
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Grant Bradley

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Clydiene Francis

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Grant Bradley

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Clydiene Francis
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Dated: October __, 2023

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Clydiene Francis

10/6/2023

Dated: October __, 2023

DocuSigned by:


Ada and Angeli Gozon

10/10/2023

Dated: October __, 2023

DocuSigned by:

Peter Lowegard
Peter Lowegard

Dated: October __, 2023

Patricia Hensley

ON BEHALF OF DEFENDANT:

Dated: October __, 2023

Michael B. Gallub
Brian T. Carr
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, New York 10020

Dated: October __, 2023

10/9/2023

Dated: October __, 2023

Peter Lowegard
DocuSigned by:
Patricia Hensley

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Patricia Hensley

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Dated: October __, 2023


Peter Lowegard

Dated: October __, 2023

Patricia Hensley

ON BEHALF OF DEFENDANT:

Dated: October 10, 2023



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

CARRIE VASSEL, KAREN
BURNAUGH, TOM GARDEN, ADA
AND ANGELI GOZON, PATRICIA A.
HENSLEY, CLYDIENE FRANCIS,
PETER LOWEGARD, and GRANT
BRADLEY individually and on behalf of
a class of similarly situated individuals,

Plaintiffs,

v.

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

**DECLARATION OF RUSSELL D. PAUL IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF ATTORNEY'S FEES, EXPENSES, AND
CLASS REPRESENTATIVES' SERVICE AWARDS**

I, Russell Paul, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the Commonwealth of Pennsylvania, State of New York, State of New Jersey and State of Delaware as well as before the United States Court of Appeals for the Third, Seventh and Ninth Circuits, the United States District Courts of the Eastern District of Pennsylvania, District Court of Delaware, District Court of the Eastern District of Michigan, District Court of New Jersey, District Court of the Southern District of New York and District Court of the Eastern District of New York.

2. I am a shareholder at Berger Montague PC (“Berger Montague”), one of the counsel of record (“Class Counsel”) for Plaintiffs Carrie Vassel, Karen Burnaugh, Tom Garden, Ada and Anjeli Gozen, Patricia Hensley, Clydiene Francis, Peter Lowegard, and Grant Bradley (“Plaintiffs”).

3. I make this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses and Service Awards. I have personal knowledge of the facts stated below and, if called upon, could competently testify thereto.

I. INTRODUCTION AND QUALIFICATIONS OF CLASS COUNSEL

4. My firm, Berger Montague, has been engaged in complex and class action litigation since 1970. While our firm has offices in Philadelphia, Pennsylvania; San Diego, California; Washington, D.C.; San Francisco, California; Chicago, Illinois; and Minneapolis, Minnesota, we litigate nationwide. Our firm’s practice areas include Antitrust, Commercial Litigation, Commodities & Options, Consumer Protection, Corporate Governance & Shareholder Rights, Employment Law, Environmental & Mass Tort, ERISA & Employee Benefits, Insurance and Financial Products & Services, Lending Practices & Borrowers’ Rights, Securities Fraud, and Whistleblowers, Qui Tam & False Claims Acts. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements. Berger Montague’s Consumer Protection Group, of which I am a member, represents consumers when they are injured by false or misleading advertising, defective products, including automobiles, and various other unfair trade practices.

5. Berger Montague's successful class action settlements providing relief to automobile owners and lessees include: *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4: :20-CV-00615-RK (W.D. Mo. Jan. 18, 2024), ECF 77 (preliminarily approving class action settlement for owners and lessees of certain 2016-2023 Volkswagen and Audi vehicles relating to autonomous braking system issues); *Gjonbalaj v. Volkswagen Group of Am., Inc.*, No. 2:19-cv-07165-BMC (E.D.N.Y. Dec. 11, 2023), ECF 101 (obtaining settlement and court's final approval for class members' damages from sunroofs); *Hickman v. Subaru of Am., Inc.*, No. 1:21-cv-02100-NLH-AMD (D.N.J. Oct. 17, 2023), ECF 68 (preliminarily approving class action settlement for owners and lessees of 2019-2020 Subaru Ascent vehicles); *Gioffe v. Volkswagen Group of Am., Inc.*, No. 22-cv-00193 (D.N.J. Jun. 20, 2023) (obtaining settlement and court's final approval for class members' damages from malfunctioning gateway control modules); *Parrish v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01148 (C.D. Cal. Mar. 2, 2023), ECF 100 (final approval of class action settlement for owners and lessees of certain 2019 Volkswagen Jetta or 2018, 2019, and/or 2019 Volkswagen Tiguan vehicles equipped with 8-speed transmissions susceptible to possible oil leaks, rattling, hesitation, or jerking); *Patrick v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01908 (C.D. Cal. Sept. 28, 2021), ECF 72 (final approval of class action settlement for owners and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions suffering from an alleged engine stalling defect); *Weckwerth v. Nissan N.A.*, No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020) (as co-lead counsel, obtained a settlement covering over 2 million class vehicles of an extended warranty and

reimbursement of 100% of out-of-pocket costs); *Stringer v. Nissan N.A.*, 3:21-cv-00099 (M.D. Tenn. Sept. 7, 2021); *Norman v. Nissan N. Am., Inc.*, No. 18-cv-00588-EJR (M.D. Tenn. July, 16, 2019); ECF 102 *Batista v. Nissan N. Am., Inc.*, No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF 191 (approving class action settlement for an alleged CVT defect, including a two-year warranty extension); *Soto v. American Honda Motor Co., Inc.*, No. 3:12-cv-01377 (N.D. Cal. 2012) (as co-counsel, obtained a warranty extension and out-of-pocket expense reimbursements for consumers who purchased defective Hondas); *Vargas v. Ford Motor Co.*, No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Davis v. General Motors LLC*, No. 8:17-cv-2431 (M.D. Fla. 2017) (as co-lead counsel, obtained settlement for defects in Cadillac SRX headlights); *Yeager v. Subaru of America, Inc.*, No. 1:14-cv-04490 (D.N.J. Aug. 31, 2016) (approving class action settlement for damages from defect causing cars to burn excessive amounts of oil); *Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*, No. ATL-1461-03 (N.J. Sup. Ct. 2007) (as co-lead counsel, obtained settlement for nationwide class alleging damages from defectively designed timing belt tensioners); *In Re Volkswagen and Audi Warranty Extension Litigation*, No. 07-md-1790-JLT (D. Mass. 2007) (obtained settlement valued at \$222 million for nationwide class, alleging engines were predisposed to formation of harmful sludge and deposits leading to engine damage).

6. Other consumer class action settlements in which our firm was co-lead counsel include: *Cole v. NIBCO, Inc.*, No. 3:13-cv-07871-FLW-TJB (D.N.J. 2013)

(obtaining a \$43.5 million settlement on behalf of nationwide class of consumers who purchased defective tubing manufactured by NIBCO and certain fittings and clamps used with the tubing); *In re: Certain Teed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.) (obtained a settlement of more than \$103 million in a multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class); and *Tim George v. Uponor, Inc., et al.*, No. 12-CV-249 (D. Minn.) (achieving a \$21 million settlement on behalf of a nationwide class of consumers who purchased defective plumbing parts).

7. Class Counsel in this case have received the following appointments in automobile defect class actions: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee); *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel); *Rieger v. Volkswagen Group of America, Inc.*, No. 1:21-cv-10546-NLH-EAP (D.N.J.), ECF 65 (appointed as Interim Lead Counsel); and *Harrison v. General Motors, LLC*, No. 2:21-cv-12927-LJM-APP (E.D. Mich.), ECF 35 (appointed as Interim Co-Lead Counsel). A profile of our firm's experience in complex class actions, and specifically in consumer protection and products liability cases, previously submitted as Exhibit 2 to the Declaration of Russell D. Paul in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. *See* ECF 67-11.

II. SUMMARY OF WORK PERFORMED

8. The work reflected in the billing includes substantial pre-filing work, beginning in early 2021, including a thorough investigation of the alleged defect, including, inter alia, analyzing the nature of the alleged defect; studying complaints made to the National Highway Traffic Safety Administration ("NHTSA") as well as on third-party websites; researching publicly available technical information regarding the gateway control modules in Class Vehicles including through Audi technical manuals, technical service bulletins regarding the gateway control module, and recall information provided to NHTSA; interviewing and collecting documents from over one hundred Settlement Class Members; and investigating potential claims.

9. Plaintiffs filed their initial complaint on April 30, 2021, asserting a nationwide class alleging that their vehicles were defective and asserting claims against Defendants for, inter alia, alleged violation of the consumer statutes, as well as breach of express and implied warranties. Plaintiffs then amended the complaint on May 6, 2021 (First Amended Complaint) and July 26, 2021 (Second Amended Complaint) adding additional named plaintiffs. Class Counsel also filed an action, *Gonzalez v. Volkswagen Group of America, et al.*, in Superior Court of the State of New Jersey, Mercer County, Law Division, under Docket No. L-001632-21, on August 5, 2021, on behalf of Plaintiff Hernan A. Gonzalez, concerning the same defect and asserting New Jersey state law claims. Defendant filed a notice of removal of the *Gonzalez* action to this Court, after which the parties consolidated with this action.

10. Other work performed by Berger on this case includes: drafting the complaint; negotiating and entering into a Confidentiality Order; opposing two Motions to Dismiss; preparing and filing a Motion for Judicial Notice; exchanging information pertaining to Plaintiffs and members of the putative Class; reviewing discovery provided by Defendants, including detailed information as to the pertinent design aspects of the Class Vehicles and details about the recalls, the recall remedies and their efficacy; engaging in vigorous, arm's length settlement negotiations over the course of several months; preparing for and attending two mediation sessions on July 7, 2023 and August 21, 2023; preparing the settlement agreement, Class Notice and other related documents; drafting the Preliminary Approval papers; and responding to inquiries from Settlement Class Members.

III. LODESTAR AND EXPENSES OF BERGER MONTAGUE

11. Below is a chart showing Berger Montague's total hours expended on this litigation through February 19, 2024, and corresponding lodestar computed at the current rates charged by the Firm. As of February 19, 2024, Berger Montague has spent 1,228.50 hours working on this litigation on a fully contingent basis, with a corresponding lodestar of \$695,402.00.

Name	Position	Hours	Rate	Lodestar
Paul, Russell	Shareholder	139.40	\$1,050	\$146,370.00
Deutsch, Lawrence	Shareholder	0.50	\$1,075	\$537.50
Gertner, Abigail	Senior Counsel	241.90	\$760.00	\$183,844.00

Lesser, Natalie	Senior Counsel	110.00	\$595.00	\$76,450.00
Park, Amey	Associate	133.50	\$725	\$96,787.50
Thornton, Daniel	Associate	1.20	\$540	\$648.00
Wolfinger, Caitlin	Paralegal	101.80	\$425	\$43,265.00
Filbert, David	Paralegal	8.10	\$405	\$3,402.00
Lee, Minsoo	Former Paralegal	80.70	\$330	\$26,631.00
Hamner, Peter	Research Specialist	1.80	\$685	\$1,233.00
Gebo, Rachel	Legal Project Team Leader	9.20	\$445	\$4,094.00
Mucollari, Dionis	Legal Project Analyst	13.90	\$280	\$3,892.00
Eames, Morgan	Legal Project Analyst	380.80	\$280	\$106,624.00
Shaik, Bahar Anjum	Legal Project Analyst	0.10	\$280	\$28.00
Giovanetti, Donna	Legal Assistant	5.60	\$285	\$1,596.00
TOTAL		1,228.50		\$695,402.00

12. Berger Montague's lodestar will increase in the subsequent months, given our ongoing work responding to Settlement Class Member inquiries, preparing for the Final Approval Hearing and supplemental filings, monitoring the Settlement and claims administration process, and addressing any concerns of Settlement Class Members regarding their rights and options throughout the period of the extended warranty.

13. Berger Montague's lodestar does not include charges for out-of-pocket expenses. The Firm's expenses are recorded separately and are discussed below. The above summary of Berger Montague's lodestar was prepared from contemporaneous, daily time records regularly prepared and maintained by the attorneys and professionals who worked on this case, in tenths of an hour. All the hours that contributed to the lodestar amount reflected above were expended for the benefit of Plaintiffs and the Settlement Class Members.

14. The hourly rates for the attorneys and professional support staff at Berger Montague that are included above are the same as the regular rates that would be charged for their services in non-contingent matters and/or which have been accepted in other class action/collective action litigation by district courts in the Third Circuit and across the country. *See, e.g., Devlin v. Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, *10 (E.D. Pa. Dec. 9, 2016) (“[T]he hourly rates for Class Counsel [including Berger Montague] are well within the range of what is reasonable and appropriate in this market.”); *In re Domestic Drywall Antitrust Litig.*, No. 2:13-md-2437-MMB, ECF No. 767 at 39 (E.D. Pa. July 17, 2018) (finding rates charged by Berger Montague among others to be “well within the range of rates charged by counsel in this district in complex cases”); *In re CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-02270-TON (E.D. Pa. Mar. 20, 2014).

15. I have reviewed the time that comprises Berger Montague's lodestar to ensure that it is accurate and reflective of the work that was performed. All the work performed as set forth above was necessary and reasonably incurred on behalf of Plaintiffs and the Settlement Class. My colleagues and I at Berger Montague have

reviewed the billing records maintained in this case, ensuring that none of the work reflected on the billing records was redundant or duplicative.

16. To date, Class Counsel have received no compensation for their efforts to investigate and prosecute this Litigation and have received no reimbursement for the significant expenses they have incurred.

17. Class Counsel also request reimbursement of their reasonable out-of-pocket expenses incurred on behalf of Plaintiffs and the Settlement Class. These expenses consist predominantly of consumer outreach; mediation sessions and related mediator fees; and computer research.

18. Specifically, to date, Berger Montague has already expended \$6,640.19 in unreimbursed out-of-pocket expenses in connection with this Litigation, as summarized below:

TYPE OF EXPENSE	AMOUNT
Consumer Outreach	\$1,250.00
Computer Research	\$1,506.35
Court Imposed Costs	\$200.00
Delivery and Freight (FedEx)	\$195.82
DocuSign	\$99.20
Filing Fees	\$402.00
Mediation Fees	\$2,700.38
Postage	\$39.04
Reproduction/ Color Prints	\$167.40
TOTAL CURRENT BERGER MONTAGUE PC EXPENSES	\$6,640.19

19. These expenses were incurred on behalf of Plaintiffs and the Settlement Class on a fully contingent basis and have not been reimbursed. Berger Montague's expenses incurred in this litigation are reflected on the books and records of my Firm. These books and records are prepared from receipts, invoices, expense

vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred, as reported to Berger Montague's accounting department. I have reviewed the expenses and believe that they are reasonable and were necessary to prosecute this case.

20. In addition to the above expenses, it is anticipated that Berger Montague will incur additional expenses in connection with the Litigation going forward. These anticipated additional expenses may include expenses that will be incurred in connection with appearing for the Final Approval Hearing, as well as additional expenses incurred in administering and monitoring the Settlement and assisting Settlement Class Members.

IV. SERVICE AWARDS

21. I believe that the requested service awards for the named Plaintiffs as set forth in Plaintiffs' Motion for Attorneys' Fees, Expenses and Service Awards, and supporting memorandum of law, are appropriate in this case in recognition of the Class Representatives' time and efforts on behalf of the Settlement Class.

22. In particular, each Plaintiff underwent lengthy initial and follow-up interviews by Class Counsel to gather their facts; searching for and producing documents regarding their vehicles and the damages to those vehicles; agreeing to participate in evidence preservation obligations for both hardcopy and electronically stored information in the early stages of litigation as well as once discovery had commenced, in anticipation of written discovery requests, which were served in the form of requests for production, interrogatories, and requests for admission; review of the complaint; monitoring the overall progress of the litigation; engaging in

frequent communications with Class Counsel; and reviewing and approving the settlement agreements.

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

Respectfully submitted,

Dated: February 21, 2024

/s/ Russell D. Paul

Russell D. Paul

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

CARRIE VASSEL, KAREN
BURNAUGH, TOM GARDEN, ADA
AND ANGELI GOZON, PATRICIA A.
HENSLEY, CLYDIENE FRANCIS,
PETER LOWEGARD, and GRANT
BRADLEY individually and on behalf of
a class of similarly situated individuals,

Plaintiffs,

v.

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

**DECLARATION OF ADRIAN KARIMI IN SUPPORT OF UNOPPOSED
MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND
CLASS REPRESENTATIVE SERVICE AWARDS**

I, Adrian Karimi, hereby declare:

1. I am an attorney at law duly licensed to practice before the courts of the State of Nevada and all Federal District Courts in Nevada. I am also a Senior Counsel at Ladah Law (“Plaintiffs’ Counsel”), counsel of record for Plaintiff Jeni Rieger, et al. (“Plaintiffs”) in the above-captioned action.

2. Unless the context indicates otherwise, I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify

competently thereto.

3. The Declaration of Tarek H. Zohdy, which is being filed contemporaneously herewith, accurately summarizes the overview of the litigation, the settlement negotiations and mediation, the procedural history, the work undertaken by Plaintiffs and Class Counsel to initiate this litigation and for the benefit of the Class, the substantial contingent risks in and the complexity of this litigation, and the benefits of the Settlement.

4. Undersigned Class Counsel has expended approximately 306 hours (in addition to Co-Class Counsel's respective hours) thus far to prosecute this action and secure benefits for the Class, exclusive of the hours that will be spent preparing further briefing (including any supplement in support of the motion for final approval and supervising the continued administration of the settlement). I have reviewed a summary of the billing records for this action, which are maintained during the regular course of business and billed contemporaneously. The bill for Ladah Law's attorneys' fees is summarized in the chart below:

Lawyer	Title	NV Bar Yr	Rate	Hours	Fees
Adrian Karimi	Senior Counsel	2014	\$550	306	\$168,300.00

5. Ladah Law's hourly rates are within the ranges of rates approved by other courts in this Circuit. *See Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *8 (E.D. Pa. Apr. 21, 2021) (approving hourly rates of \$235 to \$975); *In re Imprelis*

Herbicide Mktg., Sales Practices & Prod. Liab. Litig., 296 F.R.D. 351, 370 (E.D. Pa. 2013) (approving fee request where hourly rates peaked at \$1,200 and several attorneys' rates were at or above \$900); *Granillo v. FCA US LLC*, 2019 WL 4052432, at *4 (D.N.J. Aug. 27, 2019) (approving rates ranging from \$245 to \$725).

6. Ladah Law has expended \$5,613.00 in unreimbursed expenses which were reasonable and necessarily for the prosecution of this case.

7. These expenses which are accurately reflected in our firm's books and records, include the following:

Cost & Expense Categories	Amount
Travel Cost for Vehicle Inspections	\$1,407.19
Copying, Printing & Scanning and Facsimiles	\$152.19
Court Fees, Courier Fees, Filings & Service of Process	\$150.00
Mediation Fees	\$3,876.12
Postage & Mailings	\$23.00
Research Services (PACER, Westlaw, etc.)	\$4.50
Total	\$5,613

8. Ladah Law has been engaged in complex civil litigation since 2010 and is collectively licensed in the states of Nevada, California, Arizona, and New York. Ladah Law's practice areas include Personal Injury, Commercial Litigation, Contracts, Insurance Law, Employment Law, Mass Torts, Labor Law, and Real Estate Law. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements. See Firm Resume at ECF 82-12.

9. Ladah Law has obtained numerous large jury verdicts for its clients over the past few years alone, including a jury verdict in a trucking collision case for \$10,000,000. Ladah Law as a firm has collected over \$300,000,000 in verdicts and settlements in the past 10 years.

10. Throughout the course of investigation, pleadings, mediation, and filing of the Settlement Agreement with the Court, Ladah Law, along with Class Counsel Capstone and Berger Montague's attorneys have devoted significant time and resources to the investigation, development, and resolution of this case.

11. As a result of this litigation, all current and former owners receive substantial benefits from the Settlement. Based on my experience, the Settlement is fair, reasonable, and adequate, and treats all Class Members equitably. I ask that the Court approve the Settlement achieved on behalf of the Class resulting from this hard-fought and technical litigation

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

Executed on February 19, 2024 in Las Vegas, Nevada.



ADRIAN KARIMI, ESQ

1
2 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

3
4 JENI RIEGER, ALOHA DAVIS, JODIE
5 CHAPMAN, CARRIE VASSEL, KAREN
6 BURNAUGH, TOM GARDEN, ADA and
7 ANGELI GOZON, HERNAN A. GONZALEZ,
8 PATRICIA A. HENSLEY, CLYDIENE
FRANCIS, PETER LOWEGARD, and
GRANT BRADLEY, individually and on
behalf of all others similarly situated,

9 Plaintiffs,

10 v.

11
12 VOLKSWAGEN GROUP OF AMERICA,
13 INC., a New Jersey corporation, d/b/a AUDI
OF AMERICA, INC.,

14 Defendant.

Case No.: 1:21-cv-10546-NLH-EAP

DECLARATION OF MARCIA A. UHRIG
ON SETTLEMENT NOTICE PLAN
PROGRESS

15
16
17 I, **Marcia A. Uhrig**, declare and state as follows:

18 1. I am a Vice President of JND Legal Administration (JND”). This Declaration is
19 based on my personal knowledge, as well as upon information provided to me by experienced
20 JND employees, and if called upon to do so, I could and would testify competently thereto.
21 JND is a legal administration services provider with its headquarters located in Seattle,
22 Washington. JND has extensive experience in all aspects of legal administration and has
23 administered settlements in hundreds of cases.
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1 identification number was assigned to each Settlement Class Member record to identify them
2 throughout the administration process.

3 7. JND performed address research using the United States Postal Service
4 (“USPS”) National Change of Address (“NCOA”)² database to obtain the most current mailing
5 address information for potential Settlement Class Members.
6

7 **DIRECT MAIL NOTICE**

8 8. On January 29, 2023, JND mailed the Court-approved Class Notice and Claim
9 Form (“Notice”) to 533,570 Settlement Class Members. JND customized each Claim Form to
10 include the potential Settlement Class Member’s name, address, and VIN. The Notice provided
11 the URL of the Settlement Website and encouraged the potential Settlement Class Member to
12 submit their Settlement Claim and to visit the Settlement website for more information.
13

14 9. For 120 potential Settlement Class Member who had 10 or more VINs associated
15 with their name and address, JND sent the Notice and a cover letter advising them of the specific
16 VINs associated with their name and address.
17

18 **SETTLEMENT WEBSITE**

19 10. On January 29, 2024, JND established a dedicated settlement website
20 (www.PistonSettlement.com). The website hosts copies of important case documents, including
21 the Class Settlement Agreement, Preliminary Approval Order, along with Claim Form, Form
22 Declarations, and Class Notice. The website also provides answers to frequently asked
23 questions, key dates and deadlines, and contact information for the Settlement Claim
24 Administrator.
25

26
27
28 ² The NCOA database is the official USPS technology product that makes changes of address information available to mailers to help reduce undeliverable mail pieces.

OBJECTIONS

1
2 18. The Notice informed Settlement Class Members that anyone who wanted to
3 object to the Settlement could do so by submitting a written objection to the Court, postmarked
4 or filed on or before February 28, 2024.
5

6 19. As of the date of this Declaration, JND is not aware of any objections.
7

8 I declare under penalty of perjury pursuant to the laws of the United States of America
9 that the forgoing is true and correct.
10

11 Executed on February 8, 2024 at Seattle, Washington.
12

13 
14 _____
MARCIA A. UHRIG
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CARRIE VASSEL, KAREN
BURNAUGH, TOM GARDEN, ADA
AND ANGELI GOZON, PATRICIA A.
HENSLEY, CLYDIENE FRANCIS,
PETER LOWEGARD, and GRANT
BRADLEY individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

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

Defendant.

Case No. 1:21-cv-10546-NHL-EAP

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS**

THIS MATTER having come before the Court on Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards filed on February 21, 2024; and

The Court having reviewed Plaintiffs' moving papers, including Plaintiffs' brief and supporting declarations, as well as the case file; and

Good cause having been shown, for the reasons expressed herein and as further set forth in the Court's Final Approval Order approving the parties' Settlement Agreement;

**IT IS ON THIS ____ DAY OF _____, 2024, HEREBY
ORDERED, ADJUDGED AND DECREED:**

1. Terms capitalized in this Order have the same meanings as those used in the Settlement Agreement.

2. The Notice Plan adequately and reasonably afforded Settlement Class Members the opportunity to respond to Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. The Court has considered and rejected any objections timely and properly submitted.

3. The Settlement confers substantial benefits on the Settlement Class Members.

4. Plaintiffs have submitted the Declaration of Tarek Zohdy, the Declaration of Russell D. Paul, and the Declaration of Adrian Karimi, Class Counsel in connection with Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. These Declarations adequately document Class Counsel's vigorous and effective pursuit of the claims of Plaintiffs and the Settlement Class before this Court.

5. The Court finds the attorneys' fees and expenses in the amount of \$2,200,000 to Class Counsel to be fair and reasonable and within the range of attorneys' fees ordinarily awarded in this District and in the Third Circuit Court of Appeals using a hybrid approach combining the lodestar method and the percentage-of-recovery method. The Court finds that the expenses reported to the Court to date were necessary, reasonable, and proper in the pursuit of this Litigation.

6. The Court, therefore, grants attorneys' fees attorneys' fees and expenses in the amount of \$2,200,000. Defendants shall pay the attorneys' fees and expenses in the time and manner specified in the Settlement Agreement.

7. The Court further finds that Plaintiffs Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada Gozon and Angeli Gozon, Peter Lowegard, and Patricia Hensley ("Plaintiffs") devoted substantial time and energy to their duties. The Court therefore grants service awards in the amount of \$5,000 per Class Vehicle to the Plaintiffs as the named Class Representatives for their contributions in this case.

IT IS SO ORDERED.

Hon. Noel L. Hillman
United States District Judge