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6
7 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION

9 GREGORY COFFENG, MARK GLASER
and JORDAN WILSON, individually and on
10 behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 VOLKSWAGEN GROUP OF AMERICA,
14 INC.,

15 Defendant.
16

Case No. 17-cv-01825-JD

**DECLARATION OF CAMERON R.
AZARI, ESQ. ON IMPLEMENTATION
AND ADEQUACY OF SETTLEMENT
NOTICE PLAN AND NOTICES**

DATE: March 26, 2020
TIME: 10:00 a.m.
JUDGE: Hon. James Donato
CRTRM: 11, 19th Floor

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1 I, Cameron R. Azari, Esq., hereby declare and state as follows:

2 1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set
3 forth herein, and I believe them to be true and correct.

4 2. I am a nationally recognized expert in the field of legal notice and I have served as an
5 expert in hundreds of federal and state cases involving class action notice plans.

6 3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”); a firm that
7 specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal
8 notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc.
9 (“Epiq”).

10 4. This declaration will describe the implementation of the Settlement Notice Plan
11 (“Notice Plan” or “Plan”) and notices (the “Notice” or “Notices”) here for the settlement of
12 *Coffeng, et al. v. Volkswagen Group of America, Inc.*, Case No. 17-cv-01825-JD in the United
13 States District Court for the Northern District of California. I previously executed my “*Declaration*
14 *of Cameron R. Azari, Esq. on Settlement Notice Plan,*” on June 5, 2019, in which I detailed
15 Hilsoft’s class action notice experience and attached Hilsoft’s *curriculum vitae*. I also provided
16 my educational and professional experience relating to class actions and my ability to render
17 opinions on overall adequacy of notice programs.

18 **OVERVIEW**

19 5. On August 29, 2019, the Court approved the Notice Plan as designed by Hilsoft in the
20 *Order Granting Preliminary Approval of Settlement, Preliminarily Certifying Settlement Class,*
21 *and Approving Class Notice* (“Order”). After the Court’s preliminary approval of the Settlement,
22 we began to implement the Notice Program. This declaration will detail the notice activities
23 undertaken and explain how and why the Notice Plan was comprehensive and well-suited to the
24 Class. This declaration will also discuss the administration activity to date. The facts in this
25 declaration are based on what I personally know, as well as information provided to me in the
26 ordinary course of my business by my colleagues from Hilsoft and Epiq, who worked with us to
27 implement the notification effort

NOTICE PLAN SUMMARY

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2 6. Federal Rules of Civil Procedure Rule 23 directs that the best notice practicable under
3 the circumstances must include “individual notice to all members who can be identified through
4 reasonable effort.”¹ The Notice Plan here satisfied this requirement with Notices tailored to the
5 potential owners/lessees of the vehicles included in the Settlement, mailed via United States Postal
6 Service (“USPS”) first class mail. Address updating (both prior to mailing and on undeliverable
7 pieces) and re-mailing protocols met or exceed those used in other class action settlements. Where
8 email addresses were provided, an Email Notice was also sent.

9 7. In accordance with the Preliminary Approval Order, the individual notice effort was
10 supplemented by a targeted, media campaign, which appeared online on *Facebook* and *Instagram*
11 specifically targeted to Audi and Volkswagen owners. Coverage was further enhanced by the
12 sponsored search listings and a case website.

13 8. Data was provided by Defendants (“VIN Data”) and IHS Automotive, driven by Polk
14 (“Polk”) for Epiq to provide individual notice to virtually all Settlement Class members. The data
15 files from Polk were combined and de-duplicated in order to find current physical mailing addresses
16 and email addresses for Settlement Class members.

17 9. Since initial notice mailing efforts concluded recently (mailings were sent on
18 December 2, 2019), I will provide the Court with a supplemental declaration prior to the Final
19 Approval Hearing, which will include the final calculated reach of the Notice Plan as implemented.
20 Based on our experience in prior automotive settlements, we expect to successfully deliver notice
21 to more than 90-95% of the Settlement Class.

22 10. In my opinion, the Notice Plan as designed and implemented to date, has reached
23 the greatest practicable number of Settlement Class members through the use of individual notice
24 and supplemental media. In my opinion, the Notice Plan is the best notice practicable under the
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¹ FRCP 23(c)(2)(B).
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SETTLEMENT NOTICE PLAN AND NOTICES
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1 circumstances of this case and satisfies the requirements of due process, including its “desire to
2 actually inform” requirement.²

3 **CAFA NOTICE**

4 11. As described in the attached “*Declaration of Stephanie J. Fiereck, Esq. on*
5 *Implementation of CAFA Notice for Second Amended Settlement Agreement*,” dated June 14, 2019
6 (“Fiereck Declaration”), Epiq sent a CAFA notice packet (or “CAFA Notice”), on behalf Defendant
7 Volkswagen Group of America, Inc., as required by the federal Class Action Fairness Act of 2005
8 (CAFA), 28 U.S.C. § 1715, to 53 federal and state officials on June 14, 2019. The CAFA Notice
9 was mailed by certified mail to 52 officials, including the Attorneys General of each of the 50
10 states, the District of Columbia and Puerto Rico. The CAFA Notice was also sent by United Parcel
11 Service (“UPS”) to the Attorney General of the United States. The Fiereck Declaration is included
12 as **Attachment 1**.

13 **NOTICE PLAN**

14 ***Data Acquisition***

15 12. On September 14, 2019, Epiq received data from counsel for Volkswagen containing
16 874,781 VINs for Audi and Volkswagen Class Vehicles. This data file was securely transmitted
17 to Polk on September 20, 2019.

18 13. On November 5, 2019, pursuant to an agreement with Polk to purchase data
19 containing identifying information and last known mailing addresses and associated email
20 addresses corresponding with the VIN numbers provided by Volkswagen, Epiq received five files
21 from Polk containing 1,974,274 registration records from all U.S. States and associated Territories,
22 except New Hampshire and Pennsylvania, relating to the Class Vehicles (“Polk Data”).

23 14. On November 8, 2019, Epiq received two files from Polk containing 103,171
24 registration records from Pennsylvania (“Polk PA Data”).

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27 ² “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be
28 such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness
and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably
certain to inform those affected . . .” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

1 15. On November 19, 2019, Epiq received two files from Polk containing 13,766
2 registration records from New Hampshire (“Polk NH Data”).

3 16. In total, Epiq received 2,091,211 records with associated physical mailing addresses
4 for Audi and Volkswagen Owner and Leaseholder records from Polk relating to the Class Vehicles.

5 17. Included in the 2,091,211 records received were 451,412 Email Addresses (180,906
6 for Audi Settlement Class members and 270,506 for Volkswagen Settlement Class members).

7 ***Individual Notice – Direct Mail***

8 18. The Polk Data, Polk PA Data, and the Polk NH Data were combined, analyzed to
9 remove duplicate records where possible, and standardized in order to provide individual notice to
10 virtually all Audi and Volkswagen Settlement Class members. On December 2, 2019, Epiq mailed
11 1,911,011 Notice Packets (795,222 to Audi Settlement Class members and 1,115,789 to
12 Volkswagen Settlement Class members).

13 19. Individual notice consisted of a Long Form Notice and Claim Form (“Notice Packet”).
14 There were two versions of the Notice Packet; one each for Audi and Volkswagen Class Members
15 (i.e., Class Members that owned or lease the Audi and Volkswagen Class Vehicles, respectively).
16 A summary of the data acquisition and notice mailing process for each Audi and Volkswagen is as
17 follows.

18 20. The mailed notice consisted of two separate Notice Packets, one for the Audi vehicle
19 Class Members and one for the Volkswagen vehicle Class Members. Each Notice Packet included
20 an 11-image Long Form Notice that clearly and concisely summarizes the Settlement and a Claim
21 Form customized with the unique VIN, and containing the content that was approved by this Court.
22 The Notices direct the recipients to a website dedicated specifically to the Settlement where they
23 can access additional information about the Settlement, relevant documents including the
24 Settlement Agreement, orders and motions, the claims process including how to easily file a claim,
25 the Class Members’ rights including the right to object or opt out, deadlines and requirements for
26 filing a claim, objecting or opting out, other relevant dates, and the ability to download additional
27 copies of the Claim Form and Class Notice. The Notices also contained the telephone number and
28 address of the Settlement Claim Administrator for any further information and/or to address any

1 questions that Class Members may have. The Notice Packets were sent via USPS first class mail.
2 A copy of the two separate Notice Packets contents (Audi and Volkswagen Long Form Notices
3 and Claim Forms) as mailed are included as **Attachment 2**.

4 21. Prior to mailing, all mailing addresses provided were checked against the National
5 Change of Address (“NCOA”) database maintained by the USPS.³ In addition, the addresses were
6 certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip codes,
7 and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses.
8 This address updating process is standard for the industry and for the majority of promotional
9 mailings that occur today.

10 22. The return address on the Notice Packets is a post office box maintained by Epiq.
11 Notice Packets returned as undeliverable are re-mailed to any new address available through postal
12 service information. For example, to the address provided by the postal service on returned pieces
13 for which the automatic forwarding order has expired, but which is still during the period in which
14 the postal service returns the piece with the address indicated. Epiq also obtains better addresses
15 by using a third-party lookup service. Upon successfully locating better addresses, Notice Packets
16 are promptly re-mailed. As of December 10, 2019, Epiq has received nine Audi Notice Packets
17 and 10 Volkswagen Notice Packets returned as undeliverable. Because the initial Notice mailing
18 just occurred on December 2, 2019, the undeliverable processing and remailing process is currently
19 underway.

20 23. Additionally, a Notice Packet, both specific to Audi or Volkswagen vehicle Class
21 Members is mailed to all persons who request one via the toll-free telephone number or by mail.
22 As of December 10, 2019, five Audi Notice Packets and one Volkswagen Notice Packet have been
23 mailed as a result of such requests. The Long Form Notices and Claim Forms are also available to
24 download or print at the website.

25
26 ³ The NCOA database contains records of all permanent change of address submissions received by
27 the USPS for the last four years. The USPS makes this data available to mailing firms and lists
28 submitted to it are automatically updated with any reported move based on a comparison with the
person’s name and known address.

1 *Individual Notice - Email*

2 24. On December 2, 2019, Epiq sent 451,412 Email Notices (180,906 to Audi Settlement
3 Class members and 270,506 Volkswagen Settlement Class members) for Settlement Class members
4 with an email address, as obtained from Polk.

5 25. The Email Notice consisted of the Long Form Notice using an embedded html text
6 format. This format provided easy to read text without graphics, tables, images and other elements
7 that would increase the likelihood that the message could be blocked by Internet Service Providers
8 (ISPs) and/or SPAM filters. Each Email Notice was transmitted with a unique message identifier.
9 The Email Notice included an embedded link to the case website. By clicking the link, recipients
10 are able to easily access the Settlement Agreement, online Claim Forms and other information about
11 the Settlement. A copy of the Email Notice is included as **Attachment 3**.

12 26. If the receiving email server could not deliver the message, a “bounce code” was
13 returned along with the unique message identifier. For any Email Notice for which a bounce code
14 was received indicating that the message was undeliverable, at least two additional attempts were
15 made to deliver the Email Notice. After completion of the initial Email Notice effort, and as
16 December 10, 2019, 1,343 Email Notices remain undeliverable (557 Audi Email Notices and 786
17 Volkswagen Email Notices).

18 27. For Settlement Class members for whom both a physical address and an email address
19 are available, both a mailed Notice Packet and an Email Notice were sent.

20 *Social Media Banner Notices*

21 28. Pursuant to the Notice Plan ordered by the Court, Banner Notices measuring 254 x 133
22 pixels are running on *Facebook* and *Instagram*. Banners Notices target adults who have identified
23 an interest in “Volkswagen” and/or “Audi.” *Facebook* is the leading social networking site in the
24 world. The Banner Notice advertising began on December 2, 2019, and will run for 30 days, through
25 December 31, 2019. Examples of the Banner Notices are included as **Attachment 4**.

26 *Sponsored Search Listings*

27 29. Also, as approved by this Court, to facilitate locating the case website, sponsored
28 search listings have been acquired on the three most highly-visited internet search engines: *Google*,

1 *Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations such as
2 “VW Settlement” or “Audi Lawsuit,” the sponsored search listing is displayed either at the top of
3 the page prior to the search results or in the upper right-hand column.

4 30. As of December 10, 2019, the sponsored listings have been displayed 1,210 times,
5 resulting in 206 clicks that displayed the case website. A complete list of the sponsored search
6 keyword combinations is included as **Attachment 5**. Examples of the sponsored search listing as
7 displayed on each search engine are included as **Attachment 6**.

8 *Case Website*

9 31. On December 2, 2019, a neutral, informational settlement website
10 (www.EngineWaterPumpSettlement.com) was established to reflect the Settlement of the case.
11 Settlement Class members are able to obtain additional information and documents including the
12 Long Form Notices, Claim Forms, Settlement Agreement, Preliminary Approval Order and other
13 pertinent filings, a list of Frequently Asked Questions and Answers and any other information that
14 the parties agree to provide or that the Court may require. The website also includes a portal in
15 which a Settlement Class member can type in their VIN and determine if their vehicle is a Settlement
16 Class Vehicle. The website also includes information on how potential Settlement Class members
17 can opt-out of the Settlement if they choose. Settlement Class members can also file an online claim
18 or an online opt-out request. The website address was prominently displayed in all printed notice
19 documents.

20 32. As of December 10, 2019, there have been 19,545 unique visitors to the website and
21 85,144 website pages presented.

22 *Toll-free Telephone Number and Postal Mailing Address*

23 33. On December 2, 2019, a toll-free number (1-877-363-7829) was established. Callers
24 hear an introductory message and have the option to continue to get information about the Settlement
25 in the form of recorded answers to frequently asked questions. Callers also have the option to
26 request a Long Form Notice and Claim Form by mail. During normal business hours, callers also
27 have the option to speak to a service agent. The toll-free number is set forth in the class notice that
28 was sent to the Settlement Class members.

1 34. As of December 10, 2019, the toll-free telephone number has handled 5,451 calls
2 representing 32,578 minutes of use and service agents have handled 3,469 incoming calls
3 representing 34,708 minutes of use. Service agents have also made 296 outbound calls representing
4 737 minutes of use.

5 35. A postal mailing address and email address has also been established to allow
6 Settlement Class members the opportunity to request additional information or ask questions via
7 these channels. As of December 10, 2019, Epiq has received 198 emails.

8 *Status of Claims Process*

9 36. As of December 10, 2019, Epiq has received 2,073 Claim Forms (all filed online via
10 the case website). Since the initial Notice mailing just occurred on December 2, 2019, Epiq has not
11 received any paper claims at this time. Based on our experience, I expect the number of claims filed
12 will continue to increase in the coming months prior to the claim filing deadline on April 30, 2020.

13 *Requests for Exclusion*

14 37. The deadline to request exclusion from the Settlement is February 14, 2019. I will
15 provide a supplemental declaration to the Court prior to the Final Approval Hearing to provide
16 complete counts of all exclusion requests received, including an Attachment listing each request and
17 the date received.

18 **PERFORMANCE OF THE NOTICE PROGRAM**

19 *Reach*

20 38. Based on our experience in previous automotive settlements, we reasonably expect
21 to deliver individual notice to more than 90-95% of the Settlement Class. This expectation is
22 specifically informed by our recent experience in the following settlements which also used vehicle
23 VIN information to access data from Polk (cases also listed above in the Experience section):

- 24 • *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Product Liability*
25 *Litigation (Bosch Settlement)*, MDL No. 2672 (N.D. Cal.) 97% of the class reached
with individual notice;
- 26 • *Callaway v. Mercedes-Benz USA, LLC*, Case No. 14-cv-02011 JVS (DFMx) (C.D.
27 Cal.) 96.5% of the class reached with individual notice; and
- 28 • *Falco et al. v. Nissan North America, Inc. et al.* Case No. 2:13-cv-00686 DDP
(MANx) (C.D. Cal.) 99% of the class reached with individual notice.

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1 39. Reach is enhanced further by the targeted online social media, sponsored search
2 listings and the case website.

3 40. Many courts have accepted and understood that a 75 or 80 percent reach is more than
4 adequate. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims
5 Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective
6 determination of the adequacy of a proposed notice effort is whether all the notice efforts together
7 will reach a high percentage of the class. It is reasonable to reach between 70–95%.⁴ Here we have
8 developed and are implementing a notice plan that will deliver notice to the Settlement Class at the
9 very highest end of this range. These statistics reinforce the fact that the Notice Plan is broad in
10 scope and is designed to reach the greatest practicable number of Settlement Class members.

11 **CONCLUSION**

12 41. In class action notice planning, execution, and analysis, we are guided by due process
13 considerations under the United States Constitution, by federal and local rules and statutes, and
14 further by case law pertaining to notice. This framework directs that the notice program be designed
15 to reach the greatest practicable number of potential class members and, in a settlement class action
16 notice situation such as this, that the notice or notice program itself not limit knowledge of the
17 availability of benefits—nor the ability to exercise other options—to class members in any way. All
18 of these requirements were met in this case.

19 42. Our notice effort follows the guidance for how to satisfy due process obligations that
20 a notice expert gleans from the United States Supreme Court's seminal decisions, which are: a) to
21 endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to
22 do so:

23 A. "But when notice is a person's due, process which is a mere gesture is not due
24 process. The means employed must be such as one desirous of actually informing the
25 absentee might reasonably adopt to accomplish it," *Mullane v. Central Hanover Trust*, 339
26 U.S. 306, 315 (1950).

27 ⁴ Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain*
28 *Language Guide* (2010), p. 3.

1 B. “[N]otice must be reasonably calculated, under all the circumstances, to apprise
2 interested parties of the pendency of the action and afford them an opportunity to present
3 their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.


4 43. The Notice Program provided the best notice practicable under the circumstances of
5 this case, conforms to all aspects of Federal Rules of Civil Procedure Rule 23, and comported with
6 the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed.

7 44. The Notice Plan schedule affords enough time to provide full and proper notice to
8 Settlement Class members before the exclusion and objection deadline.

9 45. I will provide a supplemental declaration to the Court prior to the Final Approval
10 Hearing to provide updated information regarding re-mailing totals, administration statistics,
11 requests for exclusions and responding to any objections to the Settlement that may relate to notice.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed on
13 December 16, 2019.

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Cameron R. Azari, Esq.