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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **EASTERN DIVISION**

13 VALERIA MERCADO and ANDREA  
14 KRISTYANNE HOLMES, individually  
and on behalf of all others similarly  
15 situated,

16 Plaintiffs,

17 v.

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

21 Defendant.  
22  
23  
24  
25  
26

Case No. 5:18-cv-02388-JWH-SP

**PLAINTIFFS’ NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF**

Hon. John W. Holcomb, presiding

Date: June 25, 2021

Time: 9:00 a.m.

Location: Courtroom 2

[Filed concurrently with Decls. of T.  
Maya, D. Bryson, G. Coleman & S.  
Weisbrot]

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on June 25, 2021 at 9:00 a.m., in Courtroom 2 of the above-captioned Court before the Honorable John W. Holcomb, Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes (collectively, “Plaintiffs”) will and hereby do move for an Order:

(1) granting preliminary approval of the proposed Settlement Agreement and Release, concurrently filed as Exhibit A to the Declaration of Theodore Maya;

(2) conditionally certifying the Settlement Class;

(3) approving the parties’ proposed Notice Plan and forms of notice;

(4) conditionally appointing Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes as Class Representatives for the Settlement Class;

(5) conditionally appointing the law firms of Greg Coleman Law, PC, Ahdoot & Wolfson, PC and Whitfield Bryson, LLP as Settlement Class Counsel;

(6) conditionally appointing Angeion Group as the Settlement Claim Administrator;

(7) setting deadlines for any objections to, and/or requests for exclusion from, the proposed Settlement; and

(8) setting the following schedule for further proceedings:

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<b>Event</b>	<b>Date</b>
Initial Date for Mailing the Class Notice (the “Notice Date”)	115 days after entry of preliminary approval order
Deadline for Plaintiffs’ Counsel To File Any Motion For Award Of Attorneys’ Fees And Service Payments	21 days before the Opt-Out and Objection Deadline
Deadline for Class Members To Submit Objections To The Proposed Settlement Or Requests For Exclusion (“Opt-Out and Objection Deadline”)	30 days after the Notice Date
Deadline for Settlement Administrator to file list of exclusions with the Court	18 days before the Final Fairness Hearing
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement, including responses to any objections, and for Defendant to respond to any objections	21 days before the Final Fairness Hearing
Final Fairness Hearing	At least 190 days after entry of preliminary approval order, or such other date as the Court deems appropriate, but no sooner than 90 days after service of CAFA notice

1 This motion, unopposed by Defendant, is based upon this Notice of Motion and  
2 Motion, the accompanying Memorandum of Points and Authorities, the concurrently  
3 filed Declarations of Theodore W. Maya, Daniel K. Bryson, Gregory F. Coleman and  
4 Steven Weisbrot, the 2021 Settlement Agreement with Exhibits, all papers filed in  
5 support thereof, and such evidence and argument as the Court may consider.

6  
7 Dated: May 25, 2021

Respectfully Submitted,

AHDOOT & WOLFSON, PC

8  
9  
10 By: /s/ Robert Ahdoot

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*In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717 (C.D. Cal. 2002) ..... 17

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*Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,  
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*Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012)..... 15

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14 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir.),

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## I. INTRODUCTION

1  
2 Plaintiffs respectfully seek preliminary approval of the concurrently filed,  
3 proposed class action Settlement which, if approved, would resolve all claims alleged in  
4 this action against Defendant Volkswagen Group of America, Inc. d/b/a Audi of  
5 America, Inc. (“VWGoA” or “Defendant”).<sup>1</sup> Plaintiffs allege that certain 2017 and 2018  
6 Audi Q7 vehicles imported and distributed by Defendant in the United States and Puerto  
7 Rico (“Settlement Class Vehicles”) are equipped with defective front brakes that may  
8 emit a loud, high-pitched, squealing noise when applied. Defendant denies these  
9 allegations and maintains that the vehicles were not defective and were properly  
10 designed, manufactured, marketed and sold. Following extensive arms-length  
11 negotiations, including with the assistance of an experienced neutral mediator, the  
12 Parties are pleased to report that they have reached an agreement to resolve this litigation  
13 under terms set forth in the Settlement Agreement concurrently filed as Exhibit A to the  
14 Declaration of Theodore W. Maya (“Maya Decl.”).

15 The Settlement is the product of hard-fought litigation and a fully informed  
16 decision by Plaintiffs’ Counsel after engaging in motion practice, discovery of  
17 information, thorough factual investigation, a comprehensive evaluation of legal issues  
18 underlying Plaintiffs’ claims, and a carefully formulated litigation strategy aimed at  
19 obtaining meaningful relief for the Class as efficiently as possible. (Maya Decl. ¶¶ 10-  
20 21.) The Parties reached the proposed Settlement through extensive arms’-length  
21 negotiations over the course of several months, numerous exchanges of information and  
22 settlement proposals, and two full-day mediation sessions at JAMS. Only after the Class  
23 benefits were negotiated did the Parties discuss attorneys’ fees and Service Awards, and  
24 all was negotiated with the assistance of Bradley Winters, an experienced neutral third-  
25 party neutral mediator with JAMS. (Maya Decl. ¶¶ 18-19; Declaration of Steven  
26 Weisbrot, President of Angeion Group (“Weisbrot Decl.”) ¶¶ 11, 26.)

27  
28 <sup>1</sup> Unless otherwise defined, Capitalized terms herein have the meaning set forth in  
the Settlement Agreement (“SA” or “Settlement Agreement”).

1 The proposed Settlement is fair, reasonable, and adequate, and in the best interests  
2 of the Settlement Class Members (the “Class Members”). If approved, the Settlement  
3 would provide the following valuable class relief: (a) a warranty extension of the New  
4 Vehicle Limited Warranties applicable to the Settlement Class Vehicles to cover one  
5 Covered Repair (*i.e.* repair of a diagnosed condition of a squealing front brakes within  
6 four years or 48,000 miles (whichever occurs first) of a Settlement Class Vehicle’s in-  
7 service date) by an authorized Audi dealer; and (b) reimbursement to Class Members for  
8 eligible out-of-pocket expenses already incurred for such a Covered Repair prior to the  
9 date of Class Notice (the “Notice Date”) and within the same period of four years or  
10 48,000 miles (whichever occurs first) from the Settlement Class vehicle’s In-Service  
11 Date. This relief *directly* addresses the issues Class Members have experienced, or might  
12 experience, relating to the braking system in the Settlement Class Vehicles. To receive  
13 reimbursement for past paid out-of-pocket expenses, Class Members need only complete  
14 and submit a Claim Form via U.S. mail, along with certain required proof of the covered  
15 repair and payment thereof (“Proof of Repair Expense”). (SA ¶ II.B.) Additionally, Class  
16 Members need not submit a Claim Form in order to receive a Covered Repair under the  
17 terms of the warranty extension. (SA ¶ II.A.)

18 The extended warranty’s value is provided to all Class Members. If the extended  
19 warranty has expired by its terms with respect to a given Class Member, he or she  
20 nonetheless can obtain its value through the Settlement’s reimbursement component.

21 The Parties request that the Court appoint Angeion Group as the third-party  
22 Settlement Administrator, who will administer the Class Notice Plan, and the Claims  
23 review process. (*Id.* ¶¶ I.D., III-IV.) The Settlement requires all notice and administration  
24 expenses associated with implementing the Settlement to be paid entirely by Defendant,  
25 separate and apart from any benefits available to the Class Members. (*Id.* ¶ III.A.)

26 Proposed Class Counsel, along with Defendant’s Counsel and the proposed  
27 Settlement Administrator, devised a comprehensive Class Notice Plan that comports  
28 with due process and the procedural requisites of Rule 23. (Maya Decl. ¶¶ 18, 20-22.)

1 The proposed Class Notice advises Class Members of the key elements of the Settlement,  
2 their rights, applicable deadlines, and will be mailed directly to Class Members. (SA ¶  
3 IV.B.) In addition, a dedicated Settlement Website will be established for Class  
4 Members to obtain additional information and documents about the Settlement,  
5 including the Class Notice, Claim Form, applicable dates/deadlines to object, opt-out  
6 and of the Final Fairness Hearing, instructions on how and when to submit a Claim for  
7 Reimbursement, how to contact the Claim Administrator and/or Class Counsel with any  
8 questions or for assistance, and a copy of the Settlement Agreement if any Class Member  
9 so desires to review it. (*Id.* ¶ IV.B.6-7.) Moreover, while the mailed Class Notice will be  
10 accompanied by the Claim Form, Class Members will be able to download an additional  
11 copy of the Claim Form from the Settlement Website. (*Id.*)

12 As a result of further negotiations that took place after the Settlement terms were  
13 agreed to, the Parties agreed that Class Counsel may apply for an award of reasonable  
14 attorneys' fees, costs and expenses not to exceed the combined total sum of  
15 \$1,960,000.00, and that any amount awarded by the Court be paid by Defendant,  
16 separate and apart from any relief provided to the Class. (*Id.* ¶ VIII.C.1.) The Parties also  
17 have agreed that Class Counsel will seek Service Awards not to exceed \$5,000.00 for  
18 each of the two Plaintiffs-Settlement Class Representatives, which will likewise be paid  
19 by Defendant separate and apart from any relief provided to the Class. (*Id.* ¶ VIII.C.2.)

20 The strength of this Settlement speaks for itself, and Class Counsel firmly believe  
21 that it is in the best interests of the Class. (Maya Decl. ¶¶ 4, 34; Bryson Decl. ¶¶ 4, 17;  
22 Coleman Decl. ¶¶ 7, 19, 22.) Accordingly, Plaintiffs respectfully request that the Court:  
23 (1) grant preliminary approval of the proposed Settlement; (2) conditionally certify the  
24 proposed Settlement Class for settlement purposes only; (3) approve the form and  
25 manner of the proposed Class Notice and Notice Plan; (4) conditionally appoint the  
26 named Plaintiffs as Settlement Class Representatives, and their counsel as Settlement  
27 Class Counsel; (5) conditionally appoint Angeion Group as the Settlement Claim  
28 Administrator; and (6) set a Final Fairness Hearing date for consideration of the final

1 approval of the Settlement and payment of Class Counsel’s fees and expenses, as well  
2 as the requested Service Awards to the Class Representatives.

## 3 **II. PROCEDURAL AND FACTUAL BACKGROUND**

### 4 **A. Extensive Motion Practice Preceded the Parties’ Agreement to Settle**

5 On November 9, 2018, Plaintiff Mercado filed the initial complaint in this Action  
6 against Defendant asserting claims alleging front brake noise in certain Audi Q7  
7 vehicles. (ECF 1.) The original complaint set forth claims for: violation of the Consumer  
8 Legal Remedies Act, violation of the California Unfair Competition Law, negligence,  
9 product liability—design defect, violation of the Magnuson-Moss Warranty Act,  
10 violation of the Song-Beverly Consumer Warranty Act, and violations of other states’  
11 statutes prohibiting unfair and deceptive acts and practices. (ECF 1.)

12 After extensive briefing in response to three motions to dismiss filed by Defendant  
13 and two oral arguments before Judge John A. Kronstadt, this case was transferred to  
14 Judge John W. Holcomb on September 28, 2020. (*See* Maya Decl. ¶¶ 7-9.)

15 In December 2020, the Court entered an order granting Defendant’s motion for  
16 partial dismissal of the Fourth Amended Complaint (“4AC”), dismissing Plaintiff  
17 Holmes’ CLRA and UCL claims, along with their MMWA claims, with prejudice. (ECF  
18 133.) The parties stipulated to Plaintiffs’ filing of a Fifth Amended Complaint (“5AC”),  
19 and the Court allowed that filing. (ECF 144-45.) The 5AC continues to include those  
20 claims that Defendant’s motion for partial dismissal as to the 4AC did not challenge:  
21 Plaintiff Holmes’ CLRA and UCL claims and Plaintiff Mercado’s Song-Beverly Act  
22 claim; as well as a claim for breach of implied warranties. (ECF 147.)

### 23 **B. The Settlement Is the Result of Extensive Arms’-Length Negotiations**

24 The parties entered into settlement negotiations after Defendant filed its motion  
25 to dismiss the 4AC. (Maya Decl. ¶ 10.) In or around October 2020, the Parties reached  
26 certain partial tentative agreements that served to begin the mediation process. (*Id.* ¶ 12.)  
27 On November 9, 2020, following extensive preliminary negotiations, the Parties  
28 participated in a full day mediation session under the supervision of an experienced,

1 professional third-party neutral mediator at JAMS. (*Id.*) Thereafter, the Parties engaged  
2 in arms'-length negotiations through many telephonic discussions, participated in a  
3 follow-up session with the mediator on December 11, 2020, and ultimately agreed on  
4 the principal terms of the proposed Settlement. (*Id.* ¶ 14.)

5 The Parties engaged in additional and extensive months-long negotiations,  
6 through many telephone discussions, to finalize and memorialize all aspects of the  
7 Settlement Agreement, including each of its exhibits. (Maya Decl. ¶¶ 14-15, 18.) Also,  
8 after a review of well-known national settlement administration companies, the Parties  
9 engaged Angeion Group to advise regarding the mechanics of the Settlement, the Notice  
10 Plan, and administration of Settlement claims. (*Id.* ¶ 20.) The Notice Plan and each  
11 document comprising the Class Notice were extensively negotiated and exhaustively  
12 refined to make them easy to read, understand and fully informative. (*Id.* ¶ 21; *see also*  
13 *generally* Weisbrot Decl.)

14 **III. TERMS OF THE SETTLEMENT**

15 The material terms of the Settlement are summarized as follows:

16 **A. The Class Definition**

17 The Settlement Class is defined as:

18 All persons and entities who purchased or leased any model year 2017 or  
19 2018 Audi Q7 vehicle that was imported and distributed by VWGoA for  
sale or lease in the United States or Puerto Rico.<sup>2</sup>

20 (*See* SA ¶¶ I.X., I.Y.)

21 **B. The Settlement Consideration**

22 **1. Warranty Extension for Current Owners and Lessees**

23 Effective on the Notice Date, Volkswagen Group of America, Inc. will extend its  
24 New Vehicle Limited Warranties applicable to the Class Vehicles to cover one (1) repair  
25 of a diagnosed condition of squealing of the front brakes, by an authorized Audi dealer,  
26 during a period of four years or 48,000 miles (whichever occurs first) from the In-Service

27 \_\_\_\_\_  
28 <sup>2</sup> Defendant's records indicate that there are approximately 98,931 Class  
Vehicles—MY 2017 (51,375 vehicles); MY 2018 (47,556 vehicles).

1 Date of the Class Vehicle (hereinafter, the “Extended Warranty”). (SA ¶ II.A.) The  
2 Extended Warranty repair will consist of replacement of the front brake pads and  
3 installation of one new lower spring in each caliper of the front brake so that there are  
4 two springs per caliper, in accordance with Technical Service Bulletins 2050735  
5 (applicable to model year 2017 Audi Q7 Class Vehicles) and 2050737 (applicable to  
6 model year 2018 Audi Q7 Class Vehicles). (*Id.*)

7 The Extended Warranty is subject to the same terms and conditions set forth in  
8 the Class Vehicle’s original New Vehicle Limited Warranty and Warranty Information  
9 Booklet. (*Id.*) Squealing of the front brakes resulting from misuse, abuse, alteration or  
10 modification, a collision or crash, vandalism, lack of or improper maintenance, and/or  
11 damage from an environmental or outside source, shall be excluded and not covered.  
12 This warranty, as extended, is fully transferable to subsequent owners or lessees to the  
13 extent the extended warranty period (time and/or mileage) has not expired. (SA ¶ II.A.)

14 **2. Reimbursement for Past Unreimbursed Out-of-Pocket Expenses**  
15 **Paid for Covered Repairs**

16 In addition to the Extended Warranty, all Class Members (whether current or  
17 former owners/lessees of Class Vehicles) who paid eligible out-of-pocket expenses  
18 (parts, labor, and taxes) for a Covered Repair of a Class Vehicle prior to the Notice Date  
19 and within four years or 48,000 miles (whichever occurred first) of the Class Vehicle’s  
20 In-Service Date, and who timely submit a valid and complete Claim Form with the Proof  
21 of repair Expense documentation, will be entitled to be reimbursed as follows:

22 Repair Performed by an Authorized Audi Dealer: If the Covered Repair was  
23 performed by an authorized Audi dealer, the Settlement Class Member shall  
24 be entitled to receive reimbursement of the full amount (100%) of the paid  
25 invoice cost (parts, labor and taxes) of one (1) Covered Repair during that  
26 period.

27 Repair Performed by Other Service Entity or Facility: If the Covered Repair  
28 was performed by a service entity or facility that is not an authorized Audi  
29 dealer, the Settlement Class Member shall be entitled to receive  
30 reimbursement of fifty percent (50%) of the paid invoice cost (parts, labor and  
31 taxes) of one (1) Covered Repair during that period.

(See SA ¶ II.B.)

1 Under the Settlement, certain costs, including but not limited to costs incurred for  
2 any squealing of the front brakes caused by modification of/to brake components,  
3 misuse, abuse, alteration or modification, a collision or crash, lack of or improper  
4 maintenance, and/or damage from an environmental or other outside source are excluded  
5 from reimbursement. (*Id.* ¶ II.C.2.)

6 To receive reimbursement, Class Members need only complete and submit a  
7 Claim Form *via* U.S. mail, along with the required Proof of Repair Expense  
8 documentation (described in section III.B.3, *infra*), within the Claim Period. (*Id.*)

### 9 **3. Claim Form and Claims for Reimbursement**

10 In order to obtain reimbursement under the Settlement, a Class Member must  
11 complete and submit a Claim Form that seeks information and documents relating to the  
12 Class Member and Class Vehicle (SA ¶ I.U), together with basic supporting  
13 documentation, referred to in the Settlement as “Proof of Repair Expense,” consisting of  
14 an original or legible copy of a repair invoice, receipt or similar records containing the  
15 Class Member’s name; the make, model and vehicle identification number (VIN) of the  
16 Class Vehicle; the fact that this was a Covered Repair—*i.e.* that a squealing noise from  
17 the front brakes was diagnosed and was the reason for the repair; the name and address  
18 of the authorized Audi dealer or other repair entity/facility that performed the Covered  
19 Repair; a description of the repair work (parts and labor) performed that establishes that  
20 it was a Covered Repair; the cost of the Covered Repair (parts and labor); the vehicle’s  
21 mileage at the time of the Covered Repair; and proof of the Class Member’s payment  
22 for the Covered Repair and the amount of that payment. (*See* SA ¶ I.U.)

23 All Claims submitted for reimbursement will be reviewed by the Settlement  
24 Administrator, who will be responsible for ensuring all information required under the  
25 Settlement Agreement has been submitted and that the Claims are timely, complete and  
26 satisfy the requirements for reimbursement under the Settlement terms. (SA ¶ III.B.)  
27 Any claimant whose claim is deemed incomplete or deficient will receive by first-class  
28

1 mail a written notice explaining the deficiencies and permitting the Class Member to  
2 cure the deficiencies within 30 days from the date of that written notice. (*Id.*)

3 To prevent the unfairness of a “double recovery,” the Settlement provides that any  
4 Claim for Reimbursement shall be reduced by the amount of any payment, concession  
5 or goodwill accommodation or discount(s) already received, from any other source  
6 (including Defendant, an Audi dealer, an insurer, service contract provider, or extended  
7 warranty provider, or any other person or entity), for all or part of the amount of the  
8 Covered Repair that is the subject of the Claim. The Claim Form shall contain a  
9 statement in which the Class Member must verify either that no such payment,  
10 concession or goodwill accommodation or discount(s) was received from another  
11 source, or if it was, the amount received and from whom/what source it was received.  
12 (SA ¶ II.C.4.)

13 Disputes as to the sufficiency of the Claim and/or Proof of Repair Expense  
14 submitted in support of a Claim for Reimbursement shall be submitted to and resolved  
15 by the Settlement Administrator, who will make a preliminary determination that the  
16 Claim and/or Proof of Repair Expense submitted is insufficient and will send the Class  
17 Member a letter advising of the deficiencies. The Class Member will have thirty (30)  
18 days to cure the deficiencies, or the claim will be denied. (*Id.* ¶ III.B.)

19 The Class Notice, Claim Form and Settlement Website will contain the contact  
20 information of the Claim Administrator, so that any Class Member that has a question  
21 or needs assistance with respect to his or her claim easily can contact the Claim  
22 Administrator by phone or email for assistance.

23 The Settlement Administrator’s denial of all or part of any Claim shall be binding  
24 and non-appealable, except that a Class Member may seek attorney review of a denial  
25 by so requesting it from the Settlement Administrator within 14 days of the date of  
26 mailing of the decision. (*Id.* ¶¶ II.C.5.) If a Class Member timely seeks attorney review,  
27 Class Counsel and Defense counsel will review the Claim and supporting documentation  
28 and, if appropriate, seek to resolve any disputed issues in good faith. (*Id.*)



1           **C. Payment of Notice and Settlement Administration Expenses**

2           The Parties request the Court appoint Angeion Group as the third-party Settlement  
3 Claim Administrator, who will review and administer the Claims process. (*Id.* ¶¶ I.D,  
4 III.A-B.) The Settlement requires not only that all notice and administration expenses  
5 associated with implementing the Settlement be paid entirely by Defendant, but that  
6 these expenses also be paid separate and apart from any benefits to Class Members. (*Id.*  
7 ¶ III.A.)

8           Proposed Class Counsel, along with Defendant’s Counsel, and the proposed  
9 Settlement Administrator devised a comprehensive Notice Plan that comports with due  
10 process and the procedural requisites of Rule 23. (Maya Decl. ¶¶ 20-22.)

11           As set forth in greater detail in the Settlement Agreement, Notice to the Settlement  
12 Class will be given as follows: (1) individual direct mail (first class) notice, to be mailed  
13 no later than 115 days after entry of the Court’s Order preliminarily approving the  
14 settlement, which will be sent to the last known addresses of all Settlement Class  
15 Members identified by the Settlement Administrator from the applicable state motor  
16 vehicle agencies registration, and from the current U.S. Postal Service software and/or  
17 the National Change of Address database, and in addition, (2) publication of the Class  
18 Notice on a Settlement Website maintained by the Settlement Administrator, which will  
19 provide information about the Settlement, including the Class Notice, the Claim Form  
20 (which can also be downloaded from the website), the Settlement Agreement,  
21 Preliminary Approval Order, Motions for Final Approval and for Counsel Fees and  
22 Expenses and Class Representative Service Awards, any Orders of the Court in  
23 connection with the proposed settlement, the applicable deadlines and procedures for  
24 opting out, objecting to the settlement, and/or filing a claim for reimbursement, and the  
25 time and location of the Final Fairness Hearing.

26           The Class Notice, Claim Form and Settlement Website also inform Class  
27 members of the toll-free telephone number and email of the Claim Administrator, so that  
28 they may direct any inquiries about the Settlement or any deadlines and procedures, and

1 requests for assistance, to the Claim Administrator. Finally, the “CAFA” Notice of the  
2 proposed Settlement will be sent to governmental agencies as required by the Class  
3 Action Fairness Act. (*Id.* ¶ IV.A.)

4 As part of the Notice Plan, if any Class Notice is returned as undeliverable, the  
5 Settlement Claim Administrator will re-mail to any provided forwarding address, and  
6 for any undeliverable notice where no forwarding address is provided, the Claim  
7 Administrator will perform an advanced address search and remail any undeliverable  
8 Class Notices to any new and current address so located.

9 No later than 10 days after the Notice Date, the Settlement Administrator shall  
10 provide an affidavit or declaration to Class Counsel and Defense Counsel, attesting that  
11 the Class Notice was disseminated in a manner consistent with the terms of this  
12 Agreement or those required by the Court. (SA ¶ IV.B.9.)

13 **D. Opt-Out Rights**

14 Class Members who wish to be excluded from the Settlement must mail or deliver  
15 a written Request for Exclusion to the Settlement Administrator at the address set forth  
16 in the Class Notice. (*Id.* ¶ V.B.) Any Request for Exclusion must be postmarked and  
17 received no later than 30 days after the Notice Date. (*Id.*) The finally approved  
18 Settlement Class will not include any persons who send timely and valid Requests for  
19 Exclusion; thus, persons who opt out will not be entitled to any benefit under the  
20 Settlement, and will not release any potential claims. (*Id.*)

21 **E. Objections to the Settlement**

22 Any Class Member who seeks to object to the fairness of the Settlement Agreement  
23 or the requested amount of Class Counsel’s Fees and Expenses and/or Class  
24 Representative Service Awards, must, no later than 30 days after the Notice Date, file a  
25 written objection with the Court (a) either in-person with the Clerk of the Court or *via*  
26 the Court’s electronic filing system, or, if not filed in either manner, (b) by mailing the  
27 objection to the Court, Class Counsel, Defense Counsel and the Claim Administrator by  
28

1 first-class mail to the addresses provided in the Notice, postmarked no later than 30 days  
2 from the Notice Date. (*Id.* ¶ V.A.1.)

3 **F. Payment of Reasonable Attorneys’ Fees and Expenses, and Class**  
4 **Representative Service Awards**

5 Subject to Court approval, the Parties have agreed that Class Counsel may apply  
6 for an award of reasonable attorneys’ fees, inclusive of costs and expenses, not to exceed  
7 \$1,960,000.00, and that such fees/expenses awarded by the Court shall be paid by  
8 Defendant separate and apart from any relief provided to the Settlement Class. (SA ¶  
9 VIII.C.1.) Only after the Parties reached an agreement upon the relief provided to the  
10 Settlement Class did they negotiate the attorneys’ fees. (SA ¶ VIII.C.5; Maya Decl. ¶  
11 19.) The Parties also agreed that Class Counsel will seek Service Awards, not to exceed  
12 \$5,000.00, for each Plaintiff-Settlement Class Representative, which will likewise be  
13 paid by Defendant, up to the agreed upon amount, separate and apart from any relief  
14 provided to the Class. (*Id.* ¶ VIII.C.2.) The attorneys’ fees/expenses and service awards  
15 will be the subject of a separate fee motion, to be filed pursuant to the schedule set forth  
16 in the Preliminary Approval Order.

17 **G. Properly Tailored Release**

18 The Settlement contains a properly tailored release that is specifically limited to  
19 claims made and/or arising out of the allegations in this case relating to the brake system  
20 in the Class Vehicles. (SA ¶¶ I.V, VIII.D.) Expressly excluded are claims for personal  
21 injuries and property damage (other than damage to the Class Vehicle itself). (*Id.* ¶ I.V.)

22 **IV. PRELIMINARY APPROVAL IS APPROPRIATE**

23 **A. Legal Standards**

24 “[I]n the context of a case in which the parties reach a settlement agreement prior  
25 to class certification, courts must peruse the proposed compromise to ratify both the  
26 propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*,  
27 327 F.3d 938, 952 (9th Cir. 2003). In the Ninth Circuit, settlement is favored  
28 “particularly where complex class litigation is concerned.” *In re Hyundai & Kia Fuel*

1 *Econ. Litig.*, 926 F.3d 1095, 1101 (9th Cir. 2008). Under Rule 23(e), a proposed class  
 2 settlement should be approved when it is fair, reasonable, and adequate after considering  
 3 whether: (a) the class representatives and class counsel have adequately represented the  
 4 class; (b) the proposal was negotiated at arm’s length; (c) the relief provided for the class  
 5 is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the  
 6 effectiveness of any proposed method of distributing relief to the class, including the  
 7 method of processing class-member claims; and (iii) any agreement required to be  
 8 identified under Rule 23(e)(3); and, (d) the proposal treats class members equitably  
 9 relative to each other.

### 10 **1. Class Certification**

11 Parties seeking class certification for settlement purposes must satisfy the  
 12 requirements of FRCP 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).  
 13 “A court considering such a request should give the Rule 23 certification factors  
 14 ‘undiluted, even heightened, attention in the settlement context.’” *Sandoval v. Roadlink*  
 15 *USA Pac., Inc.*, No. EDCV 10-00973 VAP, 2011 WL 5443777, at \*2 (C.D. Cal. Oct. 9,  
 16 2011) (quoting *Amchem*, 521 U.S. at 621). At the preliminary approval stage, “if a class  
 17 has not [yet] been certified, the parties must ensure that the court has a basis for  
 18 concluding that it likely will be able, after the final hearing, to certify the class.” Fed. R.  
 19 Civ. P. 23, Adv. Comm. Notes to 2018 Amendment. However, the criteria for class  
 20 certification must be applied “differently in litigation classes and settlement classes.” *In*  
 21 *re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 556. In the context of a litigation class,  
 22 the Court must be concerned with manageability at trial while “manageability is not a  
 23 concern in certifying a settlement class where, by definition, there will be no trial.” *Id.*

24 A party seeking class certification must first demonstrate that: “(1) the class is so  
 25 numerous that joinder of all members is impracticable; (2) there are questions of law or  
 26 fact common to the class; (3) the claims or defenses of the representative parties are  
 27 typical of the claims or defenses of the class; and (4) the representative parties will fairly  
 28 and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). “Second, the

1 proposed class must satisfy at least one of the three requirements listed in Rule 23(b).”  
 2 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011).

### 3 **2. Fairness of the Proposed Class Action Settlement**

4 Rule 23(e) provides that “the claims, issues, or defenses of a certified class may  
 5 be settled. . . only with the court’s approval.” Fed. R. Civ. P. 23(e). “The parties must  
 6 provide the court with information sufficient to enable it to determine whether to give  
 7 notice of the proposal to the class,” and if, upon reviewing that information, the Court  
 8 concludes that is likely “to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify  
 9 the class for purposes of judgment on the proposal,” then the Court “must direct notice  
 10 in a reasonable manner to all class members who would be bound by the proposal.” *Id.*  
 11 This is the “preliminary approval” decision that Plaintiffs now ask the Court to make.  
 12 Fed. R. Civ. P. 23, Adv. Comm. Notes to 2018 Amendment.

13 “The primary concern of [Rule 23(e)] is the protection of th[e] Class Members,  
 14 including the named plaintiffs, whose rights may not have been given due regard by the  
 15 negotiating parties.” *Officers for Justice v. Civil Service Comm’n of the City & Cnty. of*  
 16 *San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983).  
 17 The Court may approve a settlement agreement “after a hearing and only on finding that  
 18 it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). District courts must  
 19 consider various factors in assessing a settlement proposal:

- 20
- 21 ● the strength of the plaintiffs’ case;
  - 22 ● the risk, expense, complexity, and likely duration of further litigation;
  - 23 ● the risk of maintaining class action status throughout the trial;
  - 24 ● the amount offered in settlement;
  - 25 ● the extent of discovery completed and the stage of the proceedings;
  - 26 ● the experience and views of counsel;
  - 27 ● the presence of a governmental participant; and
  - 28 ● the reaction of the Class Members to the proposed settlement.

25 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004).

26 For preliminary approval, however, “the bar to meet the ‘fair, reasonable and  
 27 adequate’ standard is lowered.” *In re Nat’l Football League Players’ Concussion Injury*  
 28 *Litig.*, 961 F.Supp.2d 708, 714 (E.D. Pa. 2014). The Court need only review the proposed

1 settlement to determine whether it is in the permissible “range of possible judicial  
2 approval.” *See* 3 Conte & Newberg, *Newberg on Clss Actions*, § 11:25. Ultimately,  
3 “[s]trong judicial policy favors settlements.” *Churchill*, 361 F.3d at 576 (ellipses and  
4 quotation marks omitted).

5 Approval of a class action settlement requires a two-step process: preliminary  
6 approval followed by a later, final approval. *See West v. Circle K Stores, Inc.*, 2006 WL  
7 1652598, \*2 (E.D. Cal. 2006) (“[A]pproval of a class action settlement takes place in  
8 two stages.”). At the preliminary approval stage, the court “evaluate[s] the terms of the  
9 settlement to determine whether they are within a range of possible judicial approval.”  
10 *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009). Although “[c]loser  
11 scrutiny is reserved for the final approval hearing[.]” *Harris v. Vector Mktg. Corp.*, 2011  
12 WL 1627973, \*7 (N.D. Cal. 2011). At the preliminary approval stage, approval should  
13 be granted “if the proposed settlement appears to be the product of serious, informed,  
14 non-collusive negotiations, has no obvious deficiencies, does not improperly grant  
15 preferential treatment to class representatives or segments of the class, and falls within  
16 the range of possible approval.” *Ruch v. AM Retail Group, Inc.*, No. 14-CV-05352-MEJ,  
17 2016 WL 1161453, at \*7 (N.D. Cal. Mar. 24, 2016). All of these criteria are met here.

## 18 **B. Discussion**

### 19 **1. Class Certification**

20 As shown below, the Settlement Class meets the requirements of Rule 23 and,  
21 accordingly, the Court should direct notice informing Settlement Class Members that the  
22 Court “likely will be able to” certify the Settlement Class for purposes of judgment. Fed.  
23 R. Civ. P. 23(e)(1)(B). The requirements for certification of a settlement class differ from  
24 those in a litigation class. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 556.

#### 25 **i. The Class Is Sufficiently Numerous**

26 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members  
27 is impracticable.” Fed. R. Civ. P. 23(a). Joinder is usually impracticable if a class is  
28 “large in numbers.” *See Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir.),

1 *vacated on other grounds*, 459 U.S. 810 (1982) (class sizes of 39, 64, and 71 are  
2 sufficient to satisfy the numerosity requirement). Here, joinder of over 98,931 Class  
3 Members would be impractical, to say the least. The Class is sufficiently numerous.

4 **ii. There Are Common Questions of Law and Fact**

5 The commonality requirement is satisfied if “there are questions of law or fact  
6 common to the class.” Fed. R. Civ. P. 23(a)(2). “This does not, however, mean that every  
7 question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a  
8 single significant question of law or fact.” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d  
9 952, 957 (9th Cir. 2013), *cert. denied*, 135 S.Ct. 53 (2014) (emphasis and internal  
10 quotation marks omitted); *see Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th  
11 Cir. 2012) (characterizing commonality as a “limited burden”). Proof of commonality  
12 under Rule 23(a) is “less rigorous” than the related preponderance standard under Rule  
13 23(b)(3). *See Mazza*, 666 F.3d at 589.

14 Here, there are common issues of law and fact that affect the Class uniformly and  
15 satisfy the commonality requirement, including, among other things: whether the Class  
16 Vehicles' brakes contain a defect, whether Defendant knew or should have known of the  
17 alleged defect before the Class Vehicles were sold or leased to Class Members, and  
18 whether Defendant's conduct violated state consumer protection laws or breached an  
19 implied warranty of merchantability. Commonality also is met here because Defendant's  
20 conduct with respect to all Class Vehicles is allegedly the same. Accordingly, the  
21 commonality requirement of Rule 23(a) is satisfied.

22 **iii. The Class Representatives' Claims Are Typical of Those of the Class**

23 Rule 23(a)(3) requires that the Class Representatives' claims be typical of those  
24 of the Class. Typicality is satisfied if the claim of the named class representative arises  
25 “from the same course of conduct that gives rise to the claims of unnamed Class  
26 Members to bring individual actions.” *Thomas v. Baca*, 231 F.R.D. 397, 401 (C.D. Cal.  
27 2005); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (claims typical if  
28 “reasonably co-extensive with those of absent Class Members” although “they need not

1 be substantially identical.”). “The test of typicality is whether other members have the  
2 same or similar injury, whether the action is based on conduct which is not unique to the  
3 named plaintiffs, and whether other Class Members have been injured by the same  
4 course of conduct.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011)  
5 (internal quotation marks and citation omitted).

6 Here, Plaintiffs’ and Class Members’ claims arise from the same nucleus of facts  
7 and are based on the same alleged defect and legal theories. Accordingly, the typicality  
8 requirement of Rule 23(a) is satisfied.

9 **iv. Class Representatives and Class Counsel Adequately Represent**  
10 **Class Members**

11 Rule 23(a)(4) permits certification of a class action only if “the representative  
12 parties will fairly and adequately protect the interests of the class,” which requires (1)  
13 that the named Plaintiff not have conflicts of interest with the proposed Class; and (2)  
14 that the named Plaintiff be represented by qualified and competent counsel. *See In re*  
15 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597,  
16 607 (9th Cir. 2018). “Adequate representation depends on, among other factors, an  
17 absence of antagonism between representatives and absentees, and a sharing of interest  
18 between representatives and absentees.” *Ellis*, 657 F.3d at 985; *Amchem*, 521 U.S. at  
19 625-26 (“The adequacy inquiry . . . serves to uncover conflicts of interest between named  
20 parties and the class they seek to represent. A class representative must be part of the  
21 class and possess the same interest and suffer the same injury as the class members.”).

22 Plaintiffs and their counsel are adequate. First, the proposed Class Representatives  
23 do not have any conflicts of interest with the absent Class Members, as their claims are  
24 coextensive with those of the Class Members. *General Tel. Co. v. Falcon*, 457 U.S. 147,  
25 157-58, fn. 13 (1982). They have read and understood the basic allegations of the  
26 operative Complaint and are willing to prosecute this matter on behalf of the Class.  
27 (Ahdoot Decl. ¶¶ 23-24.) The proposed Class Representatives consistently have been  
28 involved in the litigation, providing valuable insight and useful facts allowing Class



1 Counsel to effectively litigate this action, perform discovery, and negotiate this  
 2 Settlement. *Id.* Further, proposed Class Representatives were clearly advised of and  
 3 understand their obligations as Class Representatives. Plaintiffs regularly communicated  
 4 with Class Counsel regarding various issues pertaining to this case and will continue to  
 5 do so until the Settlement is approved, and its administration completed. *Id.*

6 Second, proposed Class Counsel are qualified and experienced in conducting class  
 7 action litigation, especially cases involving consumer protection. (Maya Decl. ¶¶ 25-33  
 8 & Ex. B; Declaration of Daniel K. Bryson (“Bryson Decl.”) ¶¶ 2-3, 16-17 Ex. A);  
 9 Declaration of Gregory F. Coleman (“Coleman Decl.”) ¶¶ 4-6 & Ex. A.) Proposed Class  
 10 Counsel vigorously prosecuted this action and will continue to do so through final  
 11 approval. Proposed Class Counsel identified and investigated the claims in this lawsuit  
 12 and the underlying facts, and successfully negotiated this Settlement. (Maya Decl. ¶¶ 10-  
 13 22; Bryson Decl. ¶¶ 3-7, 9-15; Coleman Decl. ¶¶ 5-6, 8-14, 15.); *see also In re Emulex*  
 14 *Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (a court evaluating adequacy of  
 15 representation may examine “the attorneys’ professional qualifications, skill,  
 16 experience, and resources . . . [and] the attorneys’ demonstrated performance in the suit  
 17 itself”); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 443 (E.D. Cal. 2013)  
 18 (“There is no challenge to the competency of the Class Counsel, and the Court finds that  
 19 Plaintiffs are represented by experienced and competent counsel who have litigated  
 20 numerous class action cases.”)).

21 **v. The Settlement Class Meets the Requirements of Rule 23(b)(3)**  
 22 **Because Common Issues of Law and Fact Predominate**

23 Rule 23(b)(3) allows certification of a class if the Court finds that “questions of  
 24 law or fact common to class members predominate over any questions affecting only  
 25 individual members, and that a class action is superior to other available methods for  
 26 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). In the  
 27 settlement context, the manageability criterion of Rule 23(b)(3)(D) does not apply.  
 28 *Amchem*, 521 U.S. at 620.

1 “Common questions that yield common answers” and are “apt to drive the  
2 resolution of this case” predominate over any individual issues. *Dukes*, 564 U.S. at 345.  
3 Rule 23(b)(3)’s predominance requirement is satisfied because all of Plaintiffs’ claims  
4 arise out of Defendant’s marketing and sale of Class Vehicles containing the allegedly  
5 defective braking systems. Common questions include, but are not limited to: whether  
6 the Class Vehicles contain the alleged defect, whether Defendant knew or should have  
7 known of the alleged defect before it sold the Class Vehicles, and whether Defendant  
8 breached the implied warranty of merchantability. This suffices, for the purpose of the  
9 Class, to present a predominance of common issues.

10 The superiority requirement of Rule 23(b)(3) is met because common questions  
11 comprise a substantial aspect of the case and can be resolved for all Class Members in a  
12 single adjudication, obviating the need for multiple trials in multiple venues. Given the  
13 relatively small individual claims at issue relating to the alleged defect, there is little or  
14 no interest for each Class Member to proceed with their own cases. If the proposed  
15 Settlement is approved, there will be no need for a trial, and manageability of the class  
16 for trial is irrelevant. *Amchem*, 521 U.S. at 620. A class settlement is superior to other  
17 methods of litigation where, as here, class treatment will promote greater efficiency and  
18 no realistic alternative exists. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust*  
19 *Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001).

## 20 **2. The Proposed Settlement Should be Preliminarily Approved**

### 21 **i. The Strength of Plaintiffs’ Case**

22 Plaintiffs are confident that they would succeed if this case proceeded to trial.  
23 However, balanced against the heavy obstacles and inherent risks Plaintiffs face with  
24 respect to their claims — and even getting to trial — demonstrated by the Court’s  
25 dismissal of many claims through motion practice (*see* Maya Decl. ¶¶ 6-9, 16-17), the  
26 Settlement’s substantial benefits favor preliminary approval of the Settlement.  
27  
28

1                   **ii. The Risk, Expense, Complexity, and Likely Duration of Further**  
2                   **Litigation**

3                   This factor overwhelmingly weighs in favor of preliminary approval of the  
4                   Settlement. The risk, expense, complexity, and likely duration of further litigation in this  
5                   Action is substantial.

6                   Absent a settlement, the final resolution of this litigation through the trial process  
7                   may require several more months or even years of protracted, adversarial litigation and  
8                   appeals, which will delay relief to the tens of thousands of possible Class Members. The  
9                   proofs necessary to prevail at trial in this case would be greater than what is required  
10                  under the Settlement. Class Members may receive relief (repair of their Class Vehicles  
11                  and/or reimbursement of out-of-pocket expenses associated with repairs) under the  
12                  Settlement and merely need to complete and submit a simple Claim Form with the  
13                  supporting Proof of repair Expense documentation demonstrating entitlement to  
14                  reimbursement under the Settlement terms. It is clearly advantageous for Class Members  
15                  to be eligible to obtain this significant relief without further delay or extensive proof.

16                  The claims in this case are disputed. Defendants have maintained that the subject  
17                  vehicles are equipped with state-of-the-art high-functioning brake systems that are not  
18                  defective, and that the issue of brake noise itself, including that which a driver may  
19                  consider irregular or bothersome, is very subjective in nature. Many Class Members may  
20                  not have experienced and may never experience the alleged squealing noise from the  
21                  front brakes of their Class Vehicles, or any such noise that affects their use and  
22                  enjoyment of the vehicles. There may also be statute of limitations and other factual and  
23                  legal defenses applicable to various Class Members that could preclude their recovery if  
24                  this action were not settled.

25                  By reaching this Settlement, the Parties will avoid further protracted litigation and  
26                  will establish a means for prompt, streamlined resolution of Class Members' claims  
27                  against Defendant. Given the alternative of long and complex litigation before this Court,  
28                  the risks involved in such litigation, the potential evidentiary issues, and the possibility

1 of further appellate review, the availability of prompt relief under the Settlement is  
2 highly beneficial to Class Members.

3 **iii. The Risk of Maintaining Class Action Status Throughout the Trial**

4 Class certification has not yet been granted in this Action. In the course of the  
5 litigation and the Parties' settlement negotiations, Defendant raised a number of defenses  
6 to Plaintiffs' claims. Given this Court's orders on Defendant's motions to dismiss,  
7 including its Order granting Defendant's Motion for Partial Dismissal of Plaintiffs' 4AC,  
8 attaining and maintaining class action status would be risky.

9 A denial of class certification, like a loss on the merits, would effectively  
10 extinguish any hope of recovery by the Class. Even if Plaintiffs were to win class  
11 certification, there would remain a risk of losing on summary judgement or at a jury trial.  
12 And even if Plaintiffs prevailed at trial, any judgment or order granting class certification  
13 could be reversed on appeal and, even if they were not, the appellate process would likely  
14 delay any recovery to the Class for years.

15 **iv. The Amount Offered in Settlement**

16 This Settlement meets a critical test in gauging its fairness and reasonableness  
17 because it provides significant, concrete relief to affected Class Members (far above "a  
18 hundredth or even a thousandth of a single percent") and directly addresses the injury  
19 alleged in the Action. Given the cost of repairing the alleged brake noise defect on these  
20 luxury vehicles, the Extended Warranty, combined with the opportunity for  
21 reimbursement of such repairs for those Class Members who may already have incurred  
22 such costs due to expiration of their existing warranties, the Settlement's value is  
23 significant and available to all Class Members. The Settlement directly addresses the  
24 claimed harm and does so in a way that provides substantial benefits notwithstanding  
25 the significant risks of proceeding through litigation and trial.

26 The gravamen of Plaintiffs' Complaint was that they and Class Members  
27 purchased Class Vehicles which Defendant knew or had reason to know were defective  
28 at the time of sale. Accordingly, the proposed Settlement provides for the repair of the

1 alleged brake noise defect going forward and compensates Class Members who have  
2 incurred out-of-pocket expenses for overed repairs prior to enactment of the Extended  
3 Warranty for their related out-of-pocket expenses associated with the alleged defect and  
4 for the periods when their Class Vehicles were undergoing repairs. Class Members will  
5 be able to receive a Cash Payment, as described above, by submitting a simple Claim  
6 Form, along with appropriate proof that they incurred out-of-pocket expenses for a  
7 Covered Repair. The Settlement thus directly addresses the claimed harm. Accordingly,  
8 this factor weighs heavily in favor of preliminary approval.

9 **v. The Extent of Discovery Completed and the Stage of Proceedings**

10 This Action was intensely litigated before the Settlement was reached. Ultimately,  
11 Defendant disclosed substantial evidence under the mediation privilege, and thus the  
12 extent of discovery completed is more extensive than the stage of proceedings alone  
13 might suggest. (Maya Decl. ¶ 15.) This factor supports preliminary approval.

14 **vi. The Experience and Views of Counsel**

15 Plaintiffs are represented by attorneys who have extensive experience and  
16 expertise in prosecuting complex class actions, including consumer protection class  
17 actions related to automobiles and other allegedly defective consumer products. (Maya  
18 Decl. ¶¶ 25-34 & Ex. B; Bryson Decl. ¶¶ 3-4 & Ex. A; Coleman Decl. ¶¶ 4-7 & Ex. A.)

19 The Settlement is the product of arms' length negotiations between experienced  
20 counsel before a professional third-party neutral Mediator at JAMS. The Settlement  
21 provides Class Members with immediate, certain and meaningful relief that directly  
22 addresses the issues they have experienced, or might experience, relating to the alleged  
23 Brake Defect. (Maya Decl. ¶ 4; Bryson Decl. ¶ 11; Coleman Decl. ¶ 17.) Moreover, the  
24 language of the release is properly tailored and limited to the claims at issue. (SA ¶ VII.)  
25 The release comports with the applicable law, which holds that a class action lawsuit  
26 may release all claims "that may arise out of the transaction or events pleaded in the  
27 complaint." *See Conte & Newberg, 4 Newberg on Class Actions* (4th ed. 2010) § 12:15,  
28 at 312. Proposed Class Counsel fully endorse the Settlement as fair, reasonable, and

1 adequate and in the best interests of the Class. (Maya Decl. ¶¶ 4, 34; Bryson Decl. ¶ 12;  
2 Coleman Decl. ¶¶ 19, 22.)

3 A non-collusive settlement, negotiated by experienced class counsel with the  
4 involvement of a respected mediator, is entitled to “a presumption of fairness.” *In re*  
5 *Toys “R” Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014). The  
6 proposed Settlement is the product of months of negotiations between counsel and  
7 mediation before respected mediator Bradley A. Winters. Based on these factors the  
8 Settlement is entitled to a presumption of fairness. *See id.* (finding a presumption of  
9 fairness where settlement was reached after mediation).

#### 10 **vii. The Presence of a Governmental Participant**

11 No governmental agency is involved in this litigation, but the Attorney General  
12 of the United States and Attorneys General of each State will be notified of the proposed  
13 Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, and will have  
14 an opportunity to raise any concerns or objections. (SA ¶ IV.A.)

#### 15 **viii. The Reaction of the Class Members to the Proposed Settlement**

16 The Class has yet to be notified of the Settlement and given an opportunity to  
17 object, so it is premature to assess this factor. Before the Final Fairness Hearing, the  
18 Court will receive and be able to review any objections or comments received from Class  
19 Members, along with a full accounting of all requests for exclusion.

### 20 **3. The Settlement Is the Product of Arm’s-Length Negotiations**

21 The Court must be satisfied that “the settlement is not the product of collusion  
22 among the negotiating parties.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935,  
23 947 (9th Cir. 2011). Here, when negotiations began, Plaintiffs had a clear view of the  
24 strengths and weaknesses of their case and were in a position to make an informed  
25 decision regarding the reasonableness of a potential settlement.

26 Settlement negotiations occurred only *after* extensive investigation by Plaintiffs’  
27 Counsel, *after* the exchange of initial disclosures, written discovery, production of  
28 documents and a comprehensive review of those documents, and *after* a thorough review

1 and examination of the facts and law relating to the matters in the Action. (Maya Decl.  
2 ¶¶ 10-11, 15; Bryson Decl. ¶ 14; Coleman Decl. ¶¶ 20.) Through their investigative  
3 efforts, settlement discussions and negotiations, Plaintiffs' Counsel were able to  
4 assemble the information necessary to fully assess the strengths of Plaintiffs' claims, and  
5 the benefits of settlement versus continued litigation.

6 All of the terms of the Settlement relating to the relief to be provided to the Class  
7 were agreed upon by the Parties prior to negotiations concerning the proposed Class  
8 Counsel fees and expenses and Service Awards. (Maya Decl. ¶ 19; Bryson Decl. ¶ 15;  
9 Coleman Decl. ¶ 21.) Further, any award of Attorneys' Fees and Expenses or Service  
10 Awards will not reduce the significant benefits inuring to Class Members. There is no  
11 indication of collusion or fraud in the settlement negotiations, and none exists.

#### 12 **4. The Proposed Notice Is Appropriate**

13 “The court must direct notice in a reasonable manner to all Class Members who  
14 would be bound by the proposal.” Fed. R. Civ. P. 23(c)(1). Rule 23(c)(2) requires the  
15 Court to “direct to Class Members the best notice that is practicable under the  
16 circumstances, including individual notice to all members who can be identified through  
17 reasonable effort,” although actual notice is not required. *Amchem*, 521 U.S. at 617. “The  
18 standard for the adequacy of a settlement notice in a class action under either the Due  
19 Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores,*  
20 *Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir.), *cert. denied*, 544 U.S. 1044 (2005).  
21 The best practicable notice is that which is “reasonably calculated, under all the  
22 circumstances, to apprise interested parties of the pendency of the action and afford them  
23 an opportunity to object.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,  
24 314 (1950); *Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224, 252 (2001) (“[C]lass  
25 notice must strike a balance between thoroughness and the need to avoid unduly  
26 complicating the content of the notice and confusing Class Members.”). The notice  
27 should provide sufficient information to allow Class Members to decide whether they  
28 should accept the benefits of the settlement, opt out and pursue their own remedies, or

1 object to it. *See Wershba*, 91 Cal.App.4th at 251-52. “[N]otice is adequate if it may be  
2 understood by the average class member.” *Warner v. Toyota Motor Sales, U.S.A., Inc.*,  
3 No. CV152171FMOFFMX, 2016 WL 8578913, at \*14 (C.D. Cal. Dec. 2, 2016).

4 Subject to Court approval, the Parties have selected Angeion Group as the  
5 Settlement Administrator. The Notice Plan agreed to by the Parties and approved by  
6 Angeion Group includes individual direct mail (first class) notice to be mailed to the  
7 current or last known addresses of all Class Members identified by the Settlement  
8 Administrator from the applicable state motor vehicle agencies registration, and from  
9 the current U.S. Postal Service software and/or the National Change of Address  
10 database; (2) publication of the Class Notice on a dedicated Settlement Website  
11 maintained by the Settlement Administrator, which will provide information about the  
12 Settlement, Class Members’ rights, deadlines, procedures, and documents, such as the  
13 Settlement Agreement and copies of the Claim Form that can be downloaded from the  
14 website, and a toll-free telephone number and email by which Class Members may  
15 contact the Settlement Administrator with questions or for assistance. (SA ¶ IV.B.)

16 The Class Notice (SA Ex. B) is clear, precise, informative, and meets all of the  
17 necessary standards. (Weisbrot Decl. ¶¶ 25-26.) It includes information such as the case  
18 caption; a description of the Settlement Class; a detailed description of the Settlement’s  
19 benefits and how to obtain them; a description of the claims and the history of the  
20 litigation; the Class Members’ rights, a description of the Settlement and the claims  
21 being released; the names and contact information of proposed Class Counsel and the  
22 Settlement Administrator; a statement of the maximum amount of attorneys’ fees and  
23 Service Awards that will be sought; the Final Fairness Hearing date; a description of  
24 Class Members’ opportunity to appear at the hearing; a statement of the procedures and  
25 deadlines for requesting exclusion or filing objections to the Settlement; and the manner  
26 in which to obtain further information. *In re Prudential Ins. Co. of Am. Sales Practices*  
27 *Litig.*, 962 F. Supp. 450, 496 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998); Manual  
28 For Complex Litigation § 30.212 (4th ed. 2004) (Rule 23(c) notice designed to be a



1 summary of the litigation and settlement to apprise class members of the right and  
2 opportunity to inspect the complete settlement documents, papers, and pleadings).

3 The Notice Plan was reviewed and analyzed to ensure it meets the requisite due  
4 process requirements. (Weisbrot Decl. ¶¶ 10-11, 26.) Indeed, the program here is  
5 consistent with, and exceeds, other similar court-approved notice plans, the requirements  
6 of FRCP 23(c)(2)(B), and the Federal Judicial Center (“FJC”) guidelines for adequate  
7 notice. (*Id.* ¶¶ 20-21.) The proposed procedure for providing notice and the content of  
8 the Class Notice constitute the best practicable notice to Class Members, complies with  
9 the requirements of Fed. R. Civ. P. 23 and Due Process, and should be approved.

10 **V. CONCLUSION**

11 Plaintiffs respectfully request that the Motion be granted and the Court enter an  
12 order substantially in the form accompanying the Settlement as **Exhibit C** hereto:

- 13 (1) granting preliminary approval of the proposed Settlement;
  - 14 (2) conditionally certifying the Settlement Class for settlement purposes;
  - 15 (3) approving the parties’ proposed Notice Plan and forms of notice;
  - 16 (4) conditionally appointing Plaintiffs Valeria Mercado and Andrea Kristyanne  
17 Holmes as Class Representatives for the Settlement Class;
  - 18 (5) conditionally appointing the law firms of Greg Coleman Law, PC, Ahdoot &  
19 Wolfson, PC, and Whitfield Bryson, LLP as Settlement Class Counsel;
  - 20 (6) conditionally appointing Angeion Group as the Settlement Claim  
21 Administrator;
  - 22 (7) setting deadlines for any objections to, and/or requests for exclusion from, the  
23 proposed Settlement;
  - 24 (8) other scheduling matters including the date and time for the Final Fairness  
25 Hearing.
- 26  
27  
28

1 Dated: May 25, 2021

Respectfully Submitted,

2 AHDOOT & WOLFSON, PC

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VALERIA MERCADO and ANDREA  
KRISTYANNE HOLMES,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

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

Defendant.

Case No. 5:18-cv-02388-JWH-SP

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Hon. John W. Holcomb, presiding

Date: June 25, 2021  
Time: 9:00 a.m.  
Location: Courtroom 2

1           **THIS MATTER** having been opened to the Court by Plaintiff’s Unopposed  
2 Motion for Preliminary Approval (“Motion for Preliminary Approval”) of the  
3 proposed Settlement (“Settlement”) in the above Action;

4           **WHEREAS**, the Court having reviewed and considered the Motion for  
5 Preliminary Approval and supporting materials filed by Settlement Class Counsel  
6 including the Settlement Agreement with annexed Exhibits; and

7           **WHEREAS**, this Court, after due deliberation, has fully considered the record  
8 and the requirements of law, and good cause appearing;

9           **IT IS THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2021 **ORDERED** that the  
10 proposed Settlement is hereby **PRELIMINARILY APPROVED**. The Court further  
11 finds and orders as follows:

- 12           1.       The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and  
13 venue is proper in this district.
- 14           2.       The Court has personal jurisdiction over the Plaintiffs, the Settlement  
15 Class Members, and the Defendant.
- 16           3.       To the extent not otherwise defined herein, all defined terms in this Order  
17 shall have the meaning assigned in the Settlement Agreement (“Settlement  
18 Agreement”).
- 19           4.       The Settlement Agreement was entered into by experienced class action  
20 counsel after extensive arm’s length negotiations of disputed claims, which included  
21 the participation of an experienced and neutral third-party mediator. The Settlement  
22 Agreement is not the result of collusion.
- 23           5.       The proceedings that occurred before the Parties entered into the  
24 Settlement Agreement gave counsel the opportunity to adequately assess this case’s  
25 strengths, weaknesses and the risks to each Party, and thus, to negotiate a Settlement  
26 Agreement that reflects those considerations.
- 27           6.       After careful review of the Settlement Agreement, the Court hereby  
28 preliminarily finds that the Settlement Agreement is fair, reasonable and adequate

1 under Fed. R. Civ. P. 23, and has no obvious deficiencies that would preclude  
2 preliminary approval. Accordingly, the Court hereby preliminarily approves all terms  
3 of the Settlement Agreement and its Exhibits.

4 7. The Court preliminarily finds, for settlement purposes only, that all  
5 requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. As such, the Court  
6 hereby preliminarily certifies the following Settlement Class:

7 All persons and entities who purchased or leased any model year 2017 or  
8 2018 Audi Q7 vehicle that was imported and distributed by Volkswagen  
9 Group of America, Inc. for sale or lease in the United States or Puerto  
10 Rico.

11 Excluded from the Settlement Class are (a) all Judges who have presided  
12 over the Action and their spouses; (b) all current employees, officers,  
13 directors, agents and representatives of Defendant, and their family  
14 members; (c) any affiliate, parent or subsidiary of Defendant and any  
15 entity in which Defendant has a controlling interest; (d) anyone acting as a  
16 used car dealer; (e) anyone who purchased a Settlement Class Vehicle for  
17 the purpose of commercial resale; (f) anyone who purchased a Settlement  
18 Class Vehicle with salvaged title and/or any insurance company who  
19 acquired a Settlement Class Vehicle as a result of a total loss; (g) any  
20 insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle  
21 warranties and service contracts; (i) any Settlement Class Member who,  
22 prior to the date of this Agreement, settled with and released Defendant or  
23 any Released Parties from any Released Claims, and (j) any Settlement  
24 Class Member that files a timely and proper Request for Exclusion from  
25 the Settlement Class.

26 8. The Court preliminarily finds that the requirements of Rule 23(a) are  
27 satisfied, for settlement purposes only, as follows: (a) the members of the Settlement  
28 Class are so numerous that joinder of all members is impracticable, (b) there are  
common issues of law and fact for the Settlement Class, (c) the claims of the Plaintiffs  
Valeria Mercado and Andrea Kristyanne Holmes are typical of the claims of the  
Settlement Class that they seek to represent, and (d) Plaintiffs will fairly and  
adequately protect and represent the interests of all members of the Settlement Class as  
the Class Representatives, and their interests are not antagonistic to those of the

1 Settlement Class.

2 9. The Court further preliminarily finds that the requirements of Rule  
3 23(b)(3) are satisfied, for settlement purposes only, in that (a) common questions of  
4 law and fact pertaining to the Settlement Class Members predominate over questions  
5 that may affect only individual members; and (b) a class action is superior to other  
6 available methods for the fair and efficient adjudication of this controversy.

7 10. The Court hereby preliminarily appoints Plaintiffs Valeria Mercado and  
8 Andrea Kristyanne Holmes to serve as the Class Representatives for the Settlement  
9 Class.

10 11. The Court also hereby preliminarily appoints the law firms of Greg  
11 Coleman Law, PC, Ahdoot & Wolfson, PC and Whitfield Bryson, LLP to serve as  
12 Settlement Class Counsel for the Settlement Class.

13 12. The Court preliminarily appoints Angeion Group as the Settlement  
14 Administrator (hereinafter, “Settlement Administrator” or “Claims Administrator”) to  
15 supervise and administer the Class Notice Plan as well as the processing and review of  
16 Claims that are timely and properly submitted and comply with the terms of the  
17 Settlement.

18 13. This Preliminary Approval Order shall neither preclude nor in any way  
19 affect Defendant’s rights to assert that this action may not be certified as a class action,  
20 other than for settlement purposes only. The Court also concludes that, because the  
21 action is being settled rather than litigated, the Court need not consider manageability  
22 issues that might be presented by the trial of a nationwide class action involving the  
23 issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

24 14. The Court has reviewed, and finds, that the content of the proposed form  
25 of Class Notice attached as Exhibit B to the Settlement Agreement, and the Claim  
26 Form attached as Exhibit A to the Settlement Agreement, satisfy the requirements of  
27 Fed. R. Civ. P. 23(c)(2) and 23(e)(1), and Due Process. Accordingly, the Court hereby  
28 approves the proposed Class Notice and Claim Form.

1           15. The Court further hereby approves the proposed method for providing  
2 notice of the Settlement to the Settlement Class Members, as reflected in the Class  
3 Notice Plan in the Settlement Agreement. The Court has reviewed the Class Notice  
4 Plan and finds that the Settlement Class Members will receive the best notice  
5 practicable under the circumstances. The Court specifically approves the Parties’  
6 proposal that on an agreed upon date with the Claims Administrator, but in no event  
7 later than \_\_\_\_\_, 2021 [one hundred fifteen (115) days after entry of this order],  
8 the Claims Administrator shall cause individual Class Notice, substantially in the form  
9 attached to the Settlement Agreement as Exhibit B, together with the Claim Form,  
10 substantially in the form attached to the Settlement Agreement as Exhibit A, to be  
11 mailed, by first class mail, to the current or last known addresses of all reasonably  
12 identifiable Settlement Class Members (the “Notice Date”). The Court specifically  
13 approves the procedures set forth in the Settlement Agreement for identifying  
14 Settlement Class Members, and for re-mailing notice packets and performing advanced  
15 address searches for Settlement Class Members’ addresses if returned as undeliverable.  
16 The Court further approves the payment of notice costs by Defendant as provided in  
17 the Settlement Agreement.

18           16. The Court finds that these procedures will constitute the best notice  
19 practicable under the circumstances and satisfy the requirements of Fed. R. Civ. P.  
20 23(c)(2), Fed. R. Civ. P. 23(e)(1), and Due Process.

21           17. The Departments of Motor Vehicles within the United States and Puerto  
22 Rico are ordered to provide approval to Polk/IHS Markit, or any other company so  
23 retained by the parties and/or the Claims Administrator, to release the names and  
24 addresses of Settlement Class Members in this action associated with the titles of the  
25 Vehicle Identification Numbers at issue in this action for the purposes of disseminating  
26 the Class Notice to the Settlement Class Members. Polk/IHS Markit or any other  
27 company so retained is ordered to license, pursuant to agreement between Defendant  
28 and said company, and/or the Claims Administrator and said company, the Settlement

1 Class Members' contact information to Defendant and/or the Claims Administrator  
2 solely for the use of providing Class Notice in this action and for no other purpose.

3 18. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2), a Final  
4 Fairness Hearing will be held by this Court in the Courtroom of The Honorable John W.  
5 Holcomb, United States District Court for the Central District of California, United  
6 States Courthouse, 3470 12th St., Riverside, California 92501 at \_\_\_\_\_ .m. on  
7 \_\_\_\_\_, 2021 ("Final Fairness Hearing"), to consider (a) the grant of  
8 final approval of the Settlement pursuant to the terms of the Settlement Agreement, (b)  
9 certification of the Settlement Class, (c) appointment of Plaintiffs as the Settlement  
10 Class Representatives, (d) appointment of Class Counsel as Settlement Class Counsel,  
11 (e) appointment of Angeion Group as the Settlement Administrator, (f) Class  
12 Counsel's application for reasonable attorney fees and expenses and Settlement Class  
13 Representative service awards, (g) any objections to and/or requests for exclusion from  
14 the proposed Settlement, and (h) entry of a Final Approval Order and Judgment. The  
15 Final Fairness Hearing may be adjourned by the Court, and the Court may address the  
16 above or other matters, without further notice to the Settlement Class other than notice  
17 that may be issued by the Court and/or on the Court's and settlement websites.

18 19. The Court directs that no later than \_\_\_\_\_, 2021 [twenty-one  
19 (21) days prior to the Final Fairness Hearing], Settlement Class Counsel shall file their  
20 Motion for Final Approval of the Settlement.

21 20. The Court directs that Settlement Class Counsel shall file their Motion for  
22 reasonable attorney fees and expenses, and Settlement class Representatives service  
23 awards, no later than \_\_\_\_\_, 2021 [fourteen (14) days before the Objection Deadline].  
24 No later than \_\_\_\_\_, 2021 [fourteen (14) days before the Final Fairness Hearing],  
25 reply papers, if any, may be filed with respect to said Motion.

26 21. The Court further directs that no later than \_\_\_\_\_, 2021 [ten (10)  
27 days prior to the Final Fairness Hearing], Settlement Class Counsel and Defendant  
28 may file any supplemental memoranda addressing any objections and/or opt-outs, and



1 any other matters in further support of final approval of the Settlement.

2 22. Any Settlement Class Members wishing to object to the proposed  
3 Settlement and/or the requests for Settlement Class Counsel fees and expenses and/or  
4 Settlement Class Representative service awards, must adhere to the following deadline  
5 and procedures in order for the objection to be considered by the Court:

6 a) To object, a Settlement Class Member, individually or through  
7 counsel, must, no later than \_\_\_\_\_, 2021 [thirty (30) days  
8 after the Notice Date] (hereinafter, the “Objection Deadline”), file  
9 a written objection, with all supporting documents and/or  
10 memoranda, with the Court in person at United States Courthouse,  
11 3470 12th St., Riverside, California 9250, or via the Court’s  
12 electronic filing system, or, if not filed with the Court by either  
13 method, mail the objection to the Court and to the following  
14 persons by first-class mail postmarked no later than the  
15 \_\_\_\_\_, 2021 Objection Deadline:

16 **Settlement Class Counsel**

17 Robert Ahdoot, Esq.  
18 Ahdoot & Wolfson, PC  
2600 W. Olive Ave., Suite 500  
Burbank, CA 91505

19 **Defendant’s Counsel**

20 Michael B. Gallub, Esq.  
21 Herzfeld & Rubin, P.C.  
125 Broad Street  
22 New York, NY 10004

23 **Claims Administrator**

24 Brake Claims Administrator  
25 c/o Angeion Group  
P.O. Box 58220  
26 Philadelphia, PA 19102

27 b) Any objecting Settlement Class Member must include with  
28 his/her/their/its objection:

- 1 i. the objector’s full name, address, and telephone number;
- 2 ii. the model, model year and VIN of the Settlement Class
- 3 Vehicle, along with proof that the objector has owned or
- 4 leased the Settlement Class Vehicle (i.e., a true copy of a
- 5 vehicle title, registration, or license receipt);
- 6 iii. a written statement of all grounds for the objection
- 7 accompanied by any legal support for such objection;
- 8 iv. copies of any papers, briefs, or other documents upon which
- 9 the objection is based and are pertinent to the objection;
- 10 v. the name, address and telephone number of any counsel
- 11 representing said objector; and
- 12 vi. a list of all other objections submitted by the objector, or the
- 13 objector’s counsel, to any class action settlements submitted
- 14 in any court in the United States in the previous five (5)
- 15 years, including the full case name with jurisdiction in
- 16 which it was filed and the docket number. If the Settlement
- 17 Class Member or his/her/their/its counsel has not objected
- 18 to any other class action settlement in the United States in
- 19 the previous five years, he/she/they/it shall affirmatively so
- 20 state in the objection.
- 21 c) Subject to the approval of the Court, any objecting Settlement
- 22 Class Member may appear, in person or by counsel, at the Final
- 23 Fairness Hearing to explain why the proposed Settlement should
- 24 not be approved as fair, reasonable and adequate, or to object to
- 25 any motion for attorneys’ fees and expenses or Settlement Class
- 26 Representative service awards. Any Settlement Class Member
- 27 that wishes to appear in person or by counsel must, by the
- 28 Objection Deadline, file with the Clerk of the Court and serve

1 upon all counsel designated in the Class Notice, a Notice of  
2 Intention to Appear at the Fairness Hearing. The Notice of  
3 Intention to Appear must include copies of any papers, exhibits or  
4 other evidence, and the identity of witnesses that the objecting  
5 Settlement Class Member or their counsel intends to present to the  
6 Court. Any Settlement Class Member who does not provide a  
7 Notice of Intention to Appear in accordance with the Objection  
8 Deadline and requirements set forth in the Settlement Agreement  
9 and Class Notice shall not be entitled to appear and present any  
10 arguments at the Final Fairness Hearing.

11 d) Any Settlement Class member who has not filed an objection in  
12 accordance with the Objection Deadline and requirements set forth  
13 in the Settlement Agreement and Class Notice, shall be deemed to  
14 have waived their right to object to, and shall forever be barred  
15 from objecting to, any aspect of the proposed Settlement and to  
16 Settlement Class Counsel’s motion for reasonable attorney fees  
17 and expenses and Settlement Class Representative service awards,  
18 and, if the Settlement is granted final approval, will be bound by  
19 the Settlement Agreement including the release of claims and by  
20 any orders and judgements of this Court relating to the Settlement.

21 23. Any Settlement Class Member who wishes to be excluded from the  
22 Settlement Class must mail a request for exclusion (“Request for Exclusion”), by first-  
23 class mail postmarked no later than \_\_\_\_\_, 2021 [thirty (30) days after the Notice  
24 Date], to the Claims Administrator at:

25 Brake Claims Administrator  
26 c/o Angeion Group  
27 P.O. Box 58220  
28 Philadelphia, PA 19102

24. To be effective, the Request for Exclusion must:

- 1 a) include the Settlement Class Member’s full name, address and
- 2 telephone number;
- 3 b) identify the model, model year and VIN of the Settlement Class
- 4 Vehicle;
- 5 c) state that he/she/they/it is a present or former owner or lessee of a
- 6 Settlement Class Vehicle; and
- 7 d) specifically and unambiguously state his/her/their/its desire to be
- 8 excluded from the Settlement Class.

9 25. The Claim Administrator shall report the names and addresses of all  
10 persons and entities that submitted timely and proper Requests for Exclusion to the  
11 Court, Settlement Class Counsel and Defendant’s Counsel no later than \_\_\_\_\_, 2021  
12 [eighteen (18) days prior to the Final Fairness Hearing].

13 26. The Claim Administrator shall consult with Class Counsel and  
14 Defendant’s Counsel in determining whether they meet the requirements of a Request  
15 for Exclusion. Any communications from Settlement Class Members (whether styled  
16 as an exclusion request, an objection or a comment) as to which it is not readily  
17 apparent whether the Settlement Class Member intended to be excluded from the  
18 Settlement Class shall be evaluated jointly by Class Counsel and Defendant’s Counsel,  
19 who shall make a good faith evaluation. Any uncertainties about whether a Settlement  
20 Class Member is requesting exclusion from the Settlement Class shall be submitted to  
21 the Court for resolution.

22 27. Any Settlement Class Member who does not properly and timely submit  
23 such a Request for Exclusion shall automatically be included in the Settlement Class  
24 and, if the Settlement is granted final approval, shall be bound by all the terms and  
25 provisions of the Settlement Agreement and the Settlement, including but not limited  
26 to the release of claims and any orders and judgment of this Court relating to the  
27 Settlement.

28 28. Upon final approval of the Settlement, all Settlement Class Members

1 who have not timely and properly excluded themselves from the Settlement shall be  
2 deemed to have, and by operation of the Final Order and Judgment shall have, fully  
3 and completely released, acquitted and discharged all Released Parties from all  
4 Released Claims as set forth in the Settlement Agreement.

5 29. Pending the Court's determination of whether to grant final approval of  
6 this Settlement, all Settlement Class Members and/or their representatives are  
7 preliminarily barred from commencing, prosecuting, continuing to prosecute, or  
8 participating in any action or proceeding against any of the Released Parties (as defined  
9 in the Settlement Agreement), in any court, tribunal or other forum, asserting any of the  
10 matters, claims or causes of action that are to be released in the Settlement Agreement.  
11 Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this  
12 preliminary injunction is necessary and appropriate in aid of the Court's continuing  
13 jurisdiction and authority over the Action pending its determination as to final approval  
14 of this Settlement.

15 30. In the event the Settlement is not approved by the Court, or for any  
16 reason the parties fail to obtain a Final Order and Judgment as contemplated in the  
17 Settlement, or the Settlement is terminated pursuant to its terms for any reason, then  
18 the following shall apply:

- 19 (a) All orders and findings entered in connection with the  
20 Settlement shall become null and void and have no further force  
21 and effect, shall not be used or referred to for any purposes  
22 whatsoever, and shall not be admissible as evidence or  
23 discoverable in this or any other proceeding, judicial or  
24 otherwise;
- 25 (b) All of the Parties' respective pre-Settlement claims, defenses  
26 and procedural rights will be preserved, and the parties will be  
27 restored to their positions *status quo ante*;
- 28 (c) Nothing contained in this order is, or may be construed as, any  
admission or concession by or against Defendant, any Released  
Party or any Plaintiff on any claim, defense, or point of fact or

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law;

- (d) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise;
- (e) Neither the fact of, nor any documents relating to, either party’s withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence;
- (f) The preliminary certification of the Settlement Class pursuant to this order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified; and
- (g) The terms in Section VI of the Settlement Agreement shall apply and survive.

31. The Parties and their counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with the Preliminary Approval Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement, to the form and content of the Class Notice and/or Claim Form, or to any other exhibits that the Parties jointly agree are reasonable and necessary.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. John W. Holcomb  
United States District Judge