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17 ***Class Counsel for Plaintiffs and the Class***

18 UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 GREGORY COFFENG, MARK GLASER and
21 JORDAN WILSON, individually and on behalf
22 of all others similarly situated,
23 Plaintiffs,
24 v.
25 VOLKSWAGEN GROUP OF AMERICA,
INC.,
26 Defendant.

Case No. 17-cv-01825-JD

**DECLARATION OF GARY S.
GRAIFMAN IN SUPPORT OF POST-
DISTRIBUTION ACCOUNTING AND
REQUEST FOR RELEASE OF
REMAINING ATTORNEYS FEES**

JUDGE: Hon. James Donato

1 GARY S. GRAIFMAN, hereby declares and says that:

2 **I. INTRODUCTION**

3 1. I am a partner at the law firm of Kantrowitz, Goldhamer & Graifman, P.C. (“KGG”),
4 Co-Lead Class Counsel (“Class Counsel”) in the above-captioned action and counsel for Plaintiffs
5 together with my co-counsel, Thomas P. Sobran, Esq. and liaison counsel, Patrice Bishop of Stull,
6 Stull & Brody. On behalf of the Plaintiff Class, we submit the attached Post-Distribution
7 Accounting and respectfully request that the Court release the remaining 25% of the attorneys’ fees
8 awarded (in the amount of \$589,811.34) which were withheld by the Court pending the filing of this
9 Accounting. See Final Order and Judgment Certifying Settlement Class and Granting Final
10 Approval of the Settlement (ECF 106) filed June 10, 2020 (“Final Approval Order”).

11 **II. BACKGROUND AND SUMMARY OF POST-DISTRIBUTION ACCOUNTING**

12 2. On June 10, 2020, the Court granted the Final Approval Order. *Id.* In the Final
13 Approval Order, the Court approved the claims-made settlement, which included reimbursement
14 payments to class members whose water pumps failed within ten (10) years or 100,000 miles
15 (whichever occurred first) of the vehicle’s in-service date. The payments included 100%
16 reimbursement for paid out of pocket expenses incurred in repairing or replacing the primary engine
17 water pump if the water pump failed up to 8 years or 80,000 miles (whichever occurred first) of the
18 vehicle’s in-service date and 70% reimbursement if the water pump failed between 8 or 80,001 miles
19 (whichever occurred first) and 10 years or 100,000 miles (whichever occurred first) of the vehicle’s
20 in-service date. Class members were also reimbursed for paid out of pocket expenses incurred for
21 repairs to engine damage directly caused by failure of the primary engine water pump, within 10
22 years or 100,000 miles, whichever occurs first, subject to sliding scale percentages depending on
23 the age and mileage of the vehicle. Reimbursement for repair or replacement performed at an
24 independent service center is limited to \$950 for the water pump repair and \$4,000 if the engine
25 repair related to water pump failure was performed at an independent repair shop.

26 3. In addition, the Settlement included an extended warranty up to 10 years or 100,000
27 miles, whichever occurs first, of the vehicles in-service date, covering failure of the primary engine
28

1 water pump and engine damage that is directly caused by failure of the primary engine water pump,
2 subject to a sliding scale percentage. That extended warranty program still continues today.

3 4. Concurrent with the Final Approval Order, the Court awarded Class Counsel
4 attorneys' fees and expenses in the amount of \$2.4 million and ordered, of that total fee, which was
5 \$2,359,245.34 (exclusive of expenses), that "twenty five percent (25%), or \$589,811.34, shall be
6 paid within ten (10) business days after Class Counsel's submission to the Court, of the post-
7 distribution accounting required under the Northern District Procedural Guidance for Class Action
8 Settlements." Final Approval Order, at ¶ 29.

9 5. As detailed in the Declaration of Charles Marr, Esq. ("Marr Final Accounting Decl.")
10 (Exhibit 1 annexed hereto), Project Director at Epiq Class Action & Claims Solutions, Inc. ("Epiq"),
11 the Settlement Administrator, Epiq, has now completed the initial distribution of the settlement
12 funds. *See* Marr Final Accounting Decl., ¶3 and Exh. A attached thereto. The Northern District of
13 California's Procedural Guidance for Class Action Settlements directs that information about the
14 distribution process be provided in the Post Distribution Accounting in an easy-to-read chart.¹ The
15 chart with this information is Exhibit A to the Marr Final Accounting Declaration. In addition, Epiq
16 is posting this chart to the Settlement Website – <http://www.enginewaterpumpsettlement.com> – as
17 required by the Procedural Guidance for Class Action Settlements.²

18 6. In sum, Epiq has successfully made a significant distribution of settlement funds to
19 class members. Approximately 3,000 checks have been sent out to date. The average recovery per
20 class member is \$926.24. The largest amount paid to a class member was \$4,950, which would
21 have included reimbursement for engine damage. The total amount of payments to date is
22 \$2,939,873.02. In addition, the attorney process for claimants requesting review of their claims
23 reviewed is continuing and additional funds additional funds are being distributed as a result of that

24
25 ¹ See U.S. District Court, Northern District of California, Procedural Guidance for Class Action
26 Settlements, at Post-Distribution Accounting, ¶ 1.a, [https://www.cand.uscourts.gov/forms/
27 procedural-guidance-for-class-action-settlements](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements) (last visited 27 Nov. 20, 2020).

28 ² *See id.*, ¶ 2.

1 process. Class Counsel have spent hundreds of hours since final approval responding to questions
2 concerning the claims process and assisting claimants obtain reimbursements. These activities are
3 continuing.

4 7. The prospective extended warranty program continues to cover many Settlement
5 Class Vehicles at no cost to class members who, pursuant to the instructions in the Settlement Class
6 Notice, are to bring their vehicles into the Audi or VW dealership to obtain those extended warranty
7 repairs. Although the number of extended warranty repairs and the value of those repairs is beyond
8 the purview of the Claims Administrator's duties, based on prior experience, I believe this settlement
9 provision resulted in substantial additional value to class members who have had their vehicle
10 repairs performed at no cost.

11 **III. CONCLUSION**

12 8. For the foregoing reasons, Class Counsel, on behalf of the certified Settlement Class,
13 requests that the Court accept the Post-Distribution Accounting and further requests that the Court
14 authorize release of the remaining \$589,811.34 in attorneys' fees awarded by the Court, which was
15 withheld pending filing of the Post-Distribution Accounting.

16 I declare under penalty of perjury under the laws of the State of New York and the United
17 States of America that the above is true and correct.

18 Executed this 3rd day of March, 2021, at Chestnut Ridge, New York.

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21 _____
22 Gary S. Graifman
23 Declarant
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EXHIBIT 1

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5 Local Counsel for Plaintiffs
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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12
13 SAN FRANCISCO DIVISION

14 GREGORY COFFENG, MARK GLASER
15 and JORDAN WILSON, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 VOLKSWAGENWERK
AKTIENGESELLSCHAFT, AUDI
20 AKTIENGESELLSCHAFT AND
VOLKSWAGEN GROUP OF AMERICA,
21 INC.,

22 Defendants.
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Case No. 17-cv-01825-JD

**DECLARATION OF CHARLES MARR,
ESQ. RE: POST-DISTRIBUTION
ACCOUNTING**

JUDGE: Hon. James Donato
CRTRM: 11, 19th Floor

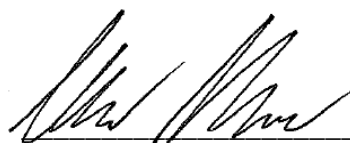
1 I, CHARLES MARR, ESQ., hereby declare and state as follows:

2 1. My name is Charles Marr, Esq. I have personal knowledge of the matters set forth
3 herein, and I believe them to be true and correct.
4

5 2. I am a Project Director employed by Epiq Class Action & Claims Solutions, Inc.
6 (“Epiq”). I am a licensed attorney in Oregon and Washington. Prior to joining Epiq, I was engaged
7 in private practice for five years. I received my Juris Doctorate from the Northwestern School of
8 Law of Lewis and Clark College and my Bachelor of Arts degree from the University of Nebraska–
9 Lincoln. I am a Certified Project Management Professional (PMP) through the Project Management
10 Institute.
11

12 3. This declaration is made to submit a Post-Distribution Accounting as outlined by
13 the U.S. District Court for the Northern District of California’s Procedural Guidance for Class
14 Action Settlement. The Post-Distribution Accounting is enclosed as Exhibit A and provides
15 various data points summarized in an easy-to-read chart and will be posted on the settlement
16 website the same day it is filed.
17

18 I declare under penalty of perjury that the foregoing is true and correct. Executed on March
19 3, 2021 in Portland, Oregon.

20 

21 _____
22 Charles Marr, Esq.
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EXHIBIT A

Post-Distribution Accounting		
<i>Coffeng v. Volkswagen Group of America, Inc., 17-cv-01825</i>		
<i>as of 2/26/21</i>		
Distribution Date	2/10/2021	
Total Settlement Fund	N/A - Claims Made Total Amount Distributed as of 2/26/21: \$2,939,873.02*	
Total Number of Class Members	1,767,440	
Class Members with Delivered Notice	1,767,440 Class Members - 6,387 Undeliverable Mailings - 1,343 Undeliverable Emails = 1,759,710 Class Members w/ Delivered Notice	
Notice Method	Claim Package (Notice + Claim Form) with Separate Claim Packages for Audi & VW owners Email	
Number and Percentage of Claim Forms Received	#: 27,604	%: 1.56%
Number and Percentage of Opt Outs	#: 302	%: .02%
Number and Percentage of Objections	#: 2	%: 0%
Payment Method	Check Payments	
Multiplier (if applicable)	N/A	
Average Recovery Per Class Member	\$926.24	
Median Recovery Per Class Member	\$950	
Largest Amount Paid to Class Member	\$4,950	
Smallest Amount Paid to Class Member	\$22.80	
Number of Cashed Checks	2,655	
Value of Cashed Checks	\$2,468,516.77	
Number of Uncashed Checks	519	
Value of Uncashed Checks	\$471,356.25	
Administrative Costs	\$3,889,011.48**	
Attorneys' Fees and Costs	\$2,400,000	
Attorneys' Fees as Percentage of Settlement Fund	N/A	
Non-Monetary Relief (if applicable)	Extension of the New Vehicle Limited Warranty on Settlement Class Vehicles if a Class Vehicle sustains a failure of the primary engine water pump within 10 years or 100,000 miles, whichever occurs first, of the vehicle's in-service date subject to specific terms and conditions. The warranty extension also covers repairs for engine damage that is directly caused by a failure of the water pump, within the above period, subject to a sliding scale of coverage percentages depending on the age and mileage of the vehicles.	
Non-Monetary Relief Redemption Rate (if applicable)	#: N/A	%: N/A
Non-Monetary Relief Aggregate Value (if applicable)	N/A	
Amount Distributed to Each Cy Pres Recipient	N/A	

* The funds distributed will increase due to any claim approved as a result of the attorney review process.

** Reflects Administrative Costs invoiced to date. Administrative activities are ongoing and the amount will increase in the future.