

1 Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
2 Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
3 Laura E. Goolsby (SBN 321721)
Laura.Goolsby@capstonelawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Russell D. Paul (pro hac vice)
rpaul@bm.net
8 Amey J. Park (pro hac vice)
apark@bm.net
9 BERGER MONTAGUE PC
1818 Market Street, Suite 3600
10 Philadelphia, PA 19103
Telephone: (215) 875-3000
11 Facsimile: (215) 875-4604

12 Attorneys for Plaintiffs Dominique Parrish,
Ludwig Combrinck and Trine E. Utne
13

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 DOMINIQUE PARRISH, LUDWIG
COMBRINCK, and TRINE E. UTNE
18 individually, and on behalf of a class of
similarly situated individuals,

19 Plaintiffs,

20 v.

21 VOLKSWAGEN GROUP OF
22 AMERICA, INC. a Delaware limited
liability company,

23 Defendant.
24

Case No.: 8:19-cv-01148-DSF-KESx

Hon. Dale S. Fischer

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 24, 2022
Time: 1:30 p.m.
Place: Courtroom 7D

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE** that on January 24, 2022, at 1:30 p.m., or as soon
4 thereafter as counsel may be heard, in Courtroom 7D of the above-captioned court,
5 located at 350 West 1st Street, Los Angeles, California 90012, the Honorable Dale S.
6 Fischer presiding, Plaintiffs Dominique Parrish, Ludwig Combrinck, and Trine E. Utne
7 will, and hereby do, move this Court to:

- 8 1. Preliminarily approve the settlement set forth in the Settlement Agreement,
9 attached as Exhibit 1 to the Declaration of Tarek H. Zohdy;
- 10 2. Conditionally certify the Settlement Class for settlement purposes;
- 11 3. Approve the Parties' Plan for dissemination of the proposed Class Notice
12 ("Notice Plan");
- 13 4. Appoint Plaintiffs Dominique Parrish, Ludwig Combrinck, and Trine E.
14 Utne as the Settlement Class Representatives;
- 15 5. Appoint Capstone Law APC and Berger Montague PC as Settlement Class
16 Counsel;
- 17 6. Set a hearing date and briefing schedule for final settlement approval and
18 Plaintiffs' fee and expense application.

19 This Motion, unopposed by Defendant Volkswagen Group of America, Inc., is
20 based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and
21 Authorities in Support of Motion for Preliminary Approval of Class Action Settlement;
22 (3) the Declaration of Tarek H. Zohdy; (4) the Declaration of Russell D. Paul; (5) the
23 Declaration of Bradley A. Winters; (6) the Settlement Agreement and attached exhibits
24 thereto; (7) the [Proposed] Order Granting Preliminary Approval of Class Action
25 Settlement; (8) the records, pleadings, and papers filed in this action; and (5) such other
26 documentary and oral evidence or argument as may be presented to the Court at or prior
27 to the hearing of this Motion.
28

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

Dated: November 22, 2021

Respectfully submitted,

By: /s/ Tarek H. Zohdy

Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby
CAPSTONE LAW APC

Russell D. Paul
Amey J. Park
BERGER MONTAGUE PC

Attorneys for Plaintiffs Dominique Parrish,
Ludwig Combrinck and Trine E. Utne

TABLE OF CONTENTS

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

I. INTRODUCTION 1

II. FACTS AND PROCEDURE 2

 A. Overview of the Litigation and Settlement Negotiations..... 2

III. MATERIAL TERMS OF THE PROPOSED SETTLEMENT..... 4

 A. 2019 Volkswagen Jetta Settlement Class Vehicles 4

 1. All Current Owners and Lessees – Free TCM Software Update
 and Installation of Damper Weight..... 4

 2. All Current and Former Owners and Lessees - Reimbursement for
 Past Unreimbursed Out-of-Pocket Repair Expenses 5

 B. Additional Settlement Benefits Applicable to Owners and Lessees of a
 Certain Subset of 2019 Volkswagen Jetta Vehicles Identified by
 Vehicle Identification Number (VIN)..... 6

 1. Warranty Extension for Current Owners and Lessees..... 6

 2. All Current and Former Owners and Lessees - Reimbursement for
 Past Unreimbursed Out-of-Pocket Repair Expenses 7

 C. 2018, 2019 and 2020 Volkswagen Tiguan Settlement Class Vehicles..... 9

 1. Warranty Extension for Current Owners and Lessees..... 9

 2. All Current and Former Owners and Lessees - Reimbursement for
 Past Unreimbursed Repair Expenses 9

 D. Release of Claims/Liability 11

 E. Claim Submission and Administration..... 11

 F. The Proposed Class Notice and Plan for Dissemination (“Notice Plan”)..... 12

 G. Proposed Class Counsel Fees, Litigation Expenses, and Class
 Representative Service Awards 14

IV. ARGUMENT 14

 A. The Court Should Grant Preliminary Settlement Approval..... 15

1 1. The Settlement is Entitled to a Presumption of Fairness 17

2 2. The Views of Experienced Counsel Should Be Accorded

3 Substantial Weight 17

4 3. The Extent of Discovery Completed Supports Preliminary

5 Approval 18

6 4. The Proposed Settlement Is Well Within the Range of

7 Reasonableness..... 19

8 5. Equitable Method of Allocating Relief to Class Members 22

9 **B. Conditional Class Certification Is Appropriate for Settlement Purposes..... 23**

10 1. The Proposed Class Meets the Requirements of Rule 23 24

11 2. The Proposed Class Is Sufficiently Numerous and Ascertainable..... 24

12 3. There Are Questions of Law and Fact that Are Common to the

13 Class 25

14 4. Plaintiffs’ Claims Are Typical of the Proposed Settlement Class 26

15 5. Plaintiffs and Plaintiffs’ Counsel Will Adequately Represent the

16 Interests of the Proposed Settlement Class..... 27

17 6. Common Issues Predominate Over Individual Issues 27

18 7. A Class Settlement Is Superior to Other Available Means of

19 Resolution..... 29

20 8. The Proposed Notice to the Settlement Class 29

21 **II. CONCLUSION..... 32**

22

23

24

25

26

27

28

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

TABLE OF AUTHORITIES

Page(s)

Cases

Aarons v. BMW of N. Am. LLC,
2014 WL 4090564 (C.D. Cal. Apr. 29, 2014).....22

Allen v. Bedolla,
787 F.3d 1218 (9th Cir. 2015) 16

Amchem Prods. v. Windsor,
521 U.S. 591 (1997).....21, 24, 28, 29

Armstrong v. Davis,
275 F.3d 849 (9th Cir. 2001)26

Briseno v. ConAgra Foods, Inc.,
844 F.3d 1121 (9th Cir. 2017)25

Browne v. American Honda Motor Co., Inc.,
2010 WL 9499072 (C.D. Cal. July 29, 2010)26

Chamberlan v. Ford Motor Co.,
223 F.R.D. 524 (N.D. Cal. 2004)26

Cholakyan v. Mercedes-Benz USA, LLC,
281 F.R.D. 534 (C.D. Cal. 2012).....21

Daffin v. Ford Motor Co.,
458 F.3d 549 (6th Cir. 2006)26

Eisen v. Porsche,
2014 WL 439006 (C.D. Cal. Jan. 30, 2014)..... 18, 19

Estrella v. Freedom Fin’l Network,
2010 WL 2231790 (N.D. Cal. June 2, 2010).....25

Grodzitsky v. Am. Honda Motor Co., No. 2-01142-SVW,
2014 WL 718431(C.D. Cal. Feb. 19, 2014)21

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998)25, 26, 27, 29

1 *Hensley v. Eckerhart*,
 2 461 U.S. 424 (1983).....17
 3 *In re Bluetooth Headset Prod. Liab. Litig.*,
 4 654 F.3d 935 (9th Cir. 2011)16
 5 *In re Hyundai & Kia Fuel Econ. Litig.*,
 6 926 F.3d 539 (9th Cir. 2019)15, 21, 24, 28
 7 *In re Nat’l Football League Players’ Concussion Inj. Litig.*,
 8 961 F. Supp. 2d 708 (E.D. Pa. 2014).....15
 9 *In re Pac. Enters. Sec. Litig.*,
 10 47 F.3d 373 (9th Cir. 1995)18
 11 *In re Portal Software, Inc. Sec. Litig.*,
 12 2007 WL 4171201 (N.D. Cal. Nov. 26, 2007).....22
 13 *In re Syncor ERISA Litig.*,
 14 516 F.3d 1095 (9th Cir. 2008)15
 15 *In re Toys “R” Us-Del., Inc. FACTA Litig.*,
 16 295 F.R.D. 438 (C.D. Cal. 2014).....17, 22
 17 *In re Volkswagen “Clean Diesel Mktg., Sales Pracs., & Prod. Liab. Litig.”*,
 18 895 F.3d 597 (9th Cir. 2018)27
 19 *Lane v. Facebook, Inc.*,
 20 696 F.3d 811 (9th Cir. 2012)20
 21 *Lozano v. AT&T Wireless Services, Inc.*,
 22 504 F.3d 718 (9th Cir. 2007)26
 23 *Officers for Justice v. Civil Service Comm’n*,
 24 688 F.2d 615 (9th Cir. 1982)17, 19
 25 *Parkinson v. Hyundai Motor Am.*,
 26 258 F.R.D. 580 (C.D. Cal. 2008).....26
 27 *Patrick v. Volkswagen Group of America*,
 28 2021 WL 3616105 (C.D. Cal. March 10, 2021).....31
Rannis v. Recchia,
 380 F. App’x. 646 (9th Cir. 2010).....31

1 *Rodriguez v. West Pub. Corp.*,
 2 563 F.3d 948 (9th Cir. 2009) 19, 20

3 *Ruch v. AM Retail Grp., Inc.*,
 4 2016 WL 1161453 (N.D. Cal. Mar. 24, 2016) 16

5 *Smith v. Cardinal Logistics Mgmt. Corp.*,
 6 2008 WL 4156364 (N.D. Cal. Sep. 5, 2008) 29

7 *Smith v. Ford Motor Co.*,
 8 749 F. Supp. 2d 980 (N.D. Cal. 2010)..... 21

9 *Stockinger v. Toyota Motor Sales, U.S.A., Inc.*,
 2020 WL 1289549 (C.D. Cal. Mar. 3, 2020) 21

10 *Sullivan v. DB Invs. Inc.*,
 11 667 F.3d 273 (3d Cir. 2011) 28

12 *Tyson Foods v. Bouaphakeo*,
 13 136 S. Ct. 1036 (2016)..... 27, 28

14 *Vasquez v. Coast Valley Roofing, Inc.*,
 15 670 F. Supp. 2d 1114 (E.D. Cal. 2009) 25

16 *Wakefield v. Wells Fargo & Co.*,
 17 2014 WL 7240339 (N.D. Cal. Dec. 18, 2014) 28

18 *Wal-Mart Stores, Inc. v. Dukes*,
 19 564 U.S. 338 (2011)..... 25

20 *Wolin v. Jaguar Land Rover N. Am., LLC*,
 617 F.3d 1168 (9th Cir. 2010) 26

21 **Statutes**

22 28 U.S.C. § 1715..... 14, 32

23 **Rules**

24 Fed. R. Civ. P. 23..... 2, 24

25 Fed. R. Civ. P. 23(a)(1)..... 25

26 Fed. R. Civ. P. 23(a)(2)..... 25

27 Fed. R. Civ. P. 23(a)(4)..... 27

1 Fed. R. Civ. P. 23(b)(1), (2) or (3).....27

2 Fed. R. Civ. P. 23(c)(2)(B)30

3 Fed. R. Civ. P. 23(e)(1).....29

4 Fed. R. Civ. P. 23(e)(2)(D).....23

5 Rule 23(a) and (b)(3)24

6

7 **Other Authorities**

8 3 Conte & Newberg, *Newberg on Class Actions*, § 7.20 (4th ed. 2002)..... 15

9 Manual for Complex Litigation, § 21.632.....24

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 Plaintiffs Dominique Parrish, Ludwig Combrinck, and Trine E. Utne
3 (“Plaintiffs”) respectfully seek preliminary approval of the Parties’¹ proposed Class
4 Settlement Agreement (“Settlement”) of this action applicable to a nationwide
5 Settlement Class of U.S. current and former owners and lessees of 490,068 model year
6 2019 Volkswagen Jetta and model year 2018-2020 Volkswagen Tiguan vehicles. As
7 discussed below, this Settlement, which affords substantial benefits to the Settlement
8 Class, was the result of extensive arm’s length negotiations of highly disputed claims by
9 experienced class action counsel. Plaintiffs claim that the transmissions in the respective
10 Settlement Class Vehicles contain a defect that could result in a rattling noise, a
11 jerking/hesitation, and/or an oil leak. Plaintiffs have asserted claims under theories of,
12 *inter alia*, breach of warranty and statutory and common law fraud. Defendant
13 Volkswagen Group of America, Inc. (“VWGoA”) denies these allegations and
14 maintains that the subject vehicles’ transmissions are not defective, were properly
15 designed, manufactured, marketed, distributed and sold, and function properly. VWGoA
16 further maintains that no express or implied warranties were breached, and no consumer
17 statutes or common law duties were violated.

18 The proposed Class Settlement was the culmination of extensive arms-length
19 negotiations following significant motion practice, and occurred over many months
20 during which discovery was also exchanged. The Class Settlement was ultimately
21 reached with the assistance of a respected neutral Mediator who is highly experienced in
22 class action settlements. The Settlement,² described more fully below, provides
23 Settlement Class Members with immediate and valuable relief that directly addresses
24 issues applicable to respective categories of the Settlement Class Vehicles, it is fair,

25
26 ¹ “Parties” is defined as Plaintiffs Dominique Parrish, Ludwig Combrinck, and
Trine E. Utne, and Defendant Volkswagen Group of America, Inc.

27 ² Unless indicated otherwise, capitalized terms used herein have the same
28 meaning as those defined by the Settlement Agreement, attached as Exhibit 1 to the
Declaration of Tarek H. Zohdy (“Zohdy Decl.”).

1 reasonable, and adequate, and it complies in all respects with Fed. R. Civ. P. 23 (“Rule
2 23”). The Settlement successfully addresses the alleged transmission issues going
3 forward while also providing a reimbursement program for Settlement Class
4 Members to recoup paid out-of-pocket expenses for qualifying covered repairs that
5 were incurred in the past.

6 Plaintiffs accordingly request that this Court review their negotiated Settlement
7 Agreement, attached as Exhibit 1 to the accompanying Declaration of Tarek H. Zohdy,
8 and enter an order: (1) granting preliminary approval of the Settlement; (2) conditionally
9 certifying the proposed Settlement Class for settlement purposes; (3) conditionally
10 appointing Plaintiffs as the Settlement Class Representatives and Plaintiffs’ Counsel,
11 Capstone Law APC, and Berger Montague PC, as Settlement Class Counsel; (4)
12 approving the Parties’ proposed Class Notice form and plan for disseminating the Class
13 Notice (the “Notice Plan”); (5) conditionally appointing Rust Consulting, Inc., as the
14 Settlement Claim Administrator; (6) setting deadlines for the filing of any objections to,
15 or requests for exclusion from the Settlement and other submissions in connection with
16 the Settlement approval process; and (7) setting a hearing date and briefing schedule for
17 Final Approval of the Settlement and Plaintiffs’ application for service awards and
18 attorneys’ fees and expenses.

19 **II. FACTS AND PROCEDURE**

20 **A. Overview of the Litigation and Settlement Negotiations**

21 Plaintiff Dominique Parrish, a resident of Irvine, California, is the owner of a
22 2019 Volkswagen Jetta who complained of a rattling noise in the transmission, which he
23 claims was not repaired by a VW dealer. Plaintiff Ludwig Combrinck, a resident of
24 Livermore, California, leased a new 2018 Volkswagen Tiguan and complained of a
25 transmission oil leak, which had to be repaired under warranty, and a “hard” shifting
26 from first to second gear, which he claims was not repaired. Plaintiff Trine Utne, a
27 resident of Salt Lake City, Utah, leased a new 2019 Volkswagen Tiguan and complained
28 of transmission hesitation issues, which she asserts were not repaired.

1 Plaintiffs filed their initial complaint on June 10, 2019, alleging that the
2 transmissions in their vehicles were defective and asserting claims against VWGoA for,
3 *inter alia*, alleged violation of the consumer statutes of their states of residence, including
4 the Consumers Legal Remedies Act (CLRA), Unfair Competition Law (UCL), breach
5 of warranty under the Song-Beverly Warranty Act and the Magnuson-Moss Warranty
6 Act, and unjust enrichment. (Zohdy Decl. ¶¶ 2-3.)

7 Plaintiffs filed a First Amended Class Action Complaint on July 3, 2019. (*Id.* at ¶
8 4.) After several amendments to the Complaint [ECF 18, 35, 43, 72], Motions to
9 Dismiss the amended complaints [ECF 36, 47], and a Decision and Order dated May 7,
10 2020 granting in part and denying in part Defendant’s Motion to Dismiss the Third
11 Amended Complaint [ECF 71], Plaintiffs filed their operative Fourth Amended Class
12 Action Complaint on June 3, 2020 [ECF 72]. (*Id.* at ¶¶ 5-10.) VWGoA filed an Answer
13 to the Fourth Amended Class Action Complaint on June 17, 2020 [ECF 73], disputing
14 the material allegations and claims and asserting numerous substantial defenses to
15 Plaintiffs’ allegations and claims.

16 Following the Parties’ negotiation and filing of a Joint Rule 26(f) Report [ECF
17 59] and negotiation of a stipulated protective order, the exchange of discovery and
18 evidence took place. The Parties conferred regularly over the subsequent months, and
19 simultaneous with the discovery and litigation activities, the Parties began negotiating a
20 potential Class Settlement. After exchanges of information and months of vigorous,
21 arm’s length settlement negotiations which did not result in agreement on all settlement
22 terms, the Parties participated in a mediation on March 8, 2021, before Bradley A.
23 Winters, Esq., a respected and very experienced neutral class action Mediator with
24 JAMS. (Zohdy Decl. at ¶¶ 11-12.) With Mr. Winters’ guidance and efforts, the Parties
25 were eventually able to negotiate a class settlement of this action. (*Id.* at ¶ 13.) The terms
26 of the Settlement are set forth in detail in the Settlement Agreement (“S.A.”) submitted
27 herewith for the Court’s preliminary approval. (*Id.* at ¶ 14, Ex. 1.) At all times, the
28 Parties’ negotiations were adversarial and non-collusive (*id.*), and the Settlement

1 constitutes a fair, adequate, and reasonable compromise of the claims at issue. (*Id.* at ¶¶
2 21-24.)

3 **III. MATERIAL TERMS OF THE PROPOSED SETTLEMENT**

4 Plaintiffs have claimed that the transmissions of the Settlement Class Vehicles are
5 defective. Through detailed investigation, analysis, and information exchanged in this
6 action, Class Counsel have determined that three alleged separate and distinct
7 transmission issues exist, each relative to a certain segment of the Settlement Class
8 Vehicles, to which the claims relate: (1) certain model year 2019 Volkswagen Jetta
9 Settlement Class Vehicles might potentially experience a transmission rattling noise, (2)
10 a smaller subset of those 2019 Volkswagen Jetta vehicles might also potentially exhibit a
11 transmission oil leak from the cooler seal rings (S.A., ¶ I.G., I.H.), and (3) model year
12 2018, 2019 and 2020 Volkswagen Tiguan Settlement Class Vehicles might potentially
13 experience transmission hesitation or jerking on certain occasions (S.A., ¶ I.I.). Having
14 narrowed the issues, the Parties were able to negotiate and fashion an appropriate Class
15 Settlement that directly addresses these transmission issues and provides Settlement
16 Class Members with substantial benefits with respect to each of these potential issues in
17 the respective Settlement Class Vehicle categories. As detailed below, the Settlement
18 provides the multiple benefits which are broken down by Settlement Class Vehicles
19 applicable to each category. The settlement benefits are fair, reasonable, and adequate
20 and also take into account and complement certain prior actions that were taken by
21 VWGoA to address these distinct potential issues:

22 **A. 2019 Volkswagen Jetta Settlement Class Vehicles**

23 **Settlement Benefits Applicable to All 2019 Volkswagen Jetta Settlement**
24 **Class Vehicles – Alleged Transmission Rattling Noise**

25 **1. All Current Owners and Lessees – Free TCM Software Update**
26 **and Installation of Damper Weight**

27 Effective on the Notice Date, VWGoA will issue a Technical Service Bulletin to
28 its authorized dealers providing that each Class Member who currently owns or leases a

1 2019 Volkswagen Jetta Settlement Class Vehicle and presents the vehicle to an
2 authorized Volkswagen dealer with a diagnosed and confirmed transmission rattling
3 noise may to obtain an update of the vehicle's transmission control module software and
4 installation of a damper weight on the drive shaft, free of charge. (*See* S.A., II.A.1.a.)
5 This will be made available up to one year after the Notice Date (*id.*) and will address the
6 transmission rattling noise issue that is one of the subjects of this case.

7 **2. All Current and Former Owners and Lessees - Reimbursement**
8 **for Past Unreimbursed Out-of-Pocket Repair Expenses**

9 In addition, all Settlement Class Members who are/were current or former owners
10 or lessees of a 2019 Volkswagen Jetta Settlement Class Vehicle may be entitled to
11 submit a claim for reimbursement of certain unreimbursed out-of-pocket expenses that
12 were incurred and paid, prior to the Notice Date and within 72,000-miles from the
13 vehicle's In-Service Date (the mileage limitation of the vehicle's original New Vehicle
14 Limited Warranty), for a Past Covered Transmission Rattling Noise Repair (a repair to
15 address a diagnosed transmission rattling noise in a 2019 Volkswagen Jetta Settlement
16 Class Vehicle). (*See* S.A., II.A.1.b.)

17 Reimbursement may be provided of the full amount (100%) of the paid invoice
18 amount (parts and labor) for the Past Covered Transmission Rattling Noise Repair,
19 subject to certain proof and other requirements set forth in the Claim Form, and
20 limitations discussed in Section III of the Class Notice. (*Id.*)

21 If the past repair for which reimbursement is sought was performed by a service
22 center or facility that is not an authorized Volkswagen dealer, then the Settlement Class
23 Member must also submit documentation (such as a written estimate or invoice), or if
24 documents are not available after a good-faith effort to obtain them, provide a
25 declaration³ signed under penalty of perjury, demonstrating that prior to that repair, they
26

27 ³ The pre-printed declaration forms are clear and straightforward, and, along with
28 the Claim Form, will be included in the Class Notice mailing. In addition, they will be
made available on the settlement website.

1 first attempted to have the repair performed by an authorized Volkswagen dealer under
2 the warranty, but the dealer either declined or was unable to perform the repair free of
3 charge. (*Id.*) The Parties believe that is fair and reasonable, since the vehicle at that time
4 would have still been covered under its original express warranty, and therefore the
5 Settlement Class Member would have been entitled to a free repair by a Volkswagen
6 dealer pursuant to the warranty.

7 In addition, reimbursement for a Past Covered Transmission Rattling Noise
8 Repair performed by a service entity or facility that is not an authorized Volkswagen
9 dealer shall not exceed a maximum reimbursement amount of \$3,500. (*Id.*)

10 **B. Additional Settlement Benefits Applicable to Owners and Lessees of a**
11 **Certain Subset of 2019 Volkswagen Jetta Vehicles Identified by**
12 **Vehicle Identification Number (VIN)**

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

14 Effective on the Notice Date, VWGoA will extend its New Vehicle Limited
15 Warranties applicable to certain specified 2019 Volkswagen Jetta Settlement Class
16 Vehicles whose Vehicle Identification Numbers (VINs) are listed in Exhibit A to the
17 Settlement Agreement, to cover repairs by an authorized Volkswagen dealer to address a
18 diagnosed and confirmed transmission oil leak caused by the transmission oil cooler seal
19 rings (or “O-rings”) on the transmission oil cooler of the Settlement Class Vehicle
20 performed during a period of 12-months or 12,000-miles (whichever occurs first) from
21 the date that the Settlement Class Vehicle’s original New Vehicle Limited Warranty
22 period applicable to the transmission expires. The Warranty Extension is conditioned
23 upon either (i) Service Action 38C5 (entitled “Transmission Oil Cooler Seals”, issued by
24 VWGoA on March 25, 2020) having been performed on the vehicle prior to said repair,
25 or (ii) the Settlement Class Member providing a declaration (that VWGoA’s records do
26 not otherwise contradict), attesting that he/she/it was not previously notified of the
27 availability of Service Action 38C5, and that he/she/it had the Service Action performed
28

1 on that vehicle within thirty (30) days after the Notice Date. (*See S.A., II.A.2.a.*)⁴

2 The settlement website will contain a VIN Lookup Portal which will enable
3 Settlement Class Members to verify, by their vehicle's VIN, whether their vehicle was
4 equipped with the applicable O-rings and is covered by this warranty extension. (*Id.*)

5 The warranty extension is subject to the terms and conditions of the Settlement
6 Class Vehicle's original New Vehicle Limited Warranty and the limitations set forth in
7 Section III of the Class Notice. (*Id.*) Additionally, the warranty extension is transferable
8 to subsequent owners to the extent it has not expired. (*Id.*)

9 **2. All Current and Former Owners and Lessees - Reimbursement**
10 **for Past Unreimbursed Out-of-Pocket Repair Expenses**

11 In addition, any current or past owner/lessee of the same specified 2019
12 Volkswagen Jetta Settlement Class Vehicles (identified by VIN in Exhibit A to the
13 Settlement Agreement) may submit a claim for reimbursement of certain past
14 unreimbursed out-of-pocket expenses that were incurred and paid prior to the Notice
15 Date, and during a period of 12-months or 12,000-miles (whichever occurred first) from
16 the date that the Settlement Class Vehicle's original New Vehicle Limited Warranty
17 period applicable to the transmission expired, for a Past Covered Transmission Oil Leak
18 Repair (a repair to address a diagnosed transmission oil leak which involved replacement
19 of the O-rings on the transmission oil cooler). (*See S.A., II.A.2.b.*)

20 Reimbursement may be provided of the full amount (100%) of the paid invoice
21 amount (parts and labor) for the Past Covered Transmission Oil Leak Repair, subject to
22 certain proof and other requirements set forth in the Claim Form, and limitations
23

24 _____
25 ⁴ The reason for this condition is that on March 25, 2020, VWGoA had
26 voluntarily issued a Service Action (38C5), applicable to these specific 2019 Jetta
27 Settlement Class Members, which directed the same Settlement Class Members to have
28 the transmission's O-rings (the source of the potential oil leak) to be replaced with newly
designed O-rings by an authorized Volkswagen dealer free of charge. *See S.A., Exhibit C.* This is fair and reasonable, since, as of March 25, 2020, the applicable Settlement Class Members were supposed to have availed themselves of this free Service Action O-ring replacement which would prevent a transmission oil leak in the subject vehicle.

1 discussed in Section III of the Class Notice.

2 This reimbursement program properly takes into account that, as explained above,
3 Service Action 38C5 was issued by VWGoA on March 25, 2020, and directed
4 owners/lessees of these Settlement Class Vehicles to have the O-rings replaced by an
5 authorized Volkswagen dealer free of charge. *See* S.A., Exhibit C. Thus, for any Past
6 Covered Transmission Oil Leak Repair that was performed prior to July 1, 2020—
7 approximately three months after Service Action 38C5 was issued (a very fair and
8 reasonable leeway period), the Settlement Class Member shall be entitled to receive
9 reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered
10 Transmission Oil Leak Repair (parts and labor).

11 If, however, the Past Covered Transmission Oil Leak Repair was performed on or
12 after July 1, 2020, then in order to qualify for reimbursement, the Settlement Class
13 Member must also submit either (a) proof that Service Action 38C5 was performed on
14 the vehicle prior to that repair, or (b) if Service Action 38C5 was not performed on the
15 vehicle, a declaration attesting, under penalty of perjury, that he/she/it was not notified of
16 that Service Action prior to the repair and VWGoA's records do not show otherwise.
17 (*Id.*)

18 If the Past Covered Transmission Oil Leak Repair was performed by a service
19 entity or facility that is not an authorized Volkswagen dealer, then the Settlement Class
20 Member must also submit documentation (such as a written estimate or invoice), or if
21 documents are not available after a good-faith effort to obtain them, a declaration signed
22 under penalty of perjury confirming that prior to the repair the Settlement Class Member
23 first attempted to have it performed by an authorized Volkswagen dealer, but the dealer
24 declined or was unable to perform the repair free of charge under the existing warranty.
25 (*Id.*) In addition, reimbursement for a Past Covered Transmission Oil Leak Repair
26 performed by a service entity or facility that is not an authorized Volkswagen dealer
27 shall not exceed a maximum reimbursement amount (parts and labor) of \$500. (*Id.*)
28

1 **C. 2018, 2019 and 2020 Volkswagen Tiguan Settlement Class Vehicles**

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

3 Effective on the Notice Date, VWGoA will extend its New Vehicle Limited
4 Warranties applicable to 2018, 2019, and 2020 Volkswagen Tiguan Settlement Class
5 Vehicles to cover repairs, by an authorized Volkswagen dealer, to address a diagnosed
6 condition of transmission hesitation or jerking performed during a period of 12-months
7 or 12,000-miles (whichever occurs first) from the date that said Settlement Class
8 Vehicle’s original New Vehicle Limited Warranty period applicable to the transmission
9 expires, provided that Recall 24GB (entitled “Engine and Transmission Control Module
10 (ECM/TCM” issued by VWGoA on September 16, 2020) was previously performed on
11 the applicable vehicle prior to the extended warranty repair.⁵ (*See* S.A., II.B.1.)

12 This warranty extension is subject to the terms and conditions of the vehicle’s
13 original New Vehicle Limited Warranty and the limitations set forth in Section III of the
14 Class Notice. (*Id.*) This extended warranty shall be transferable to subsequent owners to
15 the extent it has not expired. (*Id.*)

16 **2. All Current and Former Owners and Lessees - Reimbursement**
17 **for Past Unreimbursed Repair Expenses**

18 In addition, Settlement Class Members may also be entitled to submit a claim for
19 reimbursement of certain unreimbursed out-of-pocket expenses that were incurred and
20 paid, prior to the Notice Date and during a period of 12-months or 12,000 miles
21 (whichever occurred first) from the date that the settlement Class Vehicle’s original New
22 Vehicle Limited Warranty period applicable to the transmission expired, for a Past

23
24 ⁵ The Parties believe that this is fair and reasonable because, on September 16,
25 2020, VWGoA had voluntarily issued a Recall (24GB entitled “Engine and
26 Transmission Control Module (ECM/TCM)” applicable to the 2018-2020 Volkswagen
27 Tiguan Settlement Class Vehicles which, among other things, provided for owners and
28 lessees of these vehicles to have a free software update performed on the TCM, by an
authorized Volkswagen dealer, to improve driveability. *See* S.A., Exhibit D.
Performance of that Recall would have addressed the alleged potential transmission
hesitation/jerking issue regarding those vehicles, so the same goes for the reimbursement
for past repair remedy, discussed *infra*.

1 Covered Transmission Hesitation/Jerking Repair (a repair to address a diagnosed
2 condition of transmission hesitation or transmission jerking in a 2018, 2019 or 2020
3 Volkswagen Tiguan Settlement Class Vehicle).

4 If the Past Covered Transmission Hesitation/Jerking Repair was performed prior
5 to December 1, 2020 (2-1/2 months after the aforementioned Recall 24GB [which
6 addressed this issue] was instituted), then reimbursement may be provided of the full
7 amount (100%) of the paid invoice amount (parts and labor) for the Past Covered
8 Transmission Hesitation/Jerking Repair, subject to certain proof and other requirements
9 set forth in the Claim Form, and limitations discussed in Section III of the Class Notice.
10 If said repair was performed on or after December 1, 2020, then the Settlement Class
11 Member may still be entitled to said 100% reimbursement if either: (i) Recall 24GB was,
12 in fact, performed on the Settlement Class Vehicle prior to the repair, or (ii) the
13 Settlement Class Member submits a declaration (not otherwise contradicted by
14 VWGoA's records) showing that he/she/it was not notified of that Recall prior to said
15 repair (*See S.A., II.B.2*).

16 If the Past Covered Transmission Hesitation/Jerking Repair was performed by a
17 service entity or facility that is not an authorized Volkswagen dealer, then the Settlement
18 Class Member must also submit documentation (such as a written estimate or invoice),
19 or if documents are not available after a good-faith effort to obtain them, a declaration
20 signed under penalty of perjury, confirming that prior to the repair, he/she/it first
21 attempted to have the repair performed by an authorized Volkswagen dealer, but the
22 dealer declined or was unable to perform the repair free of charge under the existing
23 warranty. (*Id.*)

24 In addition, reimbursement for a Past Covered Transmission Hesitation/Jerking
25 Repair performed by a service entity or facility that is not an authorized Volkswagen
26 dealer shall not exceed a maximum reimbursement amount (parts and labor) of \$3,000.
27 (*Id.*)

28 The Settlement provides a reasonable period of within 75 days after the Notice

1 Date for Class Members to submit claims for reimbursement to the Claim Administrator.
2 S.A. ¶ II.D(1), and Ex. A thereto (Claim Form). As discussed *infra*, the Class Notice
3 contains robust information about the case, the proposed Settlement, the Class Members’
4 rights and options, applicable deadlines, how to call or email the Claim Administrator
5 with any questions about the Settlement or requests for assistance, and when and how to
6 submit a reimbursement claim and the information and documentation needed to do so.
7 In addition, the Claim Form, which will accompany the mailing of the Class Notice, sets
8 forth in detail exactly what information and documentation is needed for a valid claim
9 for reimbursement.

10 **D. Release of Claims/Liability**

11 In consideration of the Settlement benefits, VWGoA and its related entities and
12 affiliates (the “Released Parties,” as defined in S.A. ¶ I.R.) will receive a release of
13 claims and potential claims related to the transmissions in the Settlement Class Vehicles
14 that are the subject of this litigation and Settlement, including the claims that were or
15 could have been asserted in the litigation (the “Released Claims,” as defined in S.A. ¶
16 I.Q.). The scope of the release properly reflects the issues, allegations and claims in this
17 case, and specifically excludes claims for personal injury and property damage (other
18 than damage to the Settlement Class Vehicle itself).

19 **E. Claim Submission and Administration**

20 The Parties agreed to retain Rust Consulting, Inc., as the Settlement Claim
21 Administrator. S.A. ¶ I.B. The Claim Administrator will carry out the Notice Plan
22 (discussed below), disseminate the CAFA notice, administer any requests for exclusion,
23 and administer the Claims process including the review and determination of
24 reimbursement claims, and distribution of payments to eligible Claimants whose claims
25 are complete and have been approved under the Settlement terms. (*Id.* ¶ III.A., III.B.,
26 IV.) Pursuant to the Settlement, VWGoA will pay all administrative costs (*Id.* ¶ III.A.)
27 separate and apart from any benefits to which the Settlement Class Members may be
28 entitled. Thus, none of the Settlement Administration costs will be borne by the Class

1 Members in any way.

2 The Settlement also provides for a fair, equitable, and straightforward claims
3 process for Settlement Class Members. For each complete claim that is approved, the
4 Claim Administrator will mail a reimbursement check to the Settlement Class Member
5 within the later of 100 days after submission of the completed Claim, or 100 days after
6 the Effective Date of the Settlement. (*Id.* ¶ III.B.) Significantly, the Settlement provides
7 that if a claim and/or its supporting documentation is incomplete or deficient, the Claim
8 Administrator will mail the Settlement Class Member a letter or notice outlining the
9 deficiencies and affording a 30-day period to cure them. (*Id.*) In addition, any Settlement
10 Class Member that disagrees with the ultimate denial of his/her/its/their reimbursement
11 claim, in whole or in part, may request an “attorney review” of that decision within 14
12 days of such denial. (*Id.*, ¶ II.C.(5).) If an attorney review is requested, Class Counsel and
13 Defense Counsel will confer and make good faith efforts to resolve the disputed denial.
14 (*Id.*)

15 Finally, as discussed above, the Class Notice, its accompanying Claim Form, and
16 the settlement website all provide the necessary details, including how and by when
17 reimbursement claim must be submitted, what information and documentary proof is
18 required for a valid claim, and how to contact the Claim Administrator, or Class Counsel,
19 with any questions or requests for assistance with respect to a claim. Indeed, the Class
20 Notice and settlement website provide the mailing address, the email address and a toll-
21 free telephone number for Class Members to contact the Claim Administrator.

22 **F. The Proposed Class Notice and Plan for Dissemination (“Notice**
23 **Plan”)**

24 The Settlement Agreement contains an effective Notice Plan to be paid for by
25 solely by VWGoA. S.A. ¶ IV. Class Notice will be mailed to Settlement Class Members
26 via first class mail within 120 days after entry of the Court’s Order preliminarily
27 approving this proposed Settlement. Settlement Class Members will be located based on
28 the Settlement Class Vehicles’ VIN (vehicle identification) numbers and using the

1 services of IHS/Polk or Experian. (*Id.* ¶ IV.B.2.) These established services obtain vehicle
2 ownership histories through state title and registration records, thereby identifying the
3 names and addresses of record of the Settlement Class Members.⁶ In addition, after the
4 Class Notice is mailed, for any individual mailed Notice that is returned as undeliverable,
5 the Claim Administrator will re-mail to any provided forwarding address, and for any
6 undeliverable notice packets where no forwarding address is provided, the Claim
7 Administrator will perform an advanced address search (e.g., a skip trace) and re-mail
8 any undeliverable Class Notice packets to any new and current addresses located. (*Id.* ¶
9 IV.B.3.)

10 In addition to the mailing, the Claim Administrator will, with input from counsel
11 for both Parties, establish a dedicated Settlement website that will include details
12 regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members’
13 legal rights and options including objecting to or requesting to be excluded from the
14 Settlement and/or not doing anything; instructions on how and when to submit a claim for
15 reimbursement; instructions on how to contact the Claim Administrator by e-mail, mail or
16 (toll-free) telephone; copies of the Class Notice, Claim Form, Settlement Agreement,
17 Motions and Orders relating to the Preliminary and Final Approval processes and
18 determinations, and important submissions and documents relating thereto; important
19 dates pertaining to the Settlement including the deadline to opt-out of or object to the
20 Settlement, the deadline to submit a claim for reimbursement, and the date, place and time
21 of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). (*Id.* ¶
22 IV.B.5.)

23 The Class Notice (Ex. E to Settlement Agreement) is very detailed and more than
24 complies with Rule 23(c)(2)(B). It “clearly and concisely states in plain, easily
25

26 ⁶ The 120-day time period for mailing of the Class Notice is needed to obtain the
27 vehicle ownership and history records from the DMVs and/or state agencies of the 50
28 states and Puerto Rico, which typically takes a long time to obtain, and for the Claim
Administrator to identify the names and last known addresses of the Settlement Class
Member to whom the Class Notice will be mailed.

1 understood language” the nature of the action; the Settlement Class definition; the class
2 claims, issues and/or defendant’s positions; the Settlement terms and benefits available
3 under the Settlement; the claim submission process including details and instructions
4 regarding how and when to submit a Claim for reimbursement and the required
5 proof/documentation for a Claim; the release of claims under the Settlement; the manner
6 of and deadline by which Settlement Class Members may object to the Settlement, Class
7 Counsel’s requested fee/expense award, and/or the Plaintiffs’ requested service awards;
8 the manner of and deadline by which a Settlement Class Member may request to be
9 excluded from the Settlement; the binding effect of the Settlement and release upon
10 Settlement Class Members that do not timely and properly exclude themselves from the
11 Settlement; the procedure by which Settlement Class Members may appear at the final
12 fairness hearing individually and/or through counsel; the settlement website address; how
13 to contact the Claim Administrator (through the dedicated toll-free number, email or by
14 mail) with any questions about the settlement or requests for assistance, the identities of
15 and contact information for Class Counsel; and other important information about the
16 Settlement and the Settlement Class Members’ rights. *See* S.A., Ex. E.

17 Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, the Claim
18 Administrator will also provide timely notice to the U.S. Attorney General and the
19 applicable State Attorneys General (“CAFA Notice”) so that they may review the
20 proposed Settlement and raise any comments or concerns to the Court’s attention prior to
21 final approval. S.A. ¶ IV.A.

22 **G. Proposed Class Counsel Fees, Litigation Expenses, and Class**
23 **Representative Service Awards**

24 The requested Class Counsel Fees and Expenses and Class Representative
25 Service Awards will be the subject of a separate fee motion, to be filed pursuant to the
26 schedule set forth in the Preliminary Approval Order.

27 **IV. ARGUMENT**

28 This is a strong settlement, with robust relief for the Class that will effectively

1 address the issues in this action. It is the product of extensive arm’s length negotiations,
2 with the assistance of a Mediator, between skilled and experienced class action counsel
3 regarding vigorously disputed claims. As set forth below, the Court should grant
4 preliminary approval of the class settlement, conditionally certify the settlement class for
5 settlement purposes, and approve and direct the implementation of the Parties’ Notice
6 Plan, as all applicable criteria for same are readily met.

7 **A. The Court Should Grant Preliminary Settlement Approval**

8 Under Rule 23(e), a proposed class settlement should be approved when it is fair,
9 reasonable, and adequate after considering whether: (a) the class representatives and
10 class counsel have adequately represented the class; (b) the proposal was negotiated at
11 arm’s length; (c) the relief provided for the class is adequate, taking into account: (i) the
12 costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method
13 of distributing relief to the class, including the method of processing class-member
14 claims; and (iii) any agreement required to be identified under Rule 23(e)(3); and, (d) the
15 proposal treats class members equitably relative to each other.

16 In the Ninth Circuit, “there is a strong judicial policy that favors settlements,
17 particularly where complex class action litigation is concerned.” *In re Hyundai & Kia*
18 *Fuel Econ. Litig.*, 926 F.3d 539, 556, 568 (9th Cir. 2019) (en banc); *In re Syncor ERISA*
19 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). For preliminary approval, the Court
20 evaluates whether the settlement is within the “range of reasonableness,” and whether
21 notice to the class and the scheduling of a final approval hearing should be ordered. *See*
22 *generally*, 3 Conte & Newberg, *Newberg on Class Actions*, § 7.20 (4th ed. 2002). “At
23 the preliminary approval stage, the bar to meet the ‘fair, reasonable and adequate’
24 standard is lowered.” *In re Nat’l Football League Players’ Concussion Inj. Litig.*, 961 F.
25 Supp. 2d 708, 714 (E.D. Pa. 2014) (The Court need only review the parties’ proposed
26 settlement to determine whether it is within the permissible “range of possible judicial
27 approval” and thus, whether the notice to the class and the scheduling of the formal
28 fairness hearing is appropriate. Newberg, § 11:25).

1 Preliminary approval should be granted if “the proposed settlement appears to be
2 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,
3 does not improperly grant preferential treatment to class representatives or segments of
4 the class, and falls within the range of possible approval.” *Ruch v. AM Retail Grp., Inc.*,
5 2016 WL 1161453, at *7 (N.D. Cal. Mar. 24, 2016) (quoting *In re Tableware Antitrust*
6 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). All of the criteria for preliminary
7 approval are met here.

8 The instant Settlement, reached with the assistance of respected third-party
9 Mediator Bradley A. Winters, Esq., of JAMS, is clearly not the product of collusion.
10 (See Declaration of Bradley A. Winters submitted herewith [“Winters Decl.”], ¶9.)
11 Indeed, there is no collusion unless it is demonstrated “that class counsel have allowed
12 pursuit of their own self-interests...to infect the negotiations,” *Allen v. Bedolla*, 787 F.3d
13 1218, 1224 (9th Cir. 2015); see also *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d
14 935, 947 (9th Cir. 2011), and that has clearly not occurred in this case. Moreover, while
15 the Parties have agreed to a maximum “clear sailing” counsel fee/expenses amount
16 (which is ultimately subject to the Court’s determination after class counsel’s fee motion
17 is filed), there was no discussion of counsel fees, expenses, or of any class representative
18 service awards until after the many months of settlement negotiations and the ultimate
19 agreement was reached with respect to the material terms of this Class Settlement. The
20 settlement negotiations were at all times, including during the Mediation, arduous,
21 adversarial, and conducted at arm’s length. (See Winters Decl. at ¶¶9, 10.)

22 In addition, counsel for both sides are very skilled and experienced class action
23 counsel who were aptly able to evaluate the risks of proceeding through litigation and
24 trial of this action, including the risks of non-recovery or substantially diminished
25 recovery, denial of class certification, summary judgment, and a defense verdict at trial
26 and/or as a result of any appeals. The Settlement here affords substantial benefits to the
27 Settlement Class without incurring those risks or the significant delays in recovery that
28 would result from continued litigation through trial and appeals.

1 Lastly, aside from the “clear sailing” provision, none of the *Bluetooth* Factors
2 are present here. Plaintiffs’ Counsel do not seek a disproportionate share of fees and
3 there is no “reverter” of unclaimed funds to VWGoA, as the Settlement does not provide
4 for the establishment of a common fund. Indeed, the payment of counsel fees does not
5 reduce or in any way affect the benefits afforded the Settlement Class herein. And, the
6 settlement was negotiated at arm’s-length and after mediation. Further, by agreeing to
7 resolve counsel fees amicably, the Parties averted the potential “second major litigation”
8 on attorneys’ fees that Courts disfavor. *See Hensley v. Eckerhart*, 461 U.S. 424, 437
9 (1983) (“A request for attorney’s fees should not result in a second major litigation.”).

10 **1. The Settlement is Entitled to a Presumption of Fairness**

11 In reviewing what is “otherwise a private consensual agreement negotiated
12 between the parties to a lawsuit,” the court’s scrutiny should be “limited to the extent
13 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
14 overreaching by, or collusion between, the negotiating parties and that the settlement,
15 taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*
16 *v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). A non-collusive settlement,
17 negotiated by experienced class counsel with the involvement of a respected mediator, is
18 entitled to “a presumption of fairness.” *In re Toys “R” Us-Del., Inc. FACTA Litig.*, 295
19 F.R.D. 438, 450 (C.D. Cal. 2014). The proposed Settlement is the product of many
20 months of negotiations between counsel and mediation before respected mediator
21 Bradley A. Winters. Based on these factors, the Settlement is entitled to a presumption of
22 fairness. *See id.* (finding a presumption of fairness where the settlement was reached
23 following a mediation).

24 **2. The Views of Experienced Counsel Should Be Accorded** 25 **Substantial Weight**

26 The fact that sophisticated parties with experienced counsel have agreed to settle
27 their dispute should be given considerable weight by courts, since “parties represented
28 by competent counsel are better positioned than courts to produce a settlement that fairly

1 reflects each party’s expected outcome in the litigation.” *In re Pac. Enters. Sec. Litig.*, 47
2 F.3d 373, 378 (9th Cir. 1995). Here, the Parties achieved a settlement after a thorough
3 analysis of relevant documents and data and the strengths, weaknesses, and potential
4 risks regarding the Parties’ respective claims and defenses. The expectations of all
5 Parties are embodied by the Settlement, which, as set forth above, is non-collusive, being
6 the product of arms’-length negotiations and finalized with the assistance of an
7 experienced mediator. Plaintiffs and the putative class were, at all times, represented by
8 experienced class action counsel possessing significant experience in automotive defect
9 and class action matters. (*See, e.g.*, Zohdy Decl. ¶¶ 25-28; Declaration of Russell D. Paul
10 [“Paul Decl.”] ¶¶ 4-6.) Likewise, VWGoA’s counsel, Herzfeld & Rubin, P.C., is a
11 renowned defense firm with significant experience in automotive class action litigation.
12 The Parties’ recommendation to approve this Settlement should therefore “be given
13 great weight.” *Eisen v. Porsche*, 2014 WL 439006, at *5 (C.D. Cal. Jan. 30, 2014)
14 (crediting the experience and views of counsel in approving a settlement resolving
15 automotive defect allegations).

16 3. The Extent of Discovery Completed Supports Preliminary 17 Approval

18 Both before and after the action was filed, Plaintiffs thoroughly investigated and
19 researched their claims, which allowed Plaintiffs’ Counsel to better evaluate both the
20 design and functionality of the subject transmissions and VWGoA’s representations.
21 (Zohdy Decl. ¶¶ 15-21.) Among other tasks, Plaintiffs fielded numerous inquiries from
22 putative Class Members and investigated many of their reported claims. (*Id.*) Plaintiffs
23 also researched publicly available materials as well as consumer complaints and
24 discussions of transmission-related problems in articles and forums online, in addition to
25 various manuals and technical service bulletins (“TSBs”) discussing the alleged defect.
26 (*Id.*) Finally, they conducted research into the various causes of actions and other similar
27 automotive actions. (*Id.*)

28 As to the discovery, in response to Plaintiffs’ written discovery efforts, Plaintiffs

1 received approximately 1,500 documents consisting of thousands of pages of relevant
2 information, including spreadsheets with thousands of rows of data, owners' manuals,
3 maintenance and warranty manuals, internal VWGoA investigation reports, Technical
4 Service Bulletins, field reports, warranty data, etc. (*Id.*) Informal information was also
5 provided by Defendant. All of this discovery and information was thoroughly and
6 meticulously reviewed and analyzed by Class Counsel (*Id.*), enabling us to accurately
7 assess the issues and potential claims in this matter and the strengths and weaknesses of
8 the Parties' respective positions. (*Id.*) In addition, over the course of litigation, Plaintiffs
9 responded to numerous Class Members who contacted Class Counsel to report issues
10 with their Class Vehicles and seek relief. (*Id.*) Class Counsel also conducted detailed
11 interviews with Class Members regarding their pre-purchase research, their purchasing
12 decisions, and their repair histories, and Class Counsel developed a plan for litigation
13 and settlement based in part on Class Members' reported experiences with their Class
14 Vehicles and with VWGoA dealers. (*Id.*)

15 By engaging in a thorough investigation and evaluation of Plaintiffs' claims,
16 Class Counsel can opine that this Settlement, for the consideration and on the terms set
17 forth in the Settlement Agreement, is under all of the pertinent considerations, fair,
18 reasonable, and adequate, and worthy of preliminary approval herein. (Zohdy Decl. ¶ 21;
19 Paul Decl. ¶ 13.)

20 **4. The Proposed Settlement Is Well Within the Range of** 21 **Reasonableness**

22 The proposed Settlement is well within the range of reasonableness, particularly
23 when considering the risks of prosecuting the action. In its evaluation, "the district
24 court's determination is nothing more than an amalgam of delicate balancing, gross
25 approximations, and rough justice." *Officers for Justice*, 688 F.2d at 625 (internal
26 quotation omitted). Thus, there is "no single formula" to be applied, but the court may
27 presume that the parties' counsel and the mediator arrived at a reasonable range of
28 settlement by considering the plaintiffs' likelihood of recovery. *Rodriguez v. West Pub.*

1 *Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). And this Circuit expressly rejected any
2 requirement that the settling parties value maximum damages that can be obtained at
3 trial, as that figure would be inherently speculative. *Lane v. Facebook, Inc.*, 696 F.3d
4 811, 818 (9th Cir. 2012) (“[N]ot only would such a requirement be onerous, it would
5 often be impossible... [since] the amount of damages of a given plaintiff (or class of
6 plaintiffs) has suffered in a question of fact that must be proved at trial.”).

7 This Settlement offers substantial benefits to Class Members, including warranty
8 extensions, reimbursement for out-of-pocket costs, and a free software upgrade for the
9 relevant transmission control modules. When weighed against the risk of further
10 litigation, the Settlement clearly falls within the range of reasonableness. To be sure,
11 while Plaintiffs believe that their case is strong on the merits, VWGoA has raised a
12 number of substantive defenses that present serious risks to Plaintiffs’ case. These
13 defenses include, among others, that the subject vehicles’ transmissions are not defective
14 under relevant legal standards, that no warranties were breached nor statutes violated,
15 and that issues that certain Class members may have experienced were rectified through
16 the voluntary issuance of a Service Action. In addition, Defendant maintains that this
17 action is not suited for class certification outside of a settlement because of, *inter alia*, the
18 many predominating individual issues as to liability and damages such as each putative
19 class member’s purchase or leasing decision-making; what information, if any, was
20 viewed and/or relied upon by each putative class member prior to purchase or lease, and
21 the inherently individualized issues concerning each putative class member and subject
22 vehicle such as the condition of each putative class vehicle, each owner’s/lessee’s
23 maintenance of his/her/its vehicle and transmission, each owner’s/lessee’s use and
24 manner of driving, and additional factors, all of which may significantly affect the
25 performance of any vehicle’s transmission. Other inherently individualized issues
26 include whether, and if so, to what extent, any putative class vehicle has, or would ever,
27 experience any of the alleged transmission-related issues; what issue, if anything, any
28 given owner may have presented to any dealership under the vehicle’s applicable

1 warranty, when and what occurred in each instance, and whether any applicable
2 warranty was breached under each putative class member’s specific circumstances, and
3 also, the myriad differences among the 50 states’ laws, including burdens of proof, with
4 respect to the various legal claims asserted, that would render it very difficult to certify a
5 nationwide class in the litigation context.

6 It is also noteworthy that even the existence of a defect alone does not *ipso facto*
7 lead to legal liability or establish concrete damages under federal or state statutes, *see*,
8 *e.g.*, *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 991-92 (N.D. Cal. 2010) (granting
9 defendant’s motion for summary judgment and finding alleged ignition-lock defect not a
10 safety risk), *aff’d*, 462 F. App’x 660 (9th Cir. 2011).

11 While Plaintiffs would vigorously dispute these claims, consumers bringing
12 automotive defect actions are frequently denied class certification due to lack of
13 common proof.⁷ Recently, a California district court denied class certification involving
14 a theory based on material omission of a automotive defect. *See Stockinger v. Toyota*
15 *Motor Sales, U.S.A., Inc.*, 2020 WL 1289549, at *6 (C.D. Cal. Mar. 3, 2020) (finding
16 plaintiffs failed to satisfy the commonality and predominance requirements of Rule 23 in
17 a similar automotive defect action alleging material omissions and breaches of the
18 implied warranty of merchantability). *Stockinger* underscores the heightened litigation
19 risk for Plaintiffs seeking class certification. In contrast, class certification in the
20 settlement context is different because, unlike litigation, the court does not need to be
21 concerned with manageability issues that predominating individual factors might cause.
22 *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *In re Hyundai & Kia Fuel*
23 *Econ. Litig.*, 926 F.3d at 556 (en banc).

24
25
26 ⁷ *See, e.g., Grodzitsky v. Am. Honda Motor Co.*, 2014 WL 718431 (C.D. Cal. Feb.
27 19, 2014) (denying certification due to lack of evidence that common materials were used
28 for all defective “window regulators” in the class); *Cholakyan v. Mercedes-Benz USA, LLC*,
281 F.R.D. 534, 553 (C.D. Cal. 2012) (“There is also no evidence that a single design flaw
that is common across all of the drains in question is responsible for the alleged water leak
defect...”).

1 This body of recent case law demonstrates that, had the case continued, “plaintiffs
2 [would] face[] a substantial risk of incurring the expense of a trial without any recovery.”
3 *In re Toys “R” Us-Del FACTA Litig.*, 295 F.R.D. at 451. Indeed, the risk of continuing
4 litigation, including the risk of new adverse statutory or case law, increased costs, and
5 expiration of a substantial amount of time, weigh heavily in favor of settlement.
6 *Rodriguez*, 563 F.3d at 966. In particular, a class action such as this, involving over
7 490,068 vehicles, has the strong potential to engulf plaintiffs and attorneys in protracted,
8 resource-draining court battles, the outcome of which is uncertain. *See, e.g., Aarons v.*
9 *BMW of N. Am. LLC*, 2014 WL 4090564 *11-13 (C.D. Cal. Apr. 29, 2014) (approving a
10 settlement for repairs/reimbursement of transmission defect and observing that “it is the
11 very uncertainty of outcome in litigation and avoidance of wasteful and expensive
12 litigation that induce consensual settlements.” [citation omitted]).

13 Aside from certification risk in the litigation context, Plaintiffs could face the
14 termination of their action at summary judgment or at trial. *See In re Portal Software,*
15 *Inc. Sec. Litig.*, 2007 WL 4171201, *3 (N.D. Cal. Nov. 26, 2007) (recognizing that
16 “inherent risks of proceeding to... trial and appeal also support the settlement”). And if
17 Plaintiffs prevail in some fashion on class certification and/or trial, appeals would be
18 likely and any benefits to which certain Class Members may be entitled could be
19 significantly reduced, delayed or offset by their substantial additional use, mileage and
20 the vehicles’ ordinary wear and tear by the time any such recovery might occur.

21 In light of the substantial risks of continued litigation, including the risk of
22 maintaining class certification, the significant benefits secured for the Class by the
23 proposed Settlement, which directly address the issues in this case, are clearly a fair,
24 reasonable, and adequate compromise of the issues in dispute.

25 5. Equitable Method of Allocating Relief to Class Members

26 The Rule 23(e)(2) factor turns on whether the proposed settlement “treats class
27 members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of
28 concern could include whether the apportionment of relief among class members takes

1 appropriate account of differences among their claims, and whether the scope of the
2 release may affect class members in different ways that bear on the apportionment of
3 relief.” Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee’s Notes.

4 Here, the settlement treats all class members equitably, and indeed, the same
5 within the categories of the Settlement Class Vehicles they own(ed) or lease(d). All
6 current and former owners and lessees of the categories of Settlement Class Vehicles
7 involved are, if they meet the very reasonable Settlement terms, eligible for the same
8 respective substantial benefits under this Settlement which address the alleged issue
9 applicable to their vehicles. This includes addressing the particular issues prospectively,
10 be it by a software update that resolves the issue and/or a by warranty extension covering
11 a potential future repair of the issue, and also, addressing it retrospectively, by a
12 reimbursement if the Class Member previously paid certain out-of-pocket expenses for a
13 covered repair of the issue applicable to their Settlement Class Vehicle. Thus, the
14 settlement treats all Class Members equitably, further supporting its preliminary
15 approval.

16 Finally, though the class representatives will receive an additional \$5,000, the
17 extra payment is in recognition for the service they have performed on behalf of the
18 Settlement Class prior to and during this litigation.

19 **B. Conditional Class Certification Is Appropriate for Settlement**
20 **Purposes**

21 This Settlement contemplates conditional certification of a Settlement Class
22 consisting of all persons and entities who purchased or leased a Settlement Class Vehicle
23 in the United States of America and Puerto Rico. Excluded from the Settlement Class
24 are: (a) all Judges who have presided over the Action and their spouses; (b) all current
25 employees, officers, directors, agents and representatives of Defendant, and their family
26 members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which
27 Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone
28 who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f)

1 anyone who purchased a Settlement Class Vehicle with salvaged title and/or any
2 insurance company who acquired a Settlement Class Vehicle as a result of a total loss;
3 (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties
4 and service contracts; (i) any Settlement Class Member who, prior to the date of the
5 Settlement Agreement, settled with and released Defendant or any Released Parties from
6 any Released Claims, and (j) any Settlement Class Member who files a timely and
7 proper Request for Exclusion from the Settlement Class. (S.A. § I.T.) The Settlement
8 Class is well-defined, and the exclusions are typical for these cases.

9 **1. The Proposed Class Meets the Requirements of Rule 23**

10 An analysis of the requirements of Rule 23(a) and (b)(3), commonly referred to as
11 numerosity, commonality, typicality, adequacy, predominance, and superiority, shows
12 that certification of this proposed Settlement Class, for purpose of settlement, is
13 appropriate here. *See Amchem Prods., Inc.*, 521 U.S. at 620 ; Manual for Complex
14 Litigation, § 21.632. In this regard, the Court must apply the criteria for class
15 certification “differently in litigation classes and settlement classes.” *In re Hyundai &*
16 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc). For example, in
17 deciding whether to certify a litigation class, a district court must be concerned with
18 manageability at trial, where potentially predominating individualized issues could
19 present intractable manageability issues. However, such “manageability is not a concern
20 in certifying a settlement class where, by definition, there will be no trial.” *Id.* Thus, the
21 Ninth Circuit en banc court in *Hyundai* recognized that in the settlement class
22 certification context, the element of predominance is “readily met” in cases such as this.
23 *Hyundai*, 926 F.3d at 559.

24 **2. The Proposed Class Is Sufficiently Numerous and** 25 **Ascertainable**

26 The numerosity requirement is met where “the class is so numerous that joinder
27 of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, courts will find a
28 class sufficiently numerous if it consists of 40 or more members. *Vasquez v. Coast*

1 *Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121 (E.D. Cal. 2009) (numerosity is
 2 presumed at a level of 40 members). Here, the Settlement Class consists of current and
 3 former owners and lessees of 490,068 vehicles, clearly satisfying this requirement:

4 Model	Vehicles Sold in the United States
5 2019 Volkswagen Jetta Vehicles	179,766
6 2018-2020 Volkswagen Tiguan Vehicles	310,302
Total	490,068

7 And while there is no threshold “ascertainability” requirement in this Circuit,
 8 *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1125 n.4 (9th Cir. 2017), here the
 9 Settlement Class is easily ascertainable through, for example, the vehicle ownership and
 10 registration records of each state’s department of motor vehicle records, the obtaining of
 11 which is part of the Notice Plan discussed *supra*.

12 **3. There Are Questions of Law and Fact that Are Common to the** 13 **Class**

14 The second Rule 23(a) requirement is commonality, which is satisfied “if there
 15 are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The operative
 16 criterion for commonality is “the capacity of a classwide proceeding to generate
 17 common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v.*
 18 *Dukes*, 564 U.S. 338, 350 (2011). The “commonality requirement has been ‘construed
 19 permissively,’ and its requirements deemed minimal.” *Estrella v. Freedom Fin’l*
 20 *Network*, 2010 WL 2231790, at *7 (N.D. Cal. June 2, 2010) (quoting *Hanlon v.*
 21 *Chrysler Corp.*, 150 F.3d 1011, 1018-20 (9th Cir. 1998)). A single common question of
 22 law or fact satisfies this requirement. *See Wal-Mart Stores, Inc.*, 564 U.S. at 369.

23 Here, each Class Member purchased a Settlement Class Vehicle equipped with a
 24 subject transmission that Plaintiffs claim contained a defect that was not disclosed.
 25 VWGoA contends that these transmissions are not defective. The issues in this case,
 26 including whether the subject transmissions are defective, as alleged, whether the
 27 defect(s) was/were previously known to Defendant, and whether Defendant allegedly
 28 breached a duty to disclose, are issues common to the settlement Class and involve

1 common questions of fact and law. Such issues have been viewed by courts as the
2 overarching common questions that have resulted in class treatment in other automotive
3 defect cases. *See, e.g., Hanlon*, 150 F.3d at 1020 (allegedly defective rear liftgate
4 latches); *Browne v. American Honda Motor Co., Inc.*, 2010 WL 9499072, at *1 (C.D.
5 Cal. July 29, 2010) (allegedly defective braking system); *Parkinson v. Hyundai Motor*
6 *Am.*, 258 F.R.D. 580, 595-97 (C.D. Cal. 2008) (allegedly defective flywheels);
7 *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly
8 defective engine intake manifolds); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th
9 Cir. 2006) (allegedly defective throttle body assembly); *see also, Wolin v. Jaguar Land*
10 *Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (holding that whether the
11 LR3's alignment geometry was defective, whether Land Rover was aware of the defect,
12 whether Land Rover concealed the nature of the defect in violations of consumer
13 protection statutes, and whether Land Rover was obligated to pay for or repair the
14 alleged defect pursuant to the express or implied terms of its warranties are all common
15 issues of law or fact that satisfy the commonality requirement).

16 And, since each Settlement Class Member purchased or leased a Settlement Class
17 Vehicle, the respective alleged damages, if any, would also be subject to common
18 factual and legal questions.

19 **4. Plaintiffs' Claims Are Typical of the Proposed Settlement Class**

20 "In determining whether typicality is met, the focus should be on the defendants'
21 conduct and plaintiff's legal theory, not the injury caused to the plaintiff." *Lozano v.*
22 *AT&T Wireless Services, Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is
23 "satisfied when each class member's claim arises from the same course of events, and
24 each class member makes similar legal arguments to prove the defendant's liability."
25 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (citation omitted).

26 Here, the Class Members' claims arising from the alleged defect(s) are reasonably
27 coextensive with the claims asserted by the named Plaintiffs. (Fourth Amended
28 Complaint ¶¶ 15-48.) As with the named Plaintiffs' claims, each Class Member's

1 claims arise from the same alleged course of conduct—Defendant’s alleged failure to
 2 disclose a known transmissions defect. Plaintiffs’ claims are thus typical of the Class, as
 3 “they are reasonably coextensive with those of absent class members.” Plaintiffs and
 4 Class Members would also similarly benefit from the relief provided by the Settlement.
 5 Accordingly, typicality is satisfied.

6 **5. Plaintiffs and Plaintiffs’ Counsel Will Adequately Represent**
 7 **the Interests of the Proposed Settlement Class**

8 Adequacy is satisfied because “the representative parties will fairly and
 9 adequately protect the interests of the class,” Fed. R. Civ. P. 23(a)(4); specifically: (a) the
 10 proposed representative Plaintiffs do not have conflicts of interest with the proposed
 11 class, and, (b) Plaintiffs are represented by qualified and competent counsel. *Hanlon*,
 12 150 F.3d at 1020. Here, Plaintiffs are adequate class representatives, as they have no
 13 conflict of interest with the proposed Class. In fact, Plaintiffs share a common interest in
 14 holding VWGoA accountable for selling vehicles with an Alleged Defect that they did
 15 not disclose to their customers. Moreover, there is no “irreparable conflict of interest,”
 16 either in the structure of the class or the terms of the settlement.” *In re Volkswagen*
 17 *“Clean Diesel Mktg., Sales Pracs., & Prod. Liab. Litig.”*, 895 F.3d 597, 608 (9th Cir.
 18 2018). In addition, Plaintiffs are represented by competent counsel well-versed in
 19 prosecuting automotive litigation and class actions. (*See, e.g.*, Zohdy Decl. ¶¶ 25-28, Ex.
 20 2; Paul Decl. ¶¶ 4-6.)

21 **6. Common Issues Predominate Over Individual Issues**

22 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking
 23 class certification must also show that the action is maintainable under Fed. R. Civ. P.
 24 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. The predominance inquiry under Rule
 25 23(b)(3) asks “whether the common, aggregation-enabling issue are more prevalent or
 26 more important than the non-common, aggregation-defeating, individual issues.” *Tyson*
 27 *Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted).

28 “When one or more of the central issues in the action are common to the class and

1 can be said to predominate, the action may be proper under Rule 23(b)(3) even though
2 other important matters will have to be tried separately, such as damages or some
3 affirmative defenses peculiar to some individual class members.” *Id.* And if “just one
4 common question predominates,” the action may be considered proper under Rule
5 23(b)(3), and regardless whether “other important matters [would] have to be tried
6 separately.” *See Hyundai*, 926 F.3d at 557.

7 In the context of a class settlement, the predominance of a common issue or
8 issues is much easier to establish because manageability at trial is no longer of any
9 concern. *Amchem*, *supra*, 521 U.S. at 620. Indeed, the predominance inquiry in the
10 context of a nationwide settlement should be considered under “three guideposts”:

11 [F]irst, that commonality is informed by the defendant’s
12 conduct as to all class members and any resulting injuries
13 common to all class members; second, that variations in state
14 law do not necessarily defeat predominance; and third, that
concerns regarding variations in state law largely dissipate
when a court is considering the certification of a settlement
class.

15 *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) (en banc); *see also*, *Wakefield*
16 *v. Wells Fargo & Co.*, 2014 WL 7240339, at *4 (N.D. Cal. Dec. 18, 2014) (adopting
17 *Sullivan*’s analysis that state law variations dissipate in a settlement class). Under similar
18 guiding principles, the Ninth Circuit en banc court recently confirmed that predominance
19 is not defeated by certifying a nationwide settlement class alleging state law violations.
20 *See Hyundai*, 926 F.3d at 561-62.

21 Here, for purposes of settlement, the predominance test is satisfied, as the
22 proposed Settlement makes available the relief for all Class Members based on easily
23 ascertainable criteria, bypassing whatever individual evidentiary and factual issues that
24 could arise in litigation in determining liability or damages. Consequently, common
25 questions predominate over individual issues that might have arisen had this action
26 continued to be litigated.

1 **7. A Class Settlement Is Superior to Other Available Means of**
2 **Resolution**

3 Similarly, there can be little doubt that resolving all Class Members’ claims in this
4 action is superior to a panoply of individual lawsuits by owners/lessees of more than
5 490,000 vehicles. “From either a judicial or litigant viewpoint, there is no advantage in
6 individual members controlling the prosecution of separate actions. There would be less
7 litigation or settlement leverage, significantly reduced resources and no greater prospect
8 for recovery.” *Hanlon*, 150 F.3d at 1023. Indeed, the very favorable terms of this
9 Settlement negotiated on behalf of the Class demonstrate the advantages of negotiating a
10 resolution on a class-wide basis.

11 Moreover, this is a complex automotive case in which the damages sought by
12 each Class Member would be far outweighed by the very significant costs that would be
13 required for him/her/it to prove the existence of a design defect in a vehicle’s
14 transmission, a violation of a consumer fraud statute, causation and damages, in a single
15 individual lawsuit. *See Smith v. Cardinal Logistics Mgmt. Corp.*, 2008 WL 4156364, at
16 **32-33 (N.D. Cal. Sep. 5, 2008) (finding that class members had a small interest in
17 personally controlling the litigation even where the average amount of damages were
18 \$25,000-\$30,000 per year). In addition, the sheer number of separate trials that would
19 otherwise be required also weighs in favor of settlement.

20 Finally, in the settlement context, there can be no objection that class proceedings
21 would present the sort of intractable management problems that sometimes override the
22 collective benefits of class actions, “for the proposal is that there be no trial.” *Amchem*,
23 521 U.S. at 620.

24 **8. The Proposed Notice to the Settlement Class**

25 Before approving a class settlement, “[t]he court must direct notice in a
26 reasonable manner to all class members who would be bound by the proposal.” Fed. R.
27 Civ. P. 23(e)(1). Where the settlement class is certified under Rule 23(b)(3), the notice
28 must also be the “best notice that is practicable under the circumstances, including

1 individual notice to all members who can be identified through reasonable effort.” Fed.
2 R. Civ. P. 23(c)(2)(B).

3 Here, the Parties agreed to provide individual notice by U.S. mail. (S.A. § IV.B.1)
4 In addition, the Parties have agreed to establish a settlement website, on which will be
5 posted the long-form Class Notice as well as the Claim Form, Settlement Agreement, and
6 important submissions relative to the Settlement approval process; details regarding the
7 lawsuit, the Settlement and its benefits, and the Settlement Class Members’ legal rights
8 and options including objecting to or requesting to be excluded from the Settlement and/or
9 not doing anything; instructions on how and when to submit a claim for reimbursement;
10 instructions on how to contact the Settlement Claim Administrator by e-mail, mail, or
11 (toll-free) telephone; important dates pertaining to the Settlement including the deadline to
12 opt-out of or object to the Settlement, the claim submission deadline, and the Fairness
13 Hearing date, place and time; and answers to Frequently Asked Questions (FAQs). (*Id.* at
14 § IV.B.6.)

15 For purposes of identifying Settlement Class Members, the Claim Administrator
16 shall obtain from IHS/Polk, Experian, or a similar source, the names and current or last
17 known addresses of Settlement Class Vehicle owners and lessees that can reasonably be
18 obtained, based upon the VINs of Settlement Class Vehicles to be provided by VWGoA
19 pursuant to the governing Stipulated Protective Order. (*Id.* at § IV.B.2.)

20 Prior to mailing the Class Notice, an address search through the United States
21 Postal Service’s National Change of Address database shall be conducted to update the
22 address information for Settlement Class Vehicle owners and lessees. (*Id.* at § IV.B.3.)
23 For each individual Class Notice that is returned as undeliverable, the Claim
24 Administrator shall re-mail all Class Notices where a forwarding address has been
25 provided. (*Id.*) For the remaining undeliverable notice packets where no forwarding
26 address is provided, the Claim Administrator shall perform an advanced address search
27 (e.g., a skip trace) and re-mail any undeliverable notice packets to the extent any new
28 and current addresses are located. (*Id.*)

1 Any Settlement Class Member who wishes to be excluded from the Settlement
2 Class must, by the date specified in the Preliminary Approval Order and recited in the
3 Class Notice—which is to be no later than 30 days after the Notice Date—submit a
4 written request for exclusion (“Request for Exclusion”) to the Claim Administrator,
5 Class Counsel, and Defense Counsel at the addresses and in the manner specified in the
6 Class Notice. (*Id.* at § V.B.)

7 Any Settlement Class Member who intends to object to the fairness of this
8 Settlement Agreement or the requested amount of Class Counsel Fees and Expenses
9 and/or Settlement Class representative service award, must, by the date specified in the
10 Preliminary Approval Order and recited in the Class Notice—also no later than 30-days
11 after the Notice Date—file any such objection with the Court in person or via the Court’s
12 electronic filing system, or, if not filed with the Court by either method, mail the
13 objection to the Court and to the Claim Administrator, Class Counsel, and Defense
14 Counsel at the addresses specified in the Class Notice. (*Id.* at V.A.) The Class Notice
15 also spells out clearly what information and/or materials are required for a valid and
16 timely objection. *See* Zohdy Decl. Ex. E.

17 Plaintiffs request that the Court approve this Notice Plan as the best practicable
18 under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App’x. 646, 650 (9th Cir.
19 2010) (finding mailed notice to be the best notice practicable where reasonable efforts
20 were taken to ascertain class members addresses); *see also Patrick v. Volkswagen Group*
21 *of America*, 2021 WL 3616105, *5 (C.D. Cal. March 10, 2021). The Class Notice
22 complies with Rule 23(c)(2)(B) in that they “clearly and concisely state in plain, easily
23 understood language” the nature of the action; the class definition; the class claims,
24 issues, or defenses; that the class member may appear through counsel; that the court
25 will exclude from the class any member who requests exclusion; the time and manner
26 for requesting exclusion; and the binding effect of a class judgment on class members.
27 (*See* S.A., Exhs. A-B.) The notice is also consistent with the sample provided by the
28 Federal Judiciary Center.

1 In compliance with the Attorney General notification provision of the Class
2 Action Fairness Act, 28 U.S.C. § 1715, the Claim Administrator shall provide notice of
3 this proposed Settlement to the Attorney General of the United States, and the Attorneys
4 General of each state in which a known Settlement Class Member resides. (*Id.* at §
5 IV.A.)

6 **II. CONCLUSION**

7 The Parties have negotiated a fair and reasonable settlement. Accordingly, for the
8 forgoing reasons, Plaintiffs move the Court to preliminarily approve the Settlement
9 Agreement.

10
11
12 Dated: November 22, 2021

Respectfully submitted,

13
14 By: /s/ Tarek H. Zohdy

Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby
CAPSTONE LAW APC

Russell D. Paul (pro hac vice)
Amey J. Park (pro hac vice)
BERGER MONTAGUE PC

17
18
19 Attorneys for Plaintiffs Dominique Parrish,
Ludwig Combrinck and Trine E. Utne

20
21
22
23
24
25
26
27
28

1 Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
2 Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
3 Laura Ellen Goolsby (SBN 321721)
Laura.Goolsby@capstonelawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Russell D. Paul (*admitted Pro Hac Vice*)
rpaul@bm.net
8 Amey J. Park (*admitted Pro Hac Vice*)
apark@bm.net
9 BERGER MONTAGUE P.C.
1818 Market Street, Suite 3600
10 Philadelphia, PA 19103
Telephone: (215) 875-3000
11 Facsimile: (215) 875-4604

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

16 DOMINIQUE PARRISH, LUDWIG
COMBRINCK, and TRINE E. UTNE
17 individually, and on behalf of a class of
18 similarly situated individuals,

19 Plaintiffs,

20 v.

21 VOLKSWAGEN GROUP OF
22 AMERICA, INC. a Delaware corporation,

23 Defendant.

Case No.: 8:19-cv-01148-DSF-KES

Hon. Dale S. Fischer

**DECLARATION OF TAREK H.
ZOHDY IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: January 24, 2022

Time: 1:30 p.m.

Place: Courtroom 7D

24
25
26
27
28

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

DECLARATION OF TAREK H. ZOHDY

I, Tarek H. Zohdy, hereby declare:

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 (“Plaintiff’s Counsel”), counsel of record for Plaintiffs Dominique Parrish, Ludwig Combrinck, and Trine E. Utne (“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 Motion for Preliminary Approval of Class Action Settlement.

OVERVIEW OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS

2. This action was initially filed by Plaintiffs on June 10, 2019. [Dkt. 1.]

3. Plaintiffs asserted material omissions claims under the California Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.* (“CLRA”) and the California Unfair Business Practices Act, Business and Professions Code section 17200 *et seq.*, alleging that VWGOA had a duty to disclose the existence of the alleged Transmission Defect because it was a material fact in Defendant’s exclusive or superior knowledge and that VWGOA failed to disclose and actively concealed those material facts from the Class. Plaintiffs also raised breach of implied warranty claims under the Song-Beverly Consumer Warranty Act, California Civil Code section 1791 *et seq.*, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* They also brought an unjust enrichment claim.

4. Thereafter, on July 3, 2019, Plaintiffs filed their First Amended Class Action Complaint, amending their allegations and refining their claims. [Dkt. 18.]

5. After holding a meet and confer with Defendant’s counsel on July 24, 2019, Plaintiffs filed a Second Amended Class Action Complaint on September 4, 2019, further refining their allegations and adding new class representatives and

1 claims pursuant breaches of Pennsylvania and Utah Implied Warranty law,
2 Pennsylvania Express Warranty, Pennsylvania Unfair Trade Practices and
3 Consumer Protection Law, and Utah Consumer Sales Practices Act. [Dkt. 35.]

4 6. Defendant filed a motion to dismiss Plaintiffs' Second Amended
5 Complaint on October 4, 2019 [Dkt. 26], and Plaintiffs responded with their Third
6 Amended Class Action Complaint on October 25, 2019 [Dkt. 43].

7 7. Defendant filed its Motion to Dismiss Plaintiffs' Third Amended
8 Class Action Complaint on November 13, 2019 [Dkt. 47], Plaintiffs filed their
9 opposition on December 6, 2019 [Dkt. 52], and Defendant filed its reply on
10 December 20, 2019 [Dkt. 55].

11 8. Thereafter, and on February 6, 2020, the case was reassigned from
12 Hon. Andrew J. Guilford to this Court. [Dkt. 57.]

13 9. On March 11, 2020, the Court requested supplemental briefing for
14 the Motion to Dismiss Plaintiffs Third Amended Complaint [Dkt. 61] and
15 thereafter, issued its Order Granting in part and Denying in Part Defendant's
16 Motion to Dismiss [Dkt. 71].

17 10. Plaintiffs filed their operative Fourth Amended Complaint on June 3,
18 2020 [Dkt. 72], and Defendant filed its Answer on June 17, 2020 [Dkt. 73].

19 11. Following the Parties' negotiation and filing of a Joint Rule 26(f)
20 Report [Dkt. 59] and negotiation of a stipulated protective order, the exchange of
21 discovery and evidence took place. The Parties conferred regularly over the
22 subsequent months, and simultaneous with the discovery and litigation activities,
23 the Parties began negotiating a potential Class Settlement.

24 12. After exchanges of information and months of vigorous arm's length
25 settlement negotiations that did not result in agreement on all settlement terms, the
26 Parties participated in a mediation on March 8, 2021, before Bradley A. Winters,
27 Esq., a respected and very experienced neutral class action Mediator with JAMS.

28 13. With Mr. Winters' guidance and efforts, the Parties were eventually

1 able to negotiate a class settlement of this action. The terms of the Settlement are
2 set forth in detail in the Settlement Agreement (“S.A.”) submitted herewith for the
3 Court’s preliminary approval.

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

7 **PLAINTIFFS THOROUGHLY INVESTIGATED THE CLAIMS AND DEFENSES**

8 15. Both before and after the action was filed, Plaintiffs’ Counsel
9 thoroughly investigated and researched their claims, which allowed them to better
10 evaluate both the design and functionality of the subject transmissions and
11 VWGoA’s representations.

12 16. Plaintiffs’ Counsel also researched publicly available materials as
13 well as consumer complaints and discussions of transmission-related problems in
14 articles and forums online, in addition to various manuals and technical service
15 bulletins (“TSBs”) discussing the alleged defect. Finally, they conducted research
16 into the various causes of actions and other similar automotive actions.

17 17. As to the discovery, in response to Plaintiffs’ written discovery
18 efforts, Plaintiffs received approximately 1,500 documents consisting of thousands
19 of pages of relevant information, including spreadsheets with thousands of rows of
20 data, owners’ manuals, maintenance and warranty manuals, internal VWGoA
21 investigation reports, Technical Service Bulletins, field reports, warranty data, etc.

22 18. Informal information was also provided by Defendant. All of this
23 discovery and information was thoroughly and meticulously reviewed and
24 analyzed by Plaintiffs’ Counsel, enabling us to accurately assess the issues and
25 potential claims in this matter, and the strengths and weaknesses of the Parties’
26 respective positions.

27 19. In addition, over the course of litigation, Plaintiffs’ Counsel
28 responded to numerous Class Members who contacted them to report issues with

1 their Class Vehicles and seek relief.

2 20. Plaintiffs' Counsel also conducted detailed interviews with Class
3 Members regarding their pre-purchase research, their purchasing decisions, and
4 their repair histories, and developed a plan for litigation and settlement based in
5 part on Class Members' reported experiences with their Class Vehicles and with
6 VWGoA dealers.

7 21. By engaging in a thorough investigation and evaluation of Plaintiffs'
8 claims, Plaintiffs' Counsel can opine that this Settlement, for the consideration
9 and on the terms set forth in the Settlement Agreement, is under all of the
10 pertinent considerations, fair, reasonable, and adequate, and worthy of preliminary
11 approval herein.

12 **SETTLEMENT BENEFITS AND RECOGNITION OF DIFFICULTIES ASSOCIATED WITH**
13 **LITIGATION**

14 22. My colleagues and I have been responsible for the prosecution of this
15 Action and for the negotiation of the Settlement Agreement. We have vigorously
16 represented the interests of the Class Members throughout the course of the
17 litigation and settlement negotiations.

18 23. The Settlement, described more fully below, provides Settlement
19 Class Members with immediate and valuable relief that directly addresses issues
20 applicable to specified categories of the Settlement Class Vehicles, is fair,
21 reasonable, and adequate, and it complies in all respects with Fed. R. Civ. P. 23.
22 The Settlement successfully addresses the alleged transmission issues going
23 forward, while also providing a reimbursement program for Settlement Class
24 Members to recoup paid out-of-pocket expenses for qualifying covered repairs
25 that were incurred in the past.

26 24. Plaintiffs remain convinced that their case has merit, but they
27 recognize the substantial risk that comes with continued litigation. Based on our
28 investigation and review of information and evidence produced by VWGoA, and

1 in consideration of the risks of continued litigation and the relative strengths and
2 weaknesses of Plaintiff's claims and VWGoA's defenses, we have concluded that
3 the Settlement represents an excellent result for Class Members.

4 **QUALIFICATIONS TO SERVE AS CLASS COUNSEL**

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

9 26. Capstone's accomplishments since its creation in 2012 are set forth in
10 the firm resume. A true and correct copy of Capstone's firm resume is attached
11 hereto as **Exhibit 2**.

12 27. Capstone, as lead or co-lead counsel, has obtained final approval of
13 sixty class actions valued at over \$100 million dollars. Recognized for its active
14 class action practice and cutting-edge appellate work, Capstone's recent
15 accomplishments have included three of its attorneys being honored as California
16 Lawyer's Attorneys of the Year in the employment practice area for 2014 for their
17 work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.
18 4th 348 (2014).

19 28. Capstone has an established practice in automotive defect class
20 actions and is currently appointed sole class counsel, following contested class
21 certification, in *Victorino v. VWGOA US, LLC*, No. 16-1617-GPC, 2019 WL
22 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*,
23 No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019). Capstone has
24 negotiated numerous class action settlements providing relief to owners/lessees
25 the last five years. *See, e.g., Weckwerth, et al. v. Nissan North America, Inc.*, No.
26 3:18-cv-00588 (M.D. Tenn, Mar. 10, 2020) (finally approving settlement on
27 behalf of millions of Nissan drivers with alleged transmission defects); *Wylie, et*
28 *al. v. Hyundai Motor America*, No. 8:16-cv-02102-DOC (C.D. Cal. Mar. 02,

1 2020) (finally approving settlement on behalf of tens of thousands of Hyundai
2 drivers with alleged transmission defects); *Granillo v. VWGOA US LLC*, No. 16-
3 00153-FLW (D. N.J. Feb. 12, 2019); *Morishige v. Mazda Motor of Am., Inc.*, No.
4 BC595280 (Los Angeles Sup. Ct. Aug. 20, 2019); *Falco v. Nissan N. Am. Inc.*,
5 No. 13-00686-DDP (C.D. Cal. July 16, 2018), Dkt. No. 341 (finally approving
6 settlement after certifying class alleging timing chain defect on contested motion);
7 *Vargas v. Ford Motor Co.*, No. CV12-08388 AB (FFMX), 2017 WL 4766677
8 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving
9 transmission defects for 1.8 million class vehicles); *Batista v. Nissan N.Am., Inc.*,
10 No. 14-24728-RNS (S.D. Fla. June 29, 2017), Dkt. 191 (finally approving class
11 action settlement alleging CVT defect); *Chan v. Porsche Cars N.A., Inc.*, No. No.
12 15-02106-CCC (D. N.J. Oct. 6, 2017), Dkt. 65 (finally approving class action
13 settlement involving alleged windshield glare defect); *Klee v. Nissan N. Am., Inc.*,
14 No. 12-08238-AWT, 2015 WL 4538426, at *1 (C.D. Cal. July 7, 2015)
15 (settlement involving allegations that Nissan Leaf’s driving range, based on the
16 battery capacity, was lower than was represented by Nissan); *Asghari v.*
17 *Volkswagen Group of America, Inc.*, Case No. 13-cv-02529-MMM-VBK, 2015
18 WL 12732462 (C.D. Cal. May 29, 2015) (class action settlement providing repairs
19 and reimbursement for oil consumption problem in certain Audi vehicles).

20
21
22
23
24
25
26
27
28

///
///
///
///
///

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

CONCLUSION

29. 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 United States of America that the foregoing is true and correct.

Dated: November 22, 2021

/s/ Tarek H. Zohdy
Tarek H. Zohdy

Exhibit 1

SETTLEMENT AGREEMENT

EXHIBIT 1

SETTLEMENT AGREEMENT

Plaintiffs Dominique Parrish, Ludwig Combrinck and Trine E. Utne (“Plaintiffs”), and Defendant Volkswagen Group of America, Inc. (“VWGoA” or “Defendant”), (collectively, the “Parties”), by and through their counsel, enter into this Settlement Agreement (“Settlement Agreement” or “Agreement”), providing for settlement (“Settlement”) of all claims that were asserted or that could have been asserted in the Action described below, pursuant to the terms and conditions set forth below, and subject to the approval of the Court in the Action.

RECITALS

WHEREAS, Plaintiffs filed a putative class action against Defendant on June 10, 2019 entitled *Dominique Parrish and Evan Wood, individually, and on behalf of a class of similarly situated individuals v. Volkswagen Group of America, Inc.*, Civil Action No. 8:19-cv-01148, in the United States District Court for the Central District of California, asserting claims alleging transmission-related issues in the Settlement Class Vehicles (hereinafter, the “Action”);

WHEREAS, a First Amended Class Action Complaint was filed in the Action on July 3, 2019;

WHEREAS, after several amendments to the Complaint, Motions to Dismiss the Amended Complaints by Defendant, and a Decision and Order dated May 7, 2020 granting in part and denying in part Defendant’s Motion to Dismiss the Third Amended Complaint, Plaintiffs filed a Fourth Amended Class Action Complaint on June 3, 2020, to which Defendant filed an Answer on June 17, 2020;

WHEREAS, Defendant denies Plaintiffs’ allegations and claims, and maintains, *inter alia*, that the Settlement Class Vehicles are not defective, that no applicable warranties were breached, that no applicable statutes, laws, rules or regulations were violated, and that no wrongdoing occurred with respect to the

design, manufacture, testing, inspection, distribution, marketing, advertising, warranting, sale and servicing of the Settlement Class Vehicles;

WHEREAS, the Parties, following certain pretrial proceedings, discovery, investigation and careful analysis of their respective claims and defenses, and with full understanding of the risks, expense and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were or could have been brought in the Action by or on behalf of Plaintiffs and members of the Settlement Class based upon the terms set forth in this Settlement Agreement;

WHEREAS, the Parties agree that neither this Settlement Agreement, the underlying Settlement, nor anything else, shall constitute or, in any way, be construed as any admission of liability or wrongdoing on the part of Defendant or any Released Party, which is expressly denied, or that the Plaintiffs' claims or similar claims would be suitable for class treatment if the Action proceeded through litigation and trial; and

WHEREAS, this Settlement Agreement is the result of vigorous arm's length negotiations between the Parties of highly disputed claims, and the Parties maintain that the Settlement is fair, adequate and reasonable and satisfies the requirements for class settlement under Fed. R. Civ. P. 23.

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

I. DEFINITIONS

A. "Action" or "Lawsuit"

"Action" or "Lawsuit" means Civil Action No. 8:19-cv-01148, entitled *Dominique Parrish, Valerie Wood, Ludwig Combrinck, and Trine E. Utne, individually, and on behalf of a class of similarly situated individuals v. Volkswagen Group of America, Inc.*, pending in the United States District Court for the Central District of California.

B. “Claim Administrator”

The “Claim Administrator” shall be Rust Consulting, Inc.

C. “Claim” or “Claim for Reimbursement”

“Claim” or “Claim for Reimbursement” means the timely and proper submission of the required fully completed and signed Claim Form(s), together with the required documents constituting Proof of Repair Expense (as defined in Section I.P. of this Agreement), and any other required documents and/or Declarations (as set forth in Sections II.A.(1)(b), II.A.(2)(b), II.B.(2) of this Agreement), in which a Settlement Class Member seeks to claim reimbursement, pursuant to the terms of this Settlement Agreement, for past paid and unreimbursed out-of-pocket expenses for a Covered Transmission Repair performed on an applicable Settlement Class Vehicle prior to the Notice Date.

D. “Claim Form”

“Claim Form” means the Claim Form that must be fully completed, executed and timely submitted to the Claim Administrator in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which form shall be substantially in the form attached hereto as Exhibit A.

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

“Class Counsel” or “Plaintiffs’ Counsel” means the law firms of Capstone Law, APC and Berger Montague, PC, collectively.

F. “Class Notice Plan”

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

G. “Past Covered Transmission Oil Leak Repair”

“Past Covered Transmission Oil Leak Repair” means a repair (parts and labor) to address a diagnosed transmission oil leak in certain 2019 Volkswagen Jetta

Settlement Class Vehicles¹ which involved replacement of the transmission oil cooler seal rings (or “O-rings”) on the transmission oil cooler, performed prior to the Notice Date and within a period of 12-months or 12,000-miles (whichever occurs first) from the date that said Settlement Class Vehicle’s original New Vehicle Limited Warranty period applicable to the transmission expires.

H. “Past Covered Transmission Rattling Noise Repair”

“Past Covered Transmission Rattling Noise Repair” means a repair (parts and labor) to address a diagnosed transmission rattling noise in a 2019 Volkswagen Jetta Settlement Class Vehicle, performed prior to the Notice Date and within the 72,000-miles limitation of the applicable vehicle’s New Vehicle Limited Warranty.

I. “Past Covered Transmission Hesitation/Jerking Repair”

“Past Covered Transmission Hesitation/Jerking Repair” means a repair (parts and labor) to address a diagnosed condition of transmission hesitation or transmission jerking in a 2018, 2019 or 2020 Volkswagen Tiguan Settlement Class Vehicle, performed prior to the Notice Date and within a period of 12-months or 12,000-miles (whichever occurs first), from the date that said Settlement Class Vehicle’s original New Vehicle Limited Warranty period applicable to the transmission expires.

J. “Court”

“Court” refers to the United States District Court for the Central District of California.

K. “Defense Counsel”

“Defense Counsel” means Michael B. Gallub, Esq. and Homer B. Ramsey, Esq. of Herzfeld & Rubin, P.C.

¹ This involves a subset of early production 2019 Volkswagen Jetta vehicles, which are delineated in a VIN list attached as Exhibit A.

L. “Effective Date”

“Effective Date” means the third business day after (1) the Court enters a Final Order and Judgment approving this Settlement Agreement, substantially in a form to be 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/expenses or service awards/payments, have expired or been exhausted in such a manner as to affirm the Final Order and Judgment.

M. “Final Order and Judgment”

“Final Order and Judgment” means the Final Order and Judgment approving this Settlement Agreement and dismissing the Action with prejudice as to Defendant.

N. “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.

O. “Notice Date”

“Notice Date” means the date by which notice of this Settlement is to be mailed to the Settlement Class. The Notice Date shall be within one hundred twenty (120) days after the date that the Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit B.

P. “Proof of Repair Expense”

“Proof of Repair Expense” means the documents that are required to be submitted in support of a Settlement Class Member’s Claim for Reimbursement of past paid out-of-pocket expenses (parts and labor) incurred for a Past Covered Transmission Oil Leak Repair, a Past Covered Transmission Rattling Noise Repair or a Past Covered Transmission Hesitation/Jerking Repair, of a Settlement Class Vehicle to which such reimbursement is applicable. Such Proof of Repair Expense

shall take the form of an original or legible copy of a repair invoice, receipt or similar records containing the Settlement Class Member's name; the model, model year and vehicle identification number (VIN) of the Settlement Class Vehicle; the name and address of the authorized Volkswagen dealer or other repair entity/facility that performed the repair; a description of the repair work (parts and labor) performed that establishes that it was a Past Covered Transmission Oil Leak Repair, a Past Covered Transmission Rattling Noise Repair or a Past Covered Transmission Hesitation /Jerking Repair; the cost of said covered repair (parts and labor); the date that said repair was performed; the vehicle's mileage at the time of the repair; the amount of and source of any prior reimbursement or concession (in whole or in part) received from any person or entity with respect to the repair; and proof of the Settlement Class Member's payment for the said repair including the date and amount of that payment.

Q. "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 and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, 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 relate to the transmissions in the Settlement Class Vehicles, including any service actions, recalls, software updates and other campaigns addressing the transmissions of Settlement Class Vehicles, 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, under any

federal, state or local consumer protection, consumer fraud, unfair business practices, deceptive trade practices statutes or laws or other statutes or laws, under common law, and under any legal or equitable theories whatsoever including tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi-contract, unjust enrichment, express and/or implied warranty, Magnuson-Moss Warranty Act, California Consumer Legal Remedies Act, California Business and Professions Code, California Song-Beverly Consumer Warranty Act, California Commercial Code; Pennsylvania Unfair Trade Practices and Consumer Protection Law, Utah Consumer Sales Practices Act, Uniform Commercial Code and any federal, state or local derivations thereof, any state Lemon Laws, secret warranty and/or any other theory of liability and/or recovery, whether in law or in equity, and for any and all injuries, losses, damages, remedies, recoveries or entitlements of any kind, nature and description, in law or in equity, under statutory and/or common law, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, and any other legal or equitable relief. This Settlement Agreement expressly exempts claims for personal injuries and property damage (other than damage to the Settlement Class Vehicle related to their transmissions).

R. “Released Parties”

“Released Parties” means Volkswagen Group of America, Inc., Volkswagen AG, Audi AG, Audi of America, Inc., Volkswagen Credit, Inc., Audi of America, LLC, Volkswagen de México S.A. de C.V., Volkswagen Group of America Chattanooga Operations LLC, 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, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives.

S. "Settlement Class Vehicle" or "Class Vehicle"

"Settlement Class Vehicle" or "Class Vehicle" means a model year 2019 Volkswagen Jetta vehicle, or a model year 2018, 2019 and/or 2020 Volkswagen Tiguan vehicle, that was imported and distributed by VWGoA for sale or lease in the United States or Puerto Rico.

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 Section II below will delineate the particular model/model year Settlement Class Vehicle(s) to which that benefit applies. For example, certain benefits in Section II apply only to "2019 Volkswagen Jetta Settlement Class Vehicles" [Section II.A.], and certain benefits will apply only to "2018-2020 Volkswagen Tiguan Settlement Class Vehicles" [Section II.B.].

T. "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 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 who 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.

U. “Service Action 38C5”

“Service Action 38C5” means Service Action 38C5 entitled “Transmission Oil Cooler Seals,” applicable to certain 2019 Volkswagen Jetta Settlement Class Vehicles², that was issued by VWGoA on March 25, 2020 and which will be available through December 31, 2022, a copy of which is annexed as Exhibit C.

V. “Recall 24GB”

“Recall 24GB” means Emissions Recall Campaign 24GB entitled “Engine and Transmission Control Module (ECM/TCM),” applicable to 2018-2020 Volkswagen Tiguan Settlement Class Vehicles, that was issued by VWGoA on September 16, 2020, a copy of which is annexed as Exhibit D.

II. SETTLEMENT CONSIDERATION

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

A. 2019 Volkswagen Jetta Settlement Class Vehicles

(1) Settlement Benefits Applicable to All 2019 Volkswagen Jetta Settlement Class Vehicles

² This involves a subset of early production 2019 Volkswagen Jetta vehicles, which are delineated in a VIN list attached as Exhibit A.

(a) Technical Service Bulletin Providing for Transmission Control Module Software Update and Installation of Damper Weight on All 2019 Volkswagen Jetta Settlement Class Vehicles.

VWGoA shall issue to its authorized dealers a Technical Service Bulletin whereby a current owner or lessee of a 2019 Volkswagen Jetta Settlement Class Vehicle who, within twelve (12) months from the Notice Date, presents his/her said vehicle to an authorized Volkswagen dealer with a diagnosed and confirmed transmission rattling noise, may receive from the dealer, free of charge, an update of said vehicle's transmission control module software and installation of a damper weight on the drive shaft.

(b) Reimbursement for Past Unreimbursed Out-of-Pocket Expenses for Qualifying Past Covered Transmission Rattling Noise Repair of a 2019 Volkswagen Jetta Settlement Class Vehicle Prior to the Notice Date.

Subject to the limitations set forth in Section II.D. below, if, prior to the Notice Date and within the 72,000-miles limitation of the vehicle's original applicable New Vehicle Limited Warranty, a Settlement Class Member incurred and paid out-of-pocket expenses for a Past Covered Transmission Rattling Noise Repair of a 2019 Volkswagen Jetta Settlement Class Vehicle, and timely submits a valid, complete and signed Claim Form, together with the required Proof of Repair Expense documentation pursuant to the terms of this Agreement, the Settlement Class Member shall be entitled to reimbursement of said paid and unreimbursed out-of-pocket expenses (parts and labor) for the Past Covered Transmission Rattling Noise Repair as follows:

- (i) If the Past Covered Transmission Rattling Noise Repair was performed by an authorized Volkswagen dealer, the Settlement Class Member shall be

entitled to receive reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered Transmission Rattling Noise Repair (parts and labor).

(ii) If the Past Covered Transmission Rattling Noise Repair was performed by a service entity or facility that is not an authorized Volkswagen dealer, the Settlement Class Member must, together with the Claim Form and Proof of Transmission Rattling Noise Repair Expense documentation, also submit 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 Past Covered Transmission Rattling Noise Repair performed by an authorized Volkswagen dealer, but the dealer declined or was unable to perform the repair free of charge under the existing warranty. Reimbursement for a Past Covered Transmission Rattling Noise Repair performed by a service entity or facility that is not an authorized Volkswagen dealer shall not exceed a maximum reimbursement amount (parts and labor) of \$3,500.

(2) Additional Settlement Benefits Applicable to Certain 2019

Volkswagen Jetta Settlement Class Vehicles Identified by VIN Number

(a) Warranty Extension for Current Owners and Lessees of Certain Specified 2019 Volkswagen Jetta Settlement Class Vehicles.

Effective on the Notice Date, VWGoA will extend its New Vehicle Limited Warranties applicable to certain specified 2019 Volkswagen Jetta Settlement Class Vehicles whose vehicle Identification numbers (VINs) are listed in Exhibit A, to cover any repairs to address a diagnosed and confirmed transmission oil leak caused

by the transmission oil cooler seal rings (or “O-rings”) on the transmission oil cooler of said Settlement Class Vehicle, performed by an authorized Volkswagen dealer, during a period of 12-months or 12,000-miles (whichever occurs first) from the date that said Settlement Class Vehicle’s original New Vehicle Limited Warranty period applicable to the transmission expires, provided that Service Action 38C5 was previously performed on the vehicle or the class member submits a declaration attesting, under penalty of perjury, that the class member was not notified of the availability of Service Action 38C5, and that VWGoA’s records do not show otherwise and Service Action 38C5 is performed on that class member’s vehicle within thirty (30) days after the Notice Date (hereinafter, the “Transmission Oil Leak Extended Warranty”). The Transmission Oil Leak Extended Warranty is subject to the terms and conditions of the vehicle’s original New Vehicle Limited Warranty and the limitations set forth in Section II.C. below. The extended warranty shall be transferable to subsequent owners to the extent it has not expired, and subject to the same terms and conditions (and exclusions) of the original warranty other than the extended time/mileage limitation.

(b) Reimbursement for Past Unreimbursed Out-of-Pocket Expenses for Qualifying Past Covered Transmission Oil Leak Repair of Certain Specified 2019 Volkswagen Jetta Settlement Class Vehicles Prior to the Notice Date.

Subject to the limitations set forth in Section II.D. below, and with respect to the same specified 2019 Volkswagen Jetta Settlement Class Vehicles identified by VIN in Exhibit A, if, prior to the Notice Date and within the mileage limitations afforded by the Transmission Oil Leak Extended Warranty provided in Section II.A.(2)(a), a Settlement Class Member incurred and paid out-of-pocket expenses for a Past Covered Transmission Oil Leak Repair of a 2019 Volkswagen Jetta Settlement Class Vehicle that is identified by VIN in Exhibit A, and timely submits

a valid, complete and signed Claim Form, together with the required Proof of Repair Expense documentation pursuant to the terms of this Agreement, the Settlement Class Member shall be entitled to reimbursement of said paid and unreimbursed out-of-pocket expenses (parts and labor) for the Past Covered Transmission Oil Leak Repair as follows:

- (i) If the Past Covered Transmission Oil Leak Repair was performed prior to July 1, 2020, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered Transmission Oil Leak Repair (parts and labor).
- (ii) If the Past Covered Transmission Oil Leak Repair was performed on or after July 1, 2020, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered Transmission Oil Leak Repair (parts and labor), provided that Service Action 38C5 was performed on the said applicable Settlement Class Vehicle and the Settlement Class Member submits, in addition to said Claim Form and Proof of Repair Expense, proof that Service Action 38C5 was performed on the vehicle, or, if Service Action 38C5 was not performed on said vehicle, provided that the Settlement Class Member submits a declaration attesting, under penalty of perjury, that the Settlement Class Member was not notified of the availability of Service Action 38C5 and VWGoA's records do not show otherwise. Proof that Service Action 38C5 was performed shall take the form of an original or legible copy of an invoice, receipt, or similar record confirming that Service Action 38C5 was performed, the date it was performed and the Volkswagen dealership that performed it.
- (iii) Subject to (i) and (ii) above, if the Past Covered Transmission Oil Leak Repair was performed by a service entity or facility that is not an

authorized Volkswagen dealer, the Settlement Class Member must also submit, together with the other proof and submission requirements set forth in this Section II.A.(2)(b), 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 Past Covered Transmission Oil Leak Repair performed by an authorized Volkswagen dealer, but the dealer declined or was unable to perform the repair free of charge under the existing warranty. Reimbursement for a Past Covered Transmission Oil Leak Repair performed by a service entity or facility that is not an authorized Volkswagen dealer shall not exceed a maximum reimbursement amount (parts and labor) of \$500.

B. 2018-2020 Volkswagen Tiguan Settlement Class Vehicles

(1) Warranty Extension for Current Owners and Lessees of 2018-2020 Volkswagen Tiguan Settlement Class Vehicles.

Effective on the Notice Date, VWGoA will extend its New Vehicle Limited Warranties applicable to 2018, 2019 and 2020 Volkswagen Tiguan Settlement Class Vehicles to cover any repairs to address a diagnosed condition of transmission hesitation or jerking of said 2018-2020 Volkswagen Tiguan Settlement Class Vehicles, performed by an authorized Volkswagen dealer, during a period of 12-months or 12,000-miles (whichever occurs first) from the date that said Settlement Class Vehicle's original New Vehicle Limited Warranty period applicable to the transmission expires, provided that Recall 24GB was previously performed on said vehicle (hereinafter, the "Transmission Hesitation/Jerking Extended Warranty"). The Transmission Hesitation/Jerking Extended Warranty is subject to the terms and conditions as the vehicle's original New Vehicle Limited Warranty and the limitations set forth in Section II.C. below. The extended warranty shall be

transferable to subsequent owners to the extent it has not expired, and subject to the same terms and conditions of the original warranty other than the extended time/mileage limitation.

(2) Reimbursement for Past Unreimbursed Out-of-Pocket Expenses for Past Qualifying Covered Transmission Hesitation/Jerking Repair of a 2018-2020 Volkswagen Tiguan Settlement Class Vehicle Prior to Notice Date.

Subject to the limitations set forth in Section II.D. below, if, prior to the Notice Date and within the mileage limitations afforded by the Extended Warranty for Transmission Hesitation/Jerking Class Vehicles provided in Section II.B.(1), a Settlement Class Member incurred and paid out-of-pocket expenses for a Past Covered Transmission Hesitation/Jerking Repair of a 2018-2020 Volkswagen Tiguan Settlement Class Vehicle, and timely submits a valid, complete and signed Claim Form, together with the required Proof of Repair Expense documentation pursuant to the terms of this Agreement, the Settlement Class Member shall be entitled to reimbursement of said paid and unreimbursed out-of-pocket expenses (parts and labor) for the Past Covered Transmission Hesitation/Jerking Repair as follows:

(a) If the Past Covered Transmission Hesitation/Jerking Repair was performed prior to December 1, 2020, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered Transmission Hesitation/Jerking Repair (parts and labor).

(b) If the Past Covered Transmission Hesitation/Jerking Repair was performed on or after December 1, 2020, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost of the Past Covered Transmission Hesitation/Jerking Repair (parts and labor), provided that Recall 24GB was performed on the 2018-2020 Volkswagen Tiguan

Settlement Class Vehicle and the Settlement Class Member submits, in addition to said Claim Form and Proof of Repair Expense, proof that Recall 24GB was performed on the vehicle or, if Recall 24GB was not performed on said vehicle, provided that the Settlement Class Member submits a declaration attesting, under penalty of perjury, that the Settlement Class Member was not notified of the availability of Recall 24GB and VWGoA's records do not show otherwise. Said proof shall take the form of an original or legible copy of an invoice, receipt, or similar record confirming that Recall 24GB was performed, the date it was performed, and the Volkswagen dealer that performed it.

(c) Subject to (a) and (b) above, if the Past Covered Transmission Hesitation/Jerking Repair was performed by a service entity or facility that is not an authorized Volkswagen dealer, the Settlement Class Member must also submit, together with the other proof and submission requirements set forth in this Section II.B.(2), 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 Past Covered Transmission Hesitation/Jerking Repair performed by an authorized Volkswagen dealer, but the dealer declined or was unable to perform the repair free of charge under the existing warranty. Reimbursement for a Past Covered Transmission Hesitation/Jerking Repair performed by a service entity or facility that is not an authorized Volkswagen dealer shall not exceed a maximum reimbursement amount (parts and labor) of \$3,000.

C. Limitations on the Extended Warranties Provided in Sections II.A.(2)(a) and II.B.(1) Above.

(1) The extended warranties are subject to the same terms and conditions set forth in the respective Settlement Class Vehicles' New Vehicle Limited Warranty and Warranty Information Booklets.

(2) Damage resulting from abuse, alteration, or modification, a collision or crash, vehicle misuse or neglect, lack of or improper maintenance, vandalism and/or other impact or outside forces shall be excluded and not covered by any extended warranty.

(3) Any extended warranty herein will, to the extent not expired, be fully transferable to subsequent owners of Settlement Class Vehicles to which that extended warranty is applicable.

(4) A vehicle is not eligible for an extended warranty if it has a branded title (including, but not limited to: “Totaled”, “Assembled”, “Dismantled”, “Flood”, “Junk”, “Rebuilt”, “Reconstructed”, “Lemon Law Buyback”, “Fleet”, “Mileage Unknown”, “Stolen”, or “Salvaged”) or if it was acquired by any person or entity from a junkyard, salvage facility or body shop.

(5) VWGoA shall not be responsible for, and shall not warrant, repair or replacement work performed on a Settlement Class Vehicle by a service facility or entity that is not an authorized Volkswagen dealer.

D. Requirements for and Limitations on Reimbursement Set Forth in Sections II.A.(1)(b), II.A.(2)(b) and II.B.(2) Above.

(1) To qualify for reimbursement of past paid and unreimbursed out-of-pocket expenses under Sections II.A.(1)(b), II.A.(2)(b) and II.B.(2) above, the Settlement Class Member must mail to the Claim Administrator, by first-class mail post-marked no later than seventy-five (75) days after the Notice Date, a fully completed Claim Form, signed under penalty of perjury, together with the required Proof of Repair Expense, defined in Section I.P. of this Agreement, and, if applicable, the documentation or Declaration(s) required in Sections II.A.(1)(b), II.A.(2)(b) and II.B.(2) of this Agreement, demonstrating that the Claim for Reimbursement is valid and complies in all respects with the terms of this Settlement Agreement.

(2) Any repair of a transmission rattling noise, transmission oil leak or transmission hesitation or jerking that was due to misuse, abuse, accident, crash, racing, improper operation, lack of or improper maintenance, and/or damage from an external source, does not qualify for reimbursement.

(3) If the claimant is not a person to whom the Class Notice was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN on the mailed Claim Form, the Claim shall contain proof that the claimant is a Settlement Class Member, that the vehicle is a Settlement Class Vehicle, and that the Settlement Class Member paid for the Past Covered Transmission Oil Leak Repair, Past Covered Transmission Rattling Noise Repair, and/or Past Covered Transmission Hesitation/Jerking Repair.

(4) Any Claim for Reimbursement shall be reduced by the amount of any payment, concession or goodwill accommodation or discount(s) that was already received from any other source (including VWGoA, a VW dealer, an insurer, service contract provider, or extended warranty provider, or any other person or entity), for all or part of the amount of the Past Covered Transmission Oil Leak Repair, Past Covered Transmission Rattling Noise Repair, and/or Past Covered Transmission Hesitation/Jerking Repair that is the subject of the Claim for Reimbursement. The Claim Form shall contain a statement in which the Settlement Class Member must verify either that no such payment, concession or goodwill accommodation or discount(s) was received from another source, or if it was, the amount of the payment received and from whom/what source and when it was received.

(5) The Claim Administrator's denial of all or part of any Claim shall be binding and non-appealable, except that a Settlement Class Member may seek attorney review of said denial by so requesting it from the Claim Administrator within fourteen (14) days of the date of mailing of the denial. If attorney review is timely requested, Class Counsel and Defense Counsel shall confer and attempt to

resolve any disputed denial by the Claim Administrator in good faith. This provision does not apply to claims that, based on the proof submitted, do not qualify for reimbursement benefits under the terms of the Settlement.

III. CLAIMS ADMINISTRATION

A. Claims for Reimbursement Shall Be Administered by the Claim Administrator.

Defendant shall be responsible for the costs of Class Notice and Claim Administration under this Settlement Agreement. The Parties retain the right to audit and review the claim handling by the Claim Administrator, and the Claim Administrator shall report to both Parties jointly.

B. Administration.

(1) For each approved Claim for Reimbursement, the Claim Administrator, on behalf of Defendant, shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check to be sent within one hundred (100) days of the date of receipt of the completed Claim (i.e., a fully completed and signed Claim Form with all required supporting documentation), or within one hundred (100) days of the Effective Date, whichever is later.

(2) Disputes as to the sufficiency of the Proof of Repair Expense, and/or other required documentation submitted in support of a Claim for Reimbursement shall be submitted to and resolved by the Claim Administrator, with the assistance of the counsel for the Parties, if needed. In the event the Claim Administrator makes a preliminary determination that the Proof of Repair Expense and/or other required documentation submitted is insufficient, the Claim Administrator shall send the Settlement Class Member a letter advising of the deficiencies. The Settlement Class Member shall have thirty (30) days from the date of that letter to submit, to the Claim Administrator, all documentation required to cure the deficiencies or the claim shall be denied.

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.

B. To the 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 within one hundred twenty (120) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual Class Notice, substantially in the form attached hereto as Exhibit E, together with the Claim Form, substantially in the form attached hereto as Exhibit F, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Defendant 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 dissemination of the Class Notice.

(2) For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from IHS/Polk, Experian or a similar source, 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 pursuant to the governing Stipulated Protective Order.

(3) Prior to mailing the Class Notice, an address search through the United States Postal Service's National Change of Address database shall be conducted 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 notice packets 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 containing:

- (a) instructions on how to submit a Claim for Reimbursement;
- (b) instructions on how to contact the Claim Administrator, Class Counsel and Defense Counsel for assistance;
- (c) a copy of the Claim Forms, Class Notice, this Settlement Agreement, the Preliminary Approval Order, the motion for Final Approval, the motion for Class Counsel fees and expenses and class representative service awards, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and

(d) relevant deadlines for any comments, objections, requests for exclusion and mailing of claims, the date/time 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 or declaration to Class Counsel and Defense Counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of this Agreement or those required by the Court.

V. RESPONSE TO NOTICE

A. Objection to Settlement.

(1) Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement or the requested amount of Class Counsel Fees and Expenses and/or Settlement Class representative service award, must, by the date specified in the Preliminary Approval Order and recited in the Class Notice, which date shall be approximately thirty (30) days after the Notice Date, file any such objection with the Court in person or via the Court's electronic filing system, or, if not filed with the Court by either method, mail the objection to the Court and to the following persons by first-class mail postmarked no later than thirty (30) days after the Notice Date: Tarek H. Zohdy, Esq., Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, CA 90067 on behalf of Class Counsel; and Michael B. Gallub, Esq. Herzfeld & Rubin, P.C., 125 Broad Street, New York, NY 10004 on behalf of Defendant; and the Claim Administrator, Rust Consulting, Inc., P.O. Box 44, Minneapolis, MN 55440-0044.

(2) Any objecting Settlement Class Member must include with his/her/their/its 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;
- (d) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;
- (e) the name, address and telephone number of any counsel representing said objector; and
- (f) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted 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 or his, her, their or its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/they/it shall affirmatively so state in the objection.

(3) Moreover, subject to the approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the final fairness hearing to explain why the proposed Settlement should not be approved as fair, reasonable and adequate, or to object to any motion for Class Counsel Fees and Expenses or Settlement Class representative service award. In order to appear, the objecting Settlement Class Member must, by 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 fairness hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity

of 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 fairness hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Settlement Agreement and Class Notice shall be deemed to have waived 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, no later than thirty (30) days after the Notice Date, submit a written request for exclusion ("Request for Exclusion") to (a) the Claim Administrator at the address specified in the Class Notice, (b) Tarek H. Zohdy, Esq., Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, CA 90067 on behalf of Class Counsel; and (c) Michael B. Gallub, Esq., Herzfeld & Rubin, P.C., 125 Broad Street, New York, NY 10004 on behalf of Defendant.

(2) To be effective, the Request for Exclusion must:

- (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;
- (c) state that he/she/they/it is or was a present or former owner or lessee of a Settlement Class Vehicle; and
- (d) specifically and unambiguously state his/her/their/its desire to be excluded from the Settlement Class.

(3) 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. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent 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.

(4) Any Settlement Class Member who submits a timely and proper Request for Exclusion cannot also submit an objection to the Settlement.

(5) The Claim Administrator will receive purported Requests for Exclusion and shall consult with Class Counsel and Defense Counsel in determining whether they meet the requirements of a 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 intended to be excluded from the Settlement Class shall be evaluated jointly by counsel for the Parties, who shall make a good faith evaluation. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class shall be submitted to the Court for resolution. The Claim Administrator shall maintain a database of all Requests for Exclusion, and shall send the original written communications memorializing those Requests for Exclusion to Class Counsel and Defense Counsel. The Claim Administrator shall report the names and addresses of all such persons and entities that submitted timely and proper Requests for Exclusion to the Court, Class Counsel and Defense Counsel within eighteen (18) days prior to the Final Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class shall be attached as an exhibit to the Final Approval Order and Judgment.

VI. WITHDRAWAL FROM SETTLEMENT

A. 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 substantially increases the costs of 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);

(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, 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 costs and expenses, if any, shall not be a basis for withdrawal from the Settlement.

B. The Defendant shall, in addition, 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 in accordance with the provisions of Section V.B. of this Settlement Agreement.

C. To withdraw from this Settlement Agreement under this section, 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 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, and 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, 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.

D. 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 this Settlement Agreement and any responses thereto. The Claim Administrator, on a weekly basis, shall provide to Class Counsel and Defense Counsel a summary information concerning the number of claims made, number of claims validated, number of returned claims for incompleteness, and total dollar amount of payouts on claims made, the number of claims rejected and the total dollar amount of claims rejected, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

B. Except as otherwise stated herein, all expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of

the Class Notice, and the cost of distributing and administering the benefits of this Settlement Agreement, shall be paid by Defendant.

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 B.

B. Final Approval of Settlement.

(1) If this Settlement Agreement is preliminarily approved by the Court, Class Counsel shall present a motion requesting that the Court issue a Final Approval Order and Judgment, substantially in the form attached as Exhibit G.

(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 Approval Order and Judgment of the Settlement terms contained herein, as well as supporting the Settlement and the terms of this Settlement Agreement through any appeal.

C. Plaintiffs' Application for Attorney Fees and Expenses and Settlement Class Representative Service Awards.

(1) The Parties agree that Class Counsel may apply to the Court for a combined award of reasonable attorneys' fees and expenses (hereinafter, collectively, "Class Counsel Fees and Expenses"), to be paid by Defendant separate

and apart from any benefits to the Settlement Class pursuant to this Agreement, in an amount up to, and not exceeding, the total sum of \$900,000.00 (Nine Hundred Thousand Dollars). Defendant shall not oppose Class Counsel's application for Class Counsel Fees and Expenses in the combined amount up to and not exceeding Nine Hundred Thousand Dollars (\$900,000.00), and Class Counsel shall neither seek nor accept any amount of Class Counsel Fees and Expenses exceeding said combined amount. Each party shall have the right to appeal any award of Class Counsel Fees and Expenses inconsistent with this Agreement.

(2) Plaintiffs believe that Defendant should pay a service award to the three individually named Plaintiffs in the Action, who have served as a putative class representatives. Upon finalization of this Settlement Agreement, the Parties have agreed that Defendant shall not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendant pay a service award of Five Thousand Dollars (\$5,000.00) each to Plaintiffs Dominique Parrish, Ludwig Combrinck, and Trine E. Utne, who have served as putative class representatives in the Action ("Settlement Class representatives").

(3) The Class Counsel Fees and Expenses and Settlement Class representative service awards shall be paid as directed by the Court by wire transfer, check or other mutually agreeable fashion to Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, CA 90067, within the later of (a) thirty (30) days after the Effective Date of the Settlement, or (b) assuming the Effective Date of the Settlement has occurred, thirty (30) days after 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 payments shall fully satisfy and discharge all obligations of Defendant and the Released Parties with respect to payment of the Class Counsel Fees and Expenses and Settlement Class representative's service awards.

(4) The procedure for and the grant or denial or allowance or disallowance by the Court of the Fee and Expense Application are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement Agreement. 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, shall not operate to terminate or cancel this Agreement, or affect or delay the Effective Date of this Agreement. Payment of Class Counsel Fees and Expenses and the Settlement Class Representatives' service awards shall not reduce the benefit being made available to the Settlement Class Members pursuant to this Agreement, and the Settlement Class Members shall not be required to pay any portion of the Settlement Class Representatives' service awards or Class Counsel Fees and Expenses.

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

(1) Upon the Effective Date, the Plaintiffs and each 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 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 shall 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 in and made a part of this Agreement.

B. No Admission of Liability.

Neither the fact and existence of, nor any term or provision contained in, this Agreement, nor any action taken hereunder, shall constitute, be construed as or be admitted as evidence of, any admission of the validity or merits of any claim or fact alleged in the Action, or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant and/or the Released Parties, or any admission by Defendant and/or the Released Parties of any claim or allegation made in any action or proceeding against them. The Parties understand and agree that neither this Agreement, 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 in an action or proceeding brought to enforce the terms of this Agreement and/or the Final Order and Judgment.

C. Entire Agreement.

This Settlement 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 Settlement 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 Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provision of this Settlement 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 this Settlement Agreement is sought.

D. Arm's-Length Negotiations and Good Faith.

The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

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, 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 Settlement 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: CAPSTONE LAW, APC
Tarek H. Zohdy, Esq.
Cody R. Padgett, Esq.
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

BERGER MONTAGUE, P.C.
Russell D. Paul, Esq.
Amey J. Park, Esq.
1818 Market Street, Suite 3600
Philadelphia, PA 19103

As to Defendant: HERZFELD & RUBIN, P.C.
Michael B. Gallub, Esq.
Homer B. Ramsey, Esq.
125 Broad Street
New York, NY 10004

I. Authority to Execute Settlement Agreement.

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

J. Discovery.

Defendant shall cooperate and participate in reasonable confirmatory discovery, to the extent reasonably deemed necessary by Plaintiffs and agreed by the Parties.

K. Return of Confidential Materials.

All documents and information designated as “confidential” and produced or exchanged in the Action, shall be returned or destroyed in accordance with the terms of the Stipulated Protective Order in the Action.

L. 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.

M. 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.

N. 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.

O. 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.

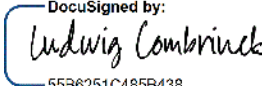
ON BEHALF OF PLAINTIFFS:

Dated: September 14, 2021

DocuSigned by:

AB9278D9B014428... e Parrish

Dated: September 14, 2021


DocuSigned by:

5536251C485B438... nck

Dated: September 21, 2021


DocuSigned by:

58B4EDDAAAF74B4...

Dated: September 14, 2021

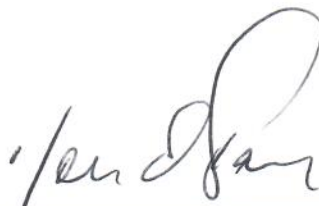

CAPSTONE LAW, APC
Tarek H. Zohdy, Esq.
Cody R. Padgett, Esq.
1875 Century Park East, Suite
1000
Los Angeles, CA 90067

Dated: September 14, 2021


BERGER MONTAGUE P.C.
Russell D. Paul, Esq.
Amey J. Park, Esq.
1818 Market Street, Suite
3600
Philadelphia, PA 19103

ON BEHALF OF DEFENDANT:

Dated: September 22, 2021


HERZFELD & RUBIN, P.C.
Michael B. Gallub, Esq.
Homer B. Ramsey, Esq.
125 Broad Street
New York, New York 10004