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5 *Local Counsel for Plaintiffs*  
6 *and the Putative Class*

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11  
12 GREGORY COFFENG, MARK GLASER  
13 and JORDAN WILSON, individually and on  
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16  
17 VOLKSWAGEN GROUP OF AMERICA,  
18 INC.,

19 Defendant.

Case No. 17-cv-01825-JD

**JOINT DECLARATION OF GARY S.  
GRAIFMAN AND THOMAS P. SOBRAN  
IN SUPPORT OF APPROVAL OF CLASS  
ACTION SETTLEMENT AND AWARD  
OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF EXPENSES**

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

1 Gary S. Graifman and Thomas P. Sobran, declare pursuant to 28 U.S.C. § 1746 under the  
2 penalties of perjury as follows:

3 1. Gary S. Graifman is a shareholder of the law firm Kantrowitz, Goldhamer &  
4 Graifman, P.C. (“KGG”). Thomas P. Sobran is the sole proprietor of Thomas P. Sobran, P.C.  
5 (“TPS”). Each firm was appointed as Co-Lead Counsel in the within consolidated actions pursuant  
6 to the Preliminary Approval Order of the Court dated August 28, 2019 (Dkt No. 82) (the firms are  
7 referred to herein as “Co-Lead Counsel”). In the Preliminary Approval Order, the Court  
8 preliminarily approved the within class action settlement, conditionally certified the class, as defined  
9 below, and approved the notice to be sent to Settlement Class Member(s) (Dkt. 82).<sup>1</sup>

10 2. Co-Lead Counsel were directly involved in, responsible for, and have personal  
11 knowledge regarding all aspects of the within litigation (the “Litigation”). Counsel submit this  
12 declaration in support of: (1) Plaintiffs’ motion for final approval of the proposed settlement set  
13 forth in the Second Amended Settlement Agreement dated May 30, 2019 (the “Settlement  
14 Agreement”), resolving all claims in the Litigation (the “Settlement”) against Defendant  
15 Volkswagen of Group of America, Inc. (“VWGoA”); (2) certification of the Settlement Class; and  
16 (3) Plaintiffs’ Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses in  
17 the sum of two million four hundred thousand dollars (\$2.4 Million) and approval of payment of  
18 incentive awards to the Class Representatives.<sup>2</sup>

19 **I. INTRODUCTION AND OVERVIEW**

20 3. The proposed Settlement of this action, which, as demonstrated, provides substantial  
21 benefits to the Settlement, is the culmination of extensive arm’s length negotiations of a vigorously  
22 contested case. This action and the Settlement involve present and former owners and lessees of  
23 certain model VW and Audi vehicles, for model years 2008 through 2014, which are more  
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25 <sup>1</sup> In addition to Co-Lead Counsel herein, the Court approved Stull, Stull & Brody (“SSB” or “liaison  
26 counsel”). SSB is a firm experienced in consumer class action litigation. For purposes of this  
Declaration, all three firms are referred to herein as “Class Counsel.”

27 <sup>2</sup> Unless otherwise defined herein, capitalized terms have the same meaning as set forth in the  
28 Settlement Agreement which has been previously filed with the Court and is annexed hereto as  
Exhibit “1.”

1 particularly identified by their Vehicle Identification Numbers (“VIN”) in Exhibit 4 to the  
2 Settlement Agreement (the “Settlement Class Vehicles”).<sup>3</sup> It was Plaintiffs’ claim that the  
3 Settlement Class Vehicles contain an alleged defect in the primary engine water pump (the “water  
4 pump”) that could potentially cause it to fail prematurely. The water pump circulates engine coolant  
5 and, together with the thermostat, is responsible for managing coolant temperature that prevents  
6 engine and component overheating including the cylinder head and turbocharger. Plaintiffs allege  
7 that VWGoA concealed this information and represented that the Settlement Class Vehicles were  
8 reliable and that the water pump was fully covered by the vehicles’ original written warranty should  
9 there be any failure.

10 4. Informal discovery confirmed, among other things, that the cost of replacing a  
11 prematurely failed water pump runs on average \$950 in the most expensive dealer region (which is  
12 California).

13 5. Defendant maintains that the Water Pump in the Settlement Class Vehicles was and  
14 is not defective, that no consumer statutes nor express or implied warranties were violated in any  
15 way, that claims asserted by Plaintiffs and the putative class are barred by statute of limitation and  
16 other defenses, and that Plaintiffs and the putative class do not have valid claims for liability and  
17 damages.

18  
19 <sup>3</sup> In particular, the vehicles which Plaintiffs’ counsel identified as containing the subject defective  
20 water pump are the following (subject to VIN confirmation):

- 21 – certain 2008-2013 model year A3
- 22 – certain 2009-2014 model year A4
- 23 – certain 2009-2014 model year A5
- 24 – certain 2011-2014 model year Q5
- 25 – certain 2012-2014 model year A6
- 26 – certain 2009-2014 model year TT
- 27 – certain 2008-2014 model year GTI
- 28 – certain 2008-2014 model year Jetta
- certain 2009-2014 model year Eos
- certain 2009-2014 model year CC (CCF)
- certain 2009-2014 model year Tiguan
- certain 2008-2010 model year Passat
- certain 2012-2014 model year Beetle

1           6.       Plaintiffs in this action are owners or lessees of certain model year VW and Audi  
2 Settlement Class Vehicles that claim to have experienced water pump failure and paid for water  
3 pump replacement. In very limited cases, certain class members also claim to have sustained some  
4 degree of related engine damage. Informal confirmatory discovery (and the subsequent notice  
5 process) disclosed that there were approximately 874,781 Settlement Class Vehicles nationwide  
6 (*see* ¶ 12 of Declaration of Cameron R. Azari, the Project Manager for Epiq Global, Regarding  
7 Implementation of Settlement Notices, dated December 16, 2019, submitted concurrently herewith  
8 (“Azari Decl.”). The Court-appointed Settlement Administrator, Epiq Global, confirmed that  
9 Settlement Class Members who have received notice of the Settlement herein numbered  
10 approximately 1,911,011 (*Id.* at ¶ 18). In addition, Email Notice, consisting of the Long Form  
11 Notice using an embedded html text format was sent to 451,412 Settlement Class Members (180,906  
12 to Audi Settlement Class Members and 270,506 to VW Settlement Class Members) for which email  
13 addresses were available after diligent searched for same. Azari Decl., ¶¶ 24-25.

14           7.       This action was first filed in this District on March 31, 2017, by Plaintiff Gregory  
15 Coffeng, asserting counts on behalf of nationwide class and state subclasses. Prior to filing the  
16 initial complaint counsel undertook an extensive investigation which included analysis of the water  
17 pump functionality and an understanding of the reasons for the alleged failure, review of bulletin  
18 boards and chat rooms used by Audi and Volkswagen owners in which they discussed the problems  
19 and symptoms of the water pump failure, review of the part changes and technical service bulletins  
20 bearing on the issues, review of the NHTSA-ODI website, including complaints and comments to  
21 NHTSA by Audi and VW owners, analyses of an exemplar of the subject water pump and revised  
22 pump designs.

23           8.       Defendant moved to dismiss the initial complaint, raising unique issues as to statute  
24 of limitations, Plaintiff’s claims of fraudulent concealment, implication of the discovery rule and  
25 equitable tolling, among other issues. The parties fully briefed the motion to dismiss (Dkt. No. 36,  
26 46, 47) and attended a hearing before the Court. Oral argument was held on November 2, 2017  
27 (Dkt. No. 50; *See also*, Hearing Transcript at Dkt. 51).

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1           9.       At the hearing, it was agreed, with the Court's approval, that Plaintiff would amend  
2 the Class Action Complaint prior to determination on the Motion to Dismiss.

3           10.       On November 22, 2017, after further engineering and forensic analysis undertaken  
4 by Class Counsel into the nature and cause of the alleged Water Pump issues, Plaintiffs filed an  
5 Amended Complaint (Dkt. No. 53) in which Plaintiffs Coffeng, Mark Glaser and Jordan Wilson  
6 asserted claims, including an additional claim under New York's General Business Law § 349. *See,*  
7 *e.g.*, summary of factual allegations at ¶¶ 2-6, 23-26 and 34-105 of the Amended Complaint. The  
8 Amended Complaint set out six causes of action, including claims alleging Breach of Express  
9 Warranty (Count I); Breach of Implied Warranty (Count II); Violation of the Magnuson-Moss  
10 Warranty Act (Count III); Breach of California Unfair Competition Law, Cal. Bus. and Professions  
11 Code §§ 17200 *et seq.* (Count IV); Breach of California Consumers Legal Remedies Act, Cal. Civ.  
12 Code §§ 1750, *et seq.* (Count V); and, Breach of New York GBL § 349 (Count VI).

13           11.       In or around the time of the initial hearing on the Motion to Dismiss, the parties  
14 began a series of in-person meetings and discussions regarding potential settlement of the case.  
15 During a conference with this Court, it was agreed, with the Court's approval, that this matter will  
16 be placed on a settlement track to avoid burdening the Court and the parties with unnecessary pretrial  
17 proceedings. Informal discovery was exchanged whereby over a period of many months VWGoA  
18 provided information, document production and engineering feedback on issues raised by Class  
19 Counsel.

20           12.       During this informal discovery period and the parties' negotiations, the parties filed  
21 multiple status reports with the Court. *See* Dkt. Nos. 53, 58, 60, 62. The Court issued the operative  
22 Pretrial Scheduling Order on July 16, 2018.

## 23           **II. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

24           13.       Settlement negotiations between the Parties were initiated in late 2017, in or around  
25 the time of the parties' appearance before the Court on VWGoA's motion to dismiss. These in-  
26 person negotiations, conducted at arms'-length, were intensive, and at times, contentious. As  
27 discussed, Defendant vigorously disputes the Plaintiffs' claims and maintains that there was and is  
28 no defect in the water pump, nor any non-disclosure or consumer statute violation, that would entitle

1 Plaintiffs to any damages in this action. Defendant has contended, and would no doubt continue to  
2 contend, that failures of the water pump alleged by Plaintiffs are the result of normal and expected  
3 wear and tear that passenger vehicles experience over time or the result of improper maintenance or  
4 are, in any event, subject to the durational limits of the existing warranties which are robust and not  
5 unconscionable.

6 14. Substantive settlement negotiations proceeded without discussion of Plaintiffs’  
7 Counsel’s fees and expenses. Only after a settlement in principle had been reached regarding the  
8 material terms of the proposed Class Settlement did the parties undertake any attempt to negotiate  
9 an agreement with respect to Plaintiffs’ Counsel’s fees and expenses. In fact, as the Court may  
10 recall, at the time the parties presented and appeared at the February 7, 2019 Preliminary Approval  
11 hearing the parties had not resolved the issue of attorneys’ fees. Discussions concerning attorneys’  
12 fees culminated in an agreement that Class Counsel’s application for attorneys’ fees and  
13 reimbursement of expenses would not be opposed by VWGoA up to the stipulated combined total  
14 amount of \$2.4 million, to which the application herein for an award of attorney’s fees is limited.

15 15. After several in-person meetings and countless communications, the Settlement  
16 Agreement was executed on August 6, 2018. Shortly thereafter, the parties negotiated an additional  
17 benefit for class members and on October 23, 2018, a revised Settlement Agreement was signed  
18 adding that term. During the preliminary approval process, the Court carefully analyzed the  
19 proposed Settlement, requested information regarding certain substantive and procedural aspects of  
20 it, and directed revisions to the Settlement Agreement, the plan for implementing and disseminating  
21 notice to the Settlement Class (“Notice Plan”), and the content of the Class Notices relating to the  
22 portions of the Class that own or lease involved Volkswagen and Audi Settlement Class Vehicles.  
23 All of these requests/directions were implemented to the Court’s satisfaction in a revised Settlement  
24 Agreement, Notice Plan and Class Notices. Accordingly, the Court granted preliminary approval  
25 of the Settlement, together with the Notice Plan and Class Notices, on August 29, 2019.

26 16. Thus, after approximately two years of contentious litigation and settlement  
27 negotiations, and with the aid of significant input from this Court, counsel have achieved an  
28 exceptional result for Settlement Class Members. This Settlement not only benefits Class Members

1 whose vehicles have, prior to the Notice Date and within 10 years or 100,000 miles (whichever  
2 occurred first) from the vehicle's In-Service Date, paid out-of-pocket expense to repair a Water  
3 Pump failure, but also benefits Settlement Class Members in the event their vehicles might  
4 experience a water pump failure after the Notice Date and within that 10 year or 100,000 mile period.  
5 This Settlement provides significant monetary relief that averages between \$750.00 and \$950.00 for  
6 many of the Settlement Class Members. Repair of the water pump averages approximately \$950.00  
7 for authorized Volkswagen and Audi dealers in the highest (most expensive) region of the country,  
8 which is California. The cost of repair of engine component damage caused by a water pump failure,  
9 while rare in occurrence, averages less than \$2,000.00 but are nonetheless not capped herein, unless  
10 done at an Independent Service Center ("ISC") in which event, the engine damage caused directly  
11 by the failed water pump is capped at \$4,000 (manifestly higher than the average cost). Thus, based  
12 on these estimates and the Settlement benefits described immediately below, Class Counsel believe  
13 that each Settlement Class Member who experienced a Water Pump failure within 10 years or  
14 100,000 miles of the vehicle In-Service Date (whichever occurs first) has saved or will save in the  
15 future, anywhere from \$665 to \$2,000.00.<sup>4</sup>

16 17. The 150-day claims period for Settlement Class Members to seek reimbursement  
17 under the Settlement terms provides a more than reasonable period of time that has been  
18 preliminarily approved by this Court. The deadline for submission of reimbursement claims is April  
19 30, 2020. The Settlement terms also provide a reasonable period within which Settlement Class  
20 Members can cure any deficiencies in the proof submitted in support of their claims. In addition,  
21 and at the Court's direction, the deadline for objecting to or opting out of the Settlement is 60-days  
22 from the filing of this Motion, which is February 14, 2020.

23 18. The nationwide settlement will resolve all claims before this Court. The Settlement  
24 consists of two programs: A reimbursement program to reimburse class members for out-of-pocket  
25 payments made for past repairs, within the time and mileage schedule described below and an  
26

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27 <sup>4</sup> If a Settlement Class Member is in the 80,000 mile/8 year to 100,000 mile/10 year tier and had  
28 the repair done at an ISC, the amount of reimbursement for the expense of the water pump failure  
is capped at 70% of the \$950, or \$665



1 Extended Warranty Program which extends the warranty for the water pump for a period of ten (10)  
 2 years or 100,000 miles of the vehicle In-Service Date (whichever occurs first). Under the  
 3 reimbursement portion of the Settlement, Defendant VWGoA agrees to:

- 4 1. Reimburse **100%** of the paid dealer invoice amount expended for the covered  
 5 part(s) and labor for repair or replacement of the Water Pump at an authorized  
 6 Audi or Volkswagen dealer within 8 years or 80,000 miles (whichever occurs  
 7 first) from the Settlement Class Vehicle’s In-Service Date and prior to the Notice  
 8 Date, limited to one repair/replacement per Settlement Class Vehicle. If repaired  
 9 at an Independent Service Center (“ISC”), the Settlement Class Member will  
 10 receive a refund of the paid invoice amount for the covered parts and labor, up to  
 11 \$950.00.
- 12 2. Reimburse **70%** of the paid dealer invoice amount expended for the covered  
 13 part(s) and labor for repair or replacement of the Water Pump at an authorized  
 14 Audi or Volkswagen dealer if made after eight (8) years or 80,000 miles  
 15 (whichever occurs first) and prior to 10 years or 100,000 miles (whichever occurs  
 16 first) from the Settlement Class Vehicle’s In-Service Date and prior to the Notice  
 17 Date, limited to one repair/replacement per Settlement Class Vehicle. Again, if  
 18 repaired at an ISC, the Settlement Class Member will receive a refund of the paid  
 19 invoice amount for the covered parts and labor, up to 70% of \$950.00.
- 20 3. Reimburse a percentage of the paid dealer invoice amount to repair or replace a  
 21 damaged engine caused directly by a Water Pump failure at an authorized Audi  
 22 or Volkswagen dealer within 10 years or 100,000 miles (whichever occurs first)  
 23 from the Settlement Class Vehicle’s In-Service Date and prior to the Notice Date,  
 24 subject to time/mileage parameters and percentage of reimbursement limits in  
 25 Table 1, below, for the covered parts and labor, and limited to one  
 26 repair/replacement per Settlement Class Vehicle. If repaired at an ISC, the  
 27 Settlement Class Member will receive a reimbursement of no more than  
 28 \$4,000.00, subject to the time/mileage parameters and percentage of  
 reimbursement limits in Table 1.

**TABLE 1: REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES FOR DAMAGED  
 OR FAILED ENGINE DUE TO WATER PUMP FAILURE**

<b>Time from In-Service Date</b>	<b>Less than 50,000 miles</b>	<b>50,001 to 60,000 miles</b>	<b>60,001 to 70,000 miles</b>	<b>70,001 to 80,000 miles</b>	<b>80,001 to 100,000 miles</b>
4 years or less	100% (under original warranty)	70%	50%	40%	25%
4-5 years*	70%	50%	40%	30%	20%
5-6 years	50%	40%	35%	25%	15%
6-7 years	40%	30%	25%	20%	10%
7-8 years	30%	25%	20%	15%	10%
8-10 years	25%	20%	15%	10%	5%



1 \*For VW Settlement Class Vehicles in which the New Vehicle Limited Warranty period is 5 years  
2 or 60,000 miles (whichever occurs first) from the In-Service Date, the percentage of coverage shall  
3 be one hundred percent (100%) for repair or replacement occurring within the said 5 years or 60,000  
4 miles (whichever occurs first) warranty period.

5 19. In order to obtain monetary benefits, the Settlement Class Member must submit a  
6 simple Claim Form (Attachment 2 to the Azari Decl. included in the sample Mail Notice Packets  
7 with the Claim Form), with the required documentary proof (repair records and receipts) showing,  
8 *inter alia*, the amount paid for the repairs necessitated by a failed Water Pump and reasonable  
9 adherence to those aspects of the vehicle's maintenance schedule that are relevant to the function of  
10 the coolant system (including use of the coolant fluid recommended by Audi or Volkswagen (as  
11 applicable)). The Settlement Agreement allows for reimbursement for one repair or replacement of  
12 a water pump per Settlement Class Vehicle. SA, II(B)(1)(a) and (b). However, if a proper Audi or  
13 Volkswagen replacement pump failed within 12 months or 12,000 miles, the replacement warranty  
14 allows for reimbursement for the cost (parts only) of the new Volkswagen or Audi pump that will  
15 replace the failed one. SA, II(B)(2)(b).

16 Extended Warranty Benefits

17 20. The Settlement Agreement also provides another valuable benefit to eligible  
18 Settlement Class Members by extending the New Vehicle Limited Warranties applicable to the  
19 Settlement Class Vehicles to cover Settlement Class Vehicle Water Pump repairs or replacement by  
20 an authorized VW or Audi dealer for a period of ten (10) years or one hundred thousand (100,000)  
21 miles (whichever occurs first) from the In-Service Date of the Settlement Class Vehicle. The  
22 Warranty Extension will include full coverage of the Water Pump, and all parts and labor necessary  
23 to effectuate the repair, with the Settlement Class Member to show reasonable adherence to the  
24 vehicle's maintenance schedule that are relevant to the function of the coolant system (including the  
25 use of coolant fluid recommended by Audi or Volkswagen (as applicable)).

26 21. In addition, similar to the reimbursement protocol, if the Settlement Class Vehicle  
27 sustains engine damage as a result of the Water Pump failure, the Settlement Class Member under  
28 the Extended Warranty is afforded a percentage of coverage for repair of said engine damage based  
on the same percentages set forth in Table 1 set forth above. The Warranty Extension will apply to

1 all eligible Settlement Class Vehicles irrespective of whether the vehicle has been repaired on or  
2 before the Effective Date of the Settlement and is fully transferable to subsequent owners to the  
3 extent the time or mileage period has not expired.

4 22. There are approximately 874,781 Settlement Class Vehicles in the Class.  
5 Approximately 1,911,011 Settlement Class Members received the Mail Notice packets advising  
6 them of the Class Action Settlement herein (Azari Decl., ¶ 18; and Attachment 2). Because the  
7 notice packets were mailed (and the Settlement Website went live) on December 2, 2019, Class  
8 Counsel do not yet have any indication as to whether there are objections and, if so, the number or  
9 nature thereof. Class Counsel expects to respond to any such objections, if any, in the subsequent  
10 filings scheduled for such responses.

11 23. Class Counsel estimates the value of the Settlement's benefit on a class wide basis  
12 to be approximately \$34.04 Million, as set forth herein, not including the costs of Notice and  
13 Administration.

14 24. Class Counsel estimate the value of the Settlement's components in part on  
15 documents provided by VWGoA including the incident rate during the warranty period based upon  
16 the data exchanged.<sup>5</sup> While the incident rate might be higher as the age and mileage of the vehicle  
17 increases, in coming to a conservative analysis, Plaintiffs' Counsel employed the *same rate* as  
18 experienced in-warranty. Based on the number of Settlement Class Vehicles (874,781), the use of  
19 the conservative incident rate, and the \$665.00 average cost of repair if all of those vehicles fell  
20 within the 70% reimbursement regime (*e.g.* at time of repair were in-service for greater than 8 years  
21 or more than 80,000 miles), Class Counsel believe that the total amount would likely equal  
22 \$43,629,985. Past experience also leads to the presumption that only half of those vehicles would  
23 likely be involved in the Reimbursement Program and one-half would be involved in the future  
24 repair program. Thus, cutting the number of Class Vehicles in the Reimbursement Program in half,  
25 the Reimbursement Program is conservatively valued at \$21,814,992. Plaintiffs submit that the  
26 value of reimbursement portion of the Settlement alone would be approximately \$21,814,992. In

27 \_\_\_\_\_  
28 <sup>5</sup> Because the information is subject to a confidentiality agreement, it is not specified here, but can be made  
available to the Court under seal if desired.

1 addition, the Extended Warranty has value apart from the reimbursements made. According to  
2 Plaintiffs' expert in the subject matter of automobile repair costs and warranty valuation, Kirk D.  
3 Kleckner, CPA MBA ASA-BV, the preliminary value of the Extended Warranty Program herein is  
4 \$12,230,314.<sup>6</sup> Thus, the Settlement valuation of this nationwide settlement, involving  
5 reimbursement and warranty extension, is estimated to be approximately \$34,045,306.

6 The Notice Program

7 25. The Notice program used in this Settlement has been robust and in accord with this  
8 Court's instruction and approval at the Preliminary Approval Hearing, and is reasonably calculated  
9 to provide the best practicable notice. Under the terms of the Settlement, the Settlement  
10 Administrator was to first use the same sources which car manufacturers generally use when  
11 engaging in a government-mandated recall program (Settlement Agreement, ¶V(b)(2)). Specifically,  
12 the Settlement Administrator utilized a third-party to search the vehicle registration records in all  
13 fifty states and Puerto Rico utilizing the Vehicle Identification Numbers for all Settlement Class  
14 Vehicles. By utilizing this method, the parties were able to identify current and former  
15 owners/lessees of Settlement Class Vehicles. Approximately 1,911,011 individual Mail Notices  
16 were then sent by first class mail to these identified Settlement Class Members (Azari Decl. ¶ 18).

17 26. On February 7, 2019, the Court held a hearing on the Motion for Preliminary  
18 Approval. The Court noted concerns with notice being promulgated by only regular mail notice and  
19 encouraged the parties to develop a program which included email notice and social media. As a  
20 result, Class Counsel, together with counsel for VWGoA, conferred with the proposed claims  
21 administrator, Epiq Global to develop a comprehensive plan which was presented to the Court at  
22 the renewed Preliminary Approval hearing date on August 15, 2019. The Court indicated that the  
23 concerns expressed at the February 7<sup>th</sup> hearing had been addressed and, *inter alia*, approved the  
24 Notice Program in the Preliminary Approval Order entered on August 29, 2019 (Dkt No. 82).

25 27. In addition to the first-class Mail Notice, the revised Notice Program included an  
26 email blast to such email addresses as could be culled from VW and Audi records and those of the

27 \_\_\_\_\_  
28 <sup>6</sup> Although it is estimated that the one-half of the pump claims not included in the Reimbursement  
Program would be Warranty Program, all vehicle owners get the benefit of the extended warranty.

1 various state motor vehicle bureaus (Azari Decl., ¶24) (“Email Notice”). The robust Notice program  
2 has to date, as noted above, included 1,911,011 first class Mail Notices and 451,412 Email Notices  
3 (Azari Decl., ¶¶18 & 24). A copy of the sample Mail Notice packets are annexed to the Azari Decl.  
4 as Attachment 2. A copy of the sample Email Notice is annexed to the Azari Decl. as Attachment  
5 3. In addition, Banner Ad Notices measuring 254 x 133 pixels are running on *Facebook* and  
6 *Instagram* which target adults who have identified an interest in “Volkswagen” and/or “Audi.”  
7 (Azari Decl., ¶ 28 and Attachment 4). In addition, sponsored search listing are running on *Google*,  
8 *Yahoo* and *Bing*. When search engine visitors search on common keyword combinations such as  
9 “VW Settlement” or “Audi Lawsuit,” the sponsored search listing is displayed either at the top of  
10 the page prior to the search results or in the upper right-hand column. As of December 10, 2019,  
11 the sponsored listings have been displayed 1,210 times, resulting in 206 clicks that displayed the  
12 case website. (See Azari Decl, ¶¶ 29-30 and Attachments 5-6); (Azari, ¶ 29).

13         28. The Settlement Website established by the Claims Administrator provides additional  
14 Notice of the Settlement and contains copies of the VW and Audi Class Notices as well as  
15 downloadable Claim Forms, and pertinent settlement documents including the Settlement  
16 Agreement. This website also has information on the Class members’ rights, when and how to  
17 submit a claim, important dates and filing deadlines, a portal to determine if the owner/lessees’  
18 vehicle’s VIN is a Settlement Class Vehicles, information on requesting an opt out and how to  
19 object to the Settlement, FAQs and answers, and other resources (Azari Decl., ¶31-35). The  
20 Settlement Website also allows vehicle owners to ask questions *via* email or a toll-free phone  
21 number for the Settlement Administrator where the Settlement Class member can speak with a live  
22 operator (Azari Decl. ¶33-34). In sum, the Notice Program comports with the Court’s comments at  
23 the Preliminary Approval Hearing and more than complies with due process requirements.<sup>7</sup>

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<sup>7</sup> Although it is too early for an assessment, it is expected that the response to the Settlement will be  
robust. This is based on the recent VW/Audi timing chain settlement. See discussion at Para. 27  
*infra*. The water pump claims period will continue until April 30, 2020 and, as a result, the claims  
undoubtedly will continue to grow even after Plaintiffs submit their analysis in their reply papers in  
support of Final Approval.

### 1 III. PLAINTIFFS' COUNSEL'S FEE AND EXPENSE APPLICATION

2 29. Plaintiffs' Counsel undertook the prosecution of the within Litigation entirely on a  
3 contingency fee basis and assumed significant risks in bringing these claims. From the outset,  
4 Plaintiffs' Counsel understood that it was undertaking an expensive and complex litigation with no  
5 guarantee of receiving compensation for the enormous investment in time and money that the case  
6 would require. The negotiations in this matter were intense and hard fought. The Litigation was  
7 complex and the process of achieving the Settlement was unique in numerous ways. Plaintiffs'  
8 Counsel faced substantial issues in establishing the sufficiency of the claims so that they could move  
9 to the discovery phase of the case. In addition to briefing the motion to dismiss on behalf of a  
10 proposed nationwide class, Plaintiffs' Counsel pursued initial independent discovery and  
11 investigation and eventually, confirmatory discovery, including certain proprietary internal  
12 warranty information.

13 30. If required to certify a litigation class, Plaintiffs' Counsel would have been expected  
14 to establish the elements of each state law claim brought on behalf of Plaintiffs—including New  
15 York and California, as well as a nationwide class which, as this Court noted, would present a  
16 substantial challenge. Plaintiffs' Counsel also communicated with various other putative class  
17 members in other jurisdictions to mount a multi-state class if necessary. The efforts of Plaintiffs'  
18 Counsel were well organized and efficiently managed—indeed, counsel had no incentive to do  
19 otherwise as any compensation is entirely contingent. As noted above, to date, there was no “clear  
20 sailing” provision agreed to prior to Settlement or prior to the initial motion for Preliminary  
21 Approval as the parties could not agree on Plaintiffs' Counsel's legal fees. Significantly, the benefits  
22 that Class Members will enjoy, including the past reimbursement and Extended Warranty, are  
23 benefits for which Class Members – *e.g.* our clients – will pay no legal fees or expenses at all.  
24 Indeed, under the Settlement, and if approved by the Court, VWGoA has agreed to pay the legal  
25 fees and expenses up to a combined total of \$2,400,000,<sup>8</sup> which will not reduce any of the benefits  
26 afforded the Class Members under the Settlement.

27 \_\_\_\_\_  
28 <sup>8</sup> Class Counsel submits with this Joint Declaration, their brief in support of their application for an  
award of legal fees and reimbursement of expenses.

1           31.     During the course of this Litigation, Class Counsel in the aggregate expended a total  
2 of 1,386.20 hours. The lodestar of each firm is set forth as follows<sup>9</sup>:

Firm	Total hours	Lodestar
KGG	696.70	\$543,911.50
TPS	408.20	\$306,150.00
SS&B	281.30	\$195,926.00
<b>TOTAL:</b>	<b>1,386.20</b>	<b>\$1,045,987.50</b>

3           32.     In support of the hourly rates of Class Counsel, counsel submit that as experienced  
4 attorneys with practices in the field of class action litigation, who practice regularly in federal courts  
5 across the country, including in this District and who are highly experienced in the field, that the  
6 hourly rates for experienced lawyers providing services may be as high as or exceed those requests  
7 herein.

8           33.     Class Counsel have extensive experience litigating and settling nationwide consumer  
9 automotive class actions. Messrs. Graifman and Sobran were recently Lead Counsel and Executive  
10 Committee member, respectively, in the *In re Volkswagen Timing Chain Prod. Liab. Litig.*, pending  
11 in the District of New Jersey and settled on a nationwide basis.<sup>10</sup> The settlement in that matter  
12 involved approximately 477,000 Volkswagen and Audi vehicles (about half the number involved  
13 herein). The settlement claims history there, to date, has resulted in approximately \$21.5 million in  
14 paid claims. That does not include the warranty extension program there which, like the program  
15 here, includes repairs for up to 10 years and 100,000 miles at no cost in most cases to settlement  
16 class members. The claims history in that case informs Class Counsel herein as to the valuation  
17 estimate on the reimbursement program made in this Joint Declaration and in the briefs submitted  
18 by Class Counsel herewith.

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<sup>9</sup> The hourly rates, the hours incurred, and the lodestars are set forth in each of the Firm Declarations submitted herewith by the various firms comprising Class Counsel: Kantrowitz Goldhamer & Graifman, P.C., Law Office of Thomas P. Sobran, and Stull, Stull & Brody. These are submitted herewith as Exhibits "2" through "4." (See Exhibits A annexed to each Firm Declaration for respective lodestar amounts). In addition, see Exhibit B to each Firm's Declaration. Each of the Firm Declarations annex their respective firm resumes as Exhibit C thereto.

<sup>10</sup> *In re Volkswagen Timing Chain Prod. Liab. Litig.*, 2:16-cv-02765-JLL (D.N.J.).

1           34. Class Counsel further opine that, being familiar with the hourly rates regularly  
2 charged by firms practicing in this field before the federal and state courts of California, the hourly  
3 rates sought by Plaintiffs' Counsel for the services rendered to Plaintiffs and Settlement Class in  
4 this Litigation are in line with the prevailing hourly rates currently being charged by class action  
5 attorneys with comparable skill, experience, and reputation for the legal services rendered in class  
6 action litigation in the federal courts of this District.<sup>11</sup> The cases referenced were cases in which the  
7 fees were to be paid from the settlement fund. Not so here. The fees sought herein will be paid by  
8 Defendant over and above the amount of payments to Class members and/or the value of the  
9 Extended Warranty work done for free for Settlement Class Members now and in the future (e.g.,  
10 the Extended Warranty program commenced as of the Notice Date, December 2<sup>nd</sup> and is currently  
11 in effect).

12           35. Class Counsel's work in the within case is only partially done. Substantial work in  
13 connection with the Settlement process has only just begun. The Settlement notices were  
14 disseminated as of two weeks ago. The work to be incurred will include interacting with Settlement  
15 Class Members seeking guidance and posing questions via phone and email; addressing class  
16 members who may want to request exclusion for themselves; addressing objections, if any, with  
17 respect to the Settlement; coordinating with defense counsel and the claims administrator as to issues  
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19 <sup>11</sup> By way of example, recently, this Court approved fee awards in two cases in which the billing  
20 partners' rates were in the range of **\$900-\$1,025 per hour** and associates were in the range of **\$500-**  
21 **\$600 per hour**. See, *Huntsman v. Southwest Airlines Co.*, 3:17-cv-03972-JD, Dkt. 57 and 49-1  
22 (N.D. Cal. Oct. 4, 2019) (granting award of attorney's fee application which sought up to **\$900 per**  
23 **hour** for partner billing rate); *In re Resistors Antitrust Litig.*, 3:15-cv-03820-JD (N.D. Cal. Nov. 21,  
24 2019) (granting award of attorney's fee application which sought up to **\$900-1025 per hour** for  
25 partners' billing rates). The order approving the application in *In re Resistors* was initially denied  
26 without prejudice to resubmit, but was publicly reported as approved on November 21, 2019,  
27 although a search of the docket indicates that no order has been entered yet. See, Law360, at  
28 "*Hagens Berman, Cohen Milstein Get \$10M Fees on 2<sup>nd</sup> Try*" at:  
<https://www.law360.com/articles/1222421/hagens-berman-cohen-milstein-get-10m-fees-on-2nd-try>. See also, *Kearney*, 2013 U.S. Dist. LEXIS 91636, \*24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys in consumer class action); *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.) (approving 2011 partner rates of \$825 to \$700 an hour, associate rates between \$355 and \$405 per hour).



1 concerning claims and payments as they arise; reviewing and addressing administrative issues that  
2 may be raised by Settlement Class Members in the event of a deficiency letter as to their claim or,  
3 in the event of a denial of claim; overseeing the final distributions and administration; addressing  
4 any questions or issues raised by Class Members in relation to the warranty extension; and  
5 addressing any issues in the final approval reply papers, which are due prior to the final fairness  
6 hearing and, of course, attending the final fairness hearing before the Court.<sup>12</sup>

7 36. The fee requested herein, based on the anticipated lodestar of Class Counsel will, it  
8 is respectfully submitted, result in a modest multiplier which, based upon the substantial benefits  
9 and the value of the Settlement, is justified. Alternatively, as set forth in Plaintiffs' Brief in Support  
10 of an Award of Attorneys' Fees and Reimbursement of Expenses, based on the valuation of the  
11 Settlement herein, which as set forth above, is approximately \$34,045,306, the fee sought is  
12 approximately 7.04% of the Settlement value herein, or well below the Ninth Circuit's benchmark  
13 of 25%.

14 37. During the course of the Litigation, Class Counsel incurred expenses of \$40,537.44.  
15 The itemization of these expenses for each firm are set forth in Exhibit C in each of their respective  
16 Declarations, annexed hereto as Exhibits "2" through "4" respectively. In this Litigation, Class  
17 Counsel were extremely efficient in limiting the expenses of the case. Because one of lead counsel  
18 is a factory-trained Volvo, BMW and Mercedes-Benz mechanic (and has testified as an expert  
19 witness in automotive cases), Class Counsel did not need to retain multiple experts to inspect various  
20 Class Vehicles and/or parts in developing their analysis and findings. The expenses incurred herein  
21 were reasonable and necessary for the prosecution of the Litigation, are the types of expenses that  
22 Plaintiffs' Counsel typically incur in complex litigation, and for which Plaintiffs' Counsel are  
23 typically reimbursed when the Litigation gives rise to a Settlement and final approval thereof. These

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25 <sup>12</sup> As a point of comparison, and to further demonstrate the necessity of investing substantial time  
26 in shepherding a settlement through, in the *In re Resistors Antitrust* matter, class counsel's time  
27 spent on the settlement aspects of the case was in the approximate amount of 900 hours as of October  
28 2019, between the Hagens Berman firm and the Cohen Milstein firm, according to submissions  
made. *See* Decl. Of Steve W. Berman in Support of Revised Motion for Attorneys' Fees, at Dkt.  
560-2 (Exh.'s 1 & 3) and Decl. of Emmy L. Levens in Support of Revised Motion for Attorney's  
Fees, at Dkt. 560-2 (Exh. 1 & 3).

1 expenses will be paid separately from, and in addition to, the benefits made available to the Class.  
 2 The breakdown of these expenses by firm are as follows:

<b>Firm</b>	<b>Expenses</b>
KGG	\$25,763.98
TPS	\$12,925.00
SS&B	\$1,848.46
<b>TOTAL:</b>	<b>\$40,537.44</b>

7 38. In addition, Plaintiffs' Counsel seek an incentive award of \$2,500 for each named  
 8 class representative herein, Gregory Coffeng, Mark Glaser and Jordan Wilson. The Defendant has  
 9 agreed to such award in the Settlement Agreement, subject to approval of the Court (Settlement  
 10 Agreement, ¶ VIII(C)(2)). Each Class Representative came forward to initiate actions on behalf of  
 11 Class Members in their respective jurisdictions and cooperated in every respect with Class Counsel.  
 12 They provided documentation to counsel as evidence for their claims and the claims of the putative  
 13 Class; reviewed and approved of the pleadings and motions and communicated with counsel about  
 14 settlement discussions. Plaintiffs played a key role in assuring there would be a recovery for the  
 15 Class. Attached hereto as Exhibits 5, 6, and 7 are the Declarations of Plaintiffs Coffeng, Glaser, and  
 16 Wilson, respectively.

17 39. In addition, Plaintiffs have placed their names in public as the parties litigated this  
 18 case. For example, as of this date, an internet search of the lead class Plaintiff Gregory Coffeng on  
 19 *Google* brings up this litigation as the fourth and fifth listing on the first landing page.

20 40. A proposed Final Approval Order will be submitted to the Court after the time for  
 21 objections or opt outs has expired and prior to the final fairness hearing. Counsel will, of course,  
 22 submit a draft earlier if the Court so desires, but respectfully believe it would be premature at this  
 23 time, and would be more meaningful if submitted at a later time as suggested.

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Under the penalties as provided by law, the undersigned declare that the statements as set forth in this declaration are true and correct to the best of their knowledge.

Dated: December 16, 2019

/ Gary S. Graifman  
Gary S. Graifman (admitted *pro hac vice*)  
Declarant

s/ Thomas P. Sobran  
Thomas P. Sobran (admitted *pro hac vice*)  
Declarant

Pursuant to Civil L.R. 5-1(i)(3), I, Patrice L. Bishop, attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: December 16, 2019 s/ Patrice L. Bishop