

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JULIE KIMBALL, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendant.

Civil Action No. 2:22-cv-04163-JMV-MAH

**NOTICE OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

PLEASE TAKE NOTICE THAT on April 7th, 2025 at 9:00 a.m. or as soon thereafter as counsel may be heard, Plaintiff Julie Kimball (the “Plaintiff” or “Named Plaintiff” or “Class Representative”) will move before the Honorable Michael Hammer, U.S.M.J., of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102, for an Order:

- 1) granting preliminary approval of the proposed class action Settlement;
- 2) preliminarily certifying, for settlement purposes only, and pursuant to the terms of the Settlement Agreement, the proposed Settlement Class for the purposes of providing notice to the members of the proposed Settlement Class; approving the form and content of, and directing the distribution of the proposed Class Notice and Claim Form, annexed to the Settlement Agreement as Exhibits 1, 2 and 3;
- 3) authorizing and directing the Parties to retain JND Legal Administration as Claim Administrator;

- 4) appointing Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C., as Conditional Class Counsel; and,
- 5) scheduling a date for the final approval hearing not earlier than one hundred and eighty (180) days after preliminary approval is granted.

In support thereof, Plaintiff has contemporaneously filed a supporting memorandum and Declaration of Gary S. Graifman with accompanying exhibits. Defendant Volkswagen Group of America, Inc. does not oppose Plaintiff's requested relief set out in the memorandum.

For the reasons set forth in the supporting memorandum, Plaintiff respectfully requests that the Court grant their unopposed motion and enter the accompanying [Proposed] Order.

Dated: February 28th, 2025

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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INTRODUCTION

Plaintiff,¹ on behalf of herself and all others similarly situated, by and through her counsel, respectfully moves the Court for preliminary approval of the proposed Class Settlement (“Settlement”) set forth in the Settlement Agreement (“Agreement”), attached as Exhibit A to the Declaration of Gary S. Graifman in support of this motion (“Graifman Decl.”).

Plaintiff, with the consent of Defendant, requests that the Court enter an Order:

- 1) granting preliminary approval of the proposed Settlement;
- 2) preliminarily certifying, for settlement purposes only and pursuant to the terms of the Agreement, the proposed Settlement Class² for the purpose of providing notice to the members of the proposed Settlement Class;
- 3) approving the Parties’ Notice Plan, including the form and content of the proposed Claim Form and Class Notices, annexed to the Agreement as Exhibits 1, 2 and 3;
- 4) directing the distribution of the Class Notice pursuant to the proposed Notice Plan;
- 5) authorizing and directing the Parties to retain JND Legal Administration as the Settlement Claims Administrator;
- 6) preliminarily appointing Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C., as Settlement Class Counsel;
- 7) preliminarily appointing named Plaintiff as Settlement Class Representative; and
- 8) scheduling relevant dates including a date for the Final Fairness Hearing not earlier than one hundred sixty (160) days after Preliminary Approval is granted.

¹ All capitalized terms used throughout this memorandum shall have the meanings ascribed to them in the Agreement.

² As set forth in Exhibit A, the Settlement Class is defined as “All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in § I.X. of this Agreement, in the United States of America or Puerto Rico.” The Agreement defines “Settlement Class Vehicles” to mean “certain specific Volkswagen and Audi brand vehicles, distributed by VWGoA in the United States and Puerto Rico, which are equipped with Generation 1, Generation 2 or Generation 3 EA888 engines (as delineated in X(1)-(3) [of the Agreement], and specifically identified by Vehicle Identification Number (“VIN”) on VIN lists attached as Exhibits 4A-C to this Agreement.”

This litigation has been vigorously contested for over two years. Proposed Settlement Class Counsel³ have significant experience litigating numerous consumer class actions. After extensive investigation, in-depth analysis of the factual and legal issues presented, consultation with experts, and arm's-length negotiations with Defendant, Plaintiff is pleased to present this nationwide Class Settlement between Plaintiff and Defendant Volkswagen Group of America, Inc. ("VWGoA"), which will provide substantial benefits to the Settlement Class comprised of current and former owners and lessees of certain enumerated Volkswagen and Audi Settlement Class Vehicles.

As set forth in the Settlement Agreement, the Settlement will provide reimbursement of up to fifty (50%) percent of the past paid out-of-pocket repair or replacement costs for Settlement Class Members whose Settlement Class Vehicles had certain covered turbocharger failures or malfunctions prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) of the vehicles' In-Service Date. The Settlement also provides a warranty extension to 8.5 years or 85,000 miles (whichever occurs first) from the original In-Service Date for Generation 3 Settlement Class Vehicles to cover 50% of the cost to repair or replace a turbocharger that fails or malfunctions due to fork head or link pin corrosion. The Settlement is clearly a fair, reasonable, and adequate resolution of the Action, especially when considering the risks and delays of continued litigation, and satisfies all of the prerequisites for preliminary approval. For these and other reasons articulated below, Plaintiff respectfully requests that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order filed contemporaneously herewith.

I. FACTUAL BACKGROUND

³ Proposed Lead Settlement Class Counsel shall refer to Gary Graifman and Thomas Sobran, and their respective firms Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran P.C. (collectively, "Settlement Class Counsel").

A. THE ALLEGED TURBOCHARGER DEFECT

Plaintiff alleges that Defendant knew or should have known that the turbochargers installed in the Settlement Class Vehicles were defective and may prematurely fail or malfunction. *See, e.g.,* Third Amended Complaint (“TAC”) at ¶¶ 2, 8, 11-19, 53-65. Plaintiff claims that the allegedly defective turbochargers created the potential for substantial expense for Settlement Class Members, with necessary repairs sometimes costing several thousand dollars. *Id.* at ¶¶ 2, 14-15, n. 2. Defendant maintains that the Settlement Class Vehicles are not defective, that the turbochargers and their components function safely and properly, and that they were properly designed, tested, manufactured, distributed, marketed, advertised, warranted and sold. Defendant further maintains that no applicable warranties were breached nor applicable statutes or common law, legal duties, laws, rules and/or regulations were violated.

B. THE ACTION

Plaintiff commenced this putative class action on June 21, 2022 asserting various individual and putative class claims on behalf of herself and a nationwide class and state subclass. *See* ECF No. 1. On September 15, 2022, Defendant filed a Motion to Dismiss the Complaint (ECF No. 20), which, after full briefing, was granted by the Court on March 2, 2023 with leave for Plaintiff to replead the claims in an amended complaint. On March 31, 2023, Plaintiff filed an [Amended] Class Action Complaint alleging substantially similar facts and individual and class claims sounding in fraud, breach of express warranties, negligent misrepresentation, and various violations state consumer protection statutes. *See* ECF No. 30. On May 15, 2023, Defendant filed a Motion to Dismiss the Amended Class Action Complaint (ECF No. 33), which, on August 28, 2023, the Court granted in part and denied in part, with leave to replead (ECF No. 45). On October 6, 2023, Plaintiff filed a Second Amended Complaint asserting essentially the same causes of

action (ECF No. 51). On December 11, 2023, Defendant filed a Motion to Dismiss the Second Amended Class Action Complaint (ECF No. 60), which the Court granted in part and denied in part on September 3, 2024, again with leave to replead (ECF No. 78). On November 14, 2024, Plaintiff filed her Third Amended Class Action Complaint (ECF No. 85), which is now the operative pleading.

C. INVESTIGATION OF CLAIMS

Prior to filing the initial complaint, Plaintiff's counsel conducted a thorough investigation into the instant claims and allegations. Likewise, during the course of this Action, the Parties exchanged Initial Disclosures and other information that enabled them to properly assess the strengths and weaknesses of their respective positions, claims and defenses, and to negotiate an excellent class settlement that is fair, reasonable and adequate and fully compliant with Rule 23 while balancing all of those factors, as discussed more fully below.

D. SETTLEMENT DISCUSSIONS

This Settlement is the product of vigorous arm's-length negotiations over a substantial period of time. Counsel for the Parties held multiple negotiation sessions, which involved numerous communications via telephone, email and videoconference. Over the course of the ensuing months, vigorous and extensive arm's-length negotiations of the disputed claims ensued, with counsel on both sides having adequate knowledge of the facts, issues, and the strengths or weaknesses of their respective positions. Following further vigorous arm's-length negotiations, the Parties ultimately came to agreement upon the specific terms and conditions of the formal Settlement Agreement, which was executed on January 6, 2025.

To date, there has been no negotiation or discussion of attorneys' fees and expenses or a class representative service award beyond the scheduling of a mediation to try to negotiate those

issues. If agreement on those issues cannot be reached, the Parties will discuss, agree upon, and submit to this Court a proposed briefing schedule relating to Class Counsel's motion for reasonable attorney fees/expenses and a class representative service award.

II. SUMMARY OF THE SETTLEMENT

A. THE PROPOSED SETTLEMENT CLASS

The Settlement Class consists of current and former U.S. owners and lessees of Settlement Class Vehicles, defined in §I(X) of the Agreement as: Certain specific Volkswagen and Audi brand vehicles, distributed by VWGoA in the United States and Puerto Rico, which are equipped with Generation 1, Generation 2, or Generation 3 EA888 engines and specifically identified by Vehicle Identification Number ("VIN") on VIN lists that are attached to the Settlement Agreement:

- (i) Generation 1 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 1 EA888 engines: certain model year 2008-2014 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2008-2009 Audi A3 11 vehicles, and 2015-2018 Audi Q3 vehicles, which are specifically identified by Vehicle Identification Number ("VIN") on a VIN list that is attached as Exhibit 4A to the Agreement.
- (ii) Generation 2 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 2 EA888 engines: 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 Audi TT vehicles, which are specifically

identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 4B to the Agreement.

- (iii) Generation 3 Settlement Class Vehicles means certain of the following Settlement Class Vehicles equipped with Generation 3 EA888 engines: 2015-2018 VW Golf vehicles, 2015-2021 VW GTI vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2024 VW Jetta GLI vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2015-2020 Audi A3, 2019-2024 Audi Q3 vehicles, and 2016-2023 Audi TT vehicles, which are specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 4C to the Agreement.⁴

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 the Agreement, settled with and released Defendant or any Released

⁴ For confidentiality, the VIN lists for Generation 1, 2, and 3 Settlement Class Vehicles have not been filed on the public docket, but will be provided to the Court for in camera review upon request.

Parties from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

B. REIMBURSEMENT OF CERTAIN PAST PAID REPAIR EXPENSES

The Settlement provides that Settlement Class Members may be entitled to reimbursement for certain past paid and unreimbursed out-of-pocket expenses for enumerated covered repairs as follows:

1. 50% reimbursement of the paid out-of-pocket expenses for one (1) repair or replacement (parts and labor) of a failed or malfunctioned turbocharger that was performed prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, if (i) for a Generation 1 or Generation 2 Settlement Class Vehicle, the past paid turbocharger repair/replacement was due to the wastegate having no longer functioned properly because of wear at the link plate and pin, and (ii) for a Generation 3 Settlement Class Vehicle, the past paid turbocharger repair/replacement was due to the wastegate having failed because of fork head and/or link pin corrosion.⁵ However, if the past paid covered repair was not performed by an authorized Volkswagen dealer (for Volkswagen vehicles) or Audi dealer (for Audi vehicles), then the invoice amount from which the 50% reimbursement is applied shall not exceed \$3,850; or
2. 40% reimbursement for the one (1) covered turbocharger repair or replacement detailed above, performed prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, if the Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair/replacement was one of the enumerated repairs in (i) [Generation 1 or Generation 2 vehicles] or (ii) [Generation 3 vehicles] above, provided that, in addition to the Proof of Repair Expense, the Settlement Class Member submits Proof of Adherence to the vehicle's oil maintenance requirements within a 10% variance (leeway) of each scheduled time and mileage interval. In addition, as stated above, if the past paid covered repair was not performed by an authorized Volkswagen or Audi dealer, then the invoice amount from which the 40% reimbursement is applied shall not exceed \$3,850.

In order to obtain the monetary benefits, a Settlement Class Member need only submit a simple Claim Form (Exhibit 1 to the Agreement) together with basic supporting documents such

⁵ This reflects the differences among the involved Generations of the Settlement Class Vehicles.

as the invoice for the covered repair, proof of payment, and, if applicable, Proof of Adherence to the vehicle's oil requirements within the 10% variance.

C. WARRANTY EXTENSION

The Agreement also provides another valuable benefit to eligible Settlement Class Members by extending the New Vehicle Limited Warranty (NVLW) applicable to the Generation 3 Settlement Class Vehicles to cover 50% of the cost of a turbocharger repair or replacement, by an authorized Audi dealer (for Audi vehicles) or Volkswagen dealer (for Volkswagen vehicles), for a period of 8.5 years or eighty-five thousand (85,000) miles (whichever occurs first) from the vehicle's In-Service Date, if the cause of the turbocharger failure or malfunction is that the wastegate failed due to fork head and/or link pin corrosion. In addition, for Generation 3 Settlement Class Vehicles that are more than 8.5 years old as of the Notice Date, the Warranty Extension will be up to 60 days after the Notice Date or 85,000 miles from the vehicle's In-Service Date (whichever occurs first).

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

D. CLASS NOTICE PLAN

The Agreement provides that on a date not more than one hundred (100) days after the entry of the Preliminary Approval Order, the Claims Administrator will mail the individual postcard Class Notice to Settlement Class Members, substantially in the form attached to the Agreement as Exhibit 2. A longer and detailed "long-form" Class Notice, substantially in the form attached to the Agreement as Exhibit 3, will be made available on the Settlement Website as

discussed below. The postcard Class Notice will be sent by first-class mail to the current or last known address of all reasonably identifiable Settlement Class Members. Exh. A, §IV(B)(1). Settlement Class Members will be located based on the Settlement Class Vehicles' VIN (vehicle identification numbers) and using the services of S & P Global or an equivalent company. These established services obtain vehicle ownership histories through state title and registration records, thereby identifying the names and addresses of record of the Settlement Class Members. The Settlement Claim Administrator will then compare the obtained addresses to information in the National Change of Address database to confirm that addresses for mailing are the most current addresses possible. In addition, after the postcard Class Notice is mailed, for any individual mailed Notice that is returned as undeliverable, the Claim Administrator will re-mail to any provided forwarding address, and for any undeliverable Class Notice where no forwarding address is provided, the Claim Administrator will perform an advanced address search (*e.g.*, a skip trace) and re-mail any undeliverable postcard Class Notice to any new and current address located. *Id.*, at §IV(B)(2)-(5).

Pursuant to the Settlement, the Claims Administrator shall also implement a Settlement website containing: (1) instructions on how to submit a Claim for reimbursement by online submission or by mail; (2) instructions on how to contact the Claims Administrator by email or toll-free telephone, defense Counsel, and/or Settlement Class Counsel for assistance; (3) a "VIN lookup" tool allowing individuals to easily input their vehicle's VIN and determine whether it is a Settlement Class Vehicle; (4) a copy of the Claim Form, Class Notices, including the long-form class notice, the Settlement Agreement, the Preliminary Approval Order, the motions for final approval and for Class Counsel fees and expenses and the Class Representative service award, and other pertinent orders and documents to be agreed upon by counsel for the Parties; (5) the

deadlines and requirements for any objections, requests for exclusion, and submission of reimbursement Claims; (6) the date, time, and location of the final fairness hearing; (7) answers to Frequently Asked Questions; and (8) any other relevant information agreed upon by counsel for the Parties. *Id.* at §IV(B)(6).

Additionally, VWGoA will advise its authorized Volkswagen and Audi dealers of the Warranty Extension so that they can effectuate the Warranty Extension pursuant to its terms. *Id.* at §IV(B)(8).

E. CLAIMS PROCESS

The Warranty Extension does not require a Claim Form. Those Settlement Class Members who sustain a turbocharger failure or malfunction that is covered under the Warranty Extension need only take the Settlement Class Vehicle to an authorized Volkswagen or Audi dealer in order to receive the warranty repair.

For reimbursement of certain past paid covered repairs, there is a very easy and consumer-friendly claims process in which, prior to the claims deadline, Settlement Class Members may submit to the Claim Administrator a fully completed, signed and dated Claim Form, together with the required supporting documentation spelled out in the Settlement, either by U.S. mail or online via the settlement website. JND Legal Administration, an experienced class action claim administrator, will administer the Settlement and will review all claims. Counsel for the Parties have the right to monitor the claims process to ensure that it is functioning as intended. Further, any Settlement Class Member that submits a claim that is deficient in any respect will receive notice of the deficiency(ies) and an opportunity to cure it/them within 30 days of the date of that notice. While the Claim Administrator's claims determinations are binding and not appealable, the Settlement provides yet another benefit in that any Settlement Class Member whose claim was

denied in whole or in part may, within fourteen (14) days, request an “attorney review” of the denial, whereupon counsel will meet and confer and determine whether said denial, based upon the Claim Form and documentation previously submitted, whether the denial was correct, or whether the denial should be modified or reversed. Exh. A at §III(B)(3) and (4).

For those Settlement Class Members whose claims are approved, the Claims Administrator shall mail to him/her a reimbursement check to the address on the Claim Form within one-hundred and fifty (150) days of the date of the receipt of a valid and complete Claim for reimbursement, or within one-hundred and fifty (150) days of the Effective Date of the Settlement, whichever is later. All costs of the Class Notice and the Claims process will be borne by Defendant and will not reduce any benefits to which a Settlement Class Member may be entitled under the Settlement. Exh. A at §III(A).

F. RELEASE OF CLAIMS AGAINST DEFENDANTS

The Settlement contains a reasonable release of claims tailored to the litigation. In exchange for the Settlement benefits, Settlement Class Members who do not submit timely and valid opt-outs will release all claims which arise from, involve or relate to the Settlement Class Vehicles’ turbochargers (and any of their component and related parts including wastegate linkages and actuators), and any claims that were or could have been asserted in the Action relating to the class vehicles’ turbochargers.

G. OPT-OUT RIGHTS

The Settlement provides reasonable opt-out rights in which any Settlement Class Member may mail a request to be excluded from the Settlement Class within thirty (30) days after the Notice Date. The Request for Exclusion requires basic information such as the requester’s name, address and telephone number, the model/model year and VIN of the Settlement Class Vehicle, and a

statement that he/she/it is a current or former owner or lessee of said Settlement Class Vehicle (*i.e.*, a Settlement Class Member) and desires to be excluded from the Settlement Class (Agreement at §V(B)). And like most other class settlements, Settlement Class Members who do not timely and properly opt out remain in the Settlement Class and are bound by all subsequent proceedings, orders, and judgments.

H. CLASS COUNSEL FEES AND EXPENSES AND NAMED PLAINTIFF SERVICE AWARDS

As stated above, to date there has been no discussion regarding reasonable Class Counsel fees and expenses and a Class Representative service award. Moreover, any such fees/expenses and service award shall not affect or, in any way, reduce any benefits to which a Settlement Class Member may be entitled under the Settlement. The Parties will attempt to mediate these issues prior to Plaintiffs' filing of a fee/expense/service award application, and if an agreement cannot be reached, the Parties will meet and confer and present to the Court for approval an agreed briefing schedule regarding same.

I. OBJECTIONS AND SETTLEMENT APPROVAL

Any potential Settlement Class Member who does not opt out of the Settlement may object to the Settlement and/or the request for Class Counsel fees/expenses and/or the Class Representative service award. To object, the Settlement Class Member must file a written objection with the Court within 30 days of the Notice Date, or mail the objection, postmarked within 30 days of the Notice Date, the Court and counsel for the Parties. Any objection must demonstrate that the objector is a Settlement Class Member, and include the basis for the objection, any documents or information in support of the objection, and state whether the Settlement Class Member intends to appear at the Final Fairness Hearing after filing a timely Notice of Intention to Appear.

III. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

“Review of a proposed class action settlement is a two-step process: (1) preliminary approval, and (2) a subsequent fairness hearing.” *Smith v. Merck & Co.*, 2019 WL 3281609, at *4 (D.N.J. July 19, 2019). “[P]reliminary approval is not binding and is granted unless the proposed settlement is obviously deficient.” *Kress v. Fulton Bank, N.A.*, 2021 WL 9031639, at *9 (D.N.J. Sept. 17, 2021), *R. & R. adopted*, 2022 WL 2357296 (D.N.J. June 30, 2022). Moreover, there is an “overriding public interest in settling class action litigation.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *see also Ortho-Clinical Diagnostics, Inc. v. Fulcrum Clinical Lab’ys, Inc.*, 2023 WL 3983877, at *3 (D.N.J. June 13, 2023) (“[T]here is a strong public policy in favor of settlements. . . . Courts, therefore, will ‘strain to give effect to the terms of a settlement whenever possible.’”). Settlement is particularly favored “in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *Warfarin*, 391 F.3d at 535 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)); *see also In re Google Inc. Cookie Placement Consumer Priv. Litig.*, 934 F.3d 316, 326 (3d Cir. 2019) (for motions seeking approval of “settlement only” class actions, “we favor the parties reaching an amicable agreement” and should not “intrude overly on the parties’ hard-fought bargain[,]” but also, “[a]t the same time, [a] district court has an obligation as a fiduciary for absent class members to examine the proposed settlement with care”).

Amendments to Rule 23 that took effect on December 1, 2018 require that the court must be satisfied that it “will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B); *see also Maverick Neutral Levered Fund, Ltd. v. Valeant Pharms. Int’l, Inc.*, 2021 WL 7872087, at *5

(D.N.J. Jan. 26, 2021) (“Thus, in connection with an order preliminarily granting approval of a class action settlement, the Court is not certifying the class at the preliminary approval stage, but rather, is making a preliminary determination that it will likely be able to certify the class at the final approval stage.”) (citing William B. Rubenstein, *4 Newberg on Class Actions* §13:17 (5th Ed.)). If these requirements are satisfied, then notice of the proposed settlement will be disseminated to the class. Fed. R. Civ. P. 23(e)(1). The court considers two sets of factors in assessing the fairness of a settlement agreement: (i) whether it “will likely be able to . . . approve the proposal under Rule 23(e)(2)” and (ii) whether it “will likely be able to . . . certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

This proposed Settlement easily satisfies the standard for preliminary approval. It is the product of extensive and adversarial arm’s-length negotiations between experienced class action counsel on both sides. As shown above, the Settlement provides a robust reimbursement program for certain enumerated past paid (and unreimbursed) expenses or a covered repair, and a substantial Warranty Extension for Generation 3 Settlement Class Vehicles. These prompt and substantial benefits avoid the significant risks and delays of litigating this matter to conclusion, would not be available absent this Settlement, and thus, Plaintiff submits that the fairness, reasonableness, and adequacy of the Settlement is apparent on its face. Moreover, Settlement Class Counsel conducted extensive investigation, including consultation with experts. And, avoidance of the potential risks including no class certification, no-recovery or substantially reduced recovery, and of the uncertainties and substantial delays of further litigation, allows Settlement Class Members to reap these substantial Settlement benefits promptly. For these reasons, Plaintiff requests that the Court grant preliminary approval.

A. RULE 23(E)(2) FACTORS

Each of the Rule 23(e)(2) factors is satisfied:

1. Rule 23(e)(2)(A) – Whether Plaintiff and Plaintiff’s Counsel “have adequately represented the class”

Plaintiff and Settlement Class Counsel have more than adequately represented the Settlement Class. Prior to reaching settlement, Settlement Class Counsel reviewed substantial documents, inspected and analyzed relevant engines and engine components,⁶ worked with automotive engineering experts, and analyzed the pertinent factual, legal and damages issues. Settlement Class Counsel has spent significant time and resources over three years representing the class, including extensive motion practice. Settlement Class Counsel also have significant experience as class counsel in numerous automotive class actions. *See* Graifman Decl. In retaining Settlement Class Counsel, Plaintiff has “employed counsel who are qualified and experienced in complex class litigation and who have resources, zeal, and a successful record in class cases.” *In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, at *9 (D.N.J. Aug. 2, 2021). Settlement Class Counsel’s approval of the Settlement should weigh in favor of the Settlement’s fairness. *Varacallo*, 226 F.R.D. at 240 (“[T]he Court puts credence in the fact that Class Counsel consider the Proposed Settlement to be fair, reasonable and adequate.”).

Further, as evidenced by the typicality and commonality considerations discussed below, the interests of the named Plaintiff representative and the Settlement Class Members are aligned and there are no apparent conflicts of interest. Settlement Class Counsel and the named plaintiff have adequately represented the interests of the class.

2. Rule 23(e)(2)(B) – Whether the settlement “was negotiated at arm’s-length”

⁶ Co-Class Counsel Thomas Sobran, in addition to being an attorney with substantial class action experience, is a Volvo, BMW and Mercedes factory-trained mechanic. *See* Sobran Resumé, Exh. D to Graifman Decl.

This excellent Settlement was the result of extensive arm's-length negotiations conducted by sophisticated counsel who had sufficient information and expertise to understand the relevant factual, technical and legal issues, the strengths and weaknesses of their respective positions, and to craft a Settlement which is fair, reasonable and adequate in every sense. At all times the negotiations were vigorous and adversarial; attorney fees/expenses were never discussed, and there was no collusion whatsoever.

3. Rule 23(e)(2)(C)(i) – Whether the relief “is adequate, taking into account the costs, risks, and delay of trial and appeal”

This factor “balances the ‘relief that the settlement is expected to provide to class members’ against ‘the cost and risk involved in pursuing a litigated outcome.’” *Hall v. Accolade, Inc.*, 2019 WL 3996621, at *4 (E.D. Pa. Aug. 23, 2019) (quoting Fed. R. Civ. P. 23 advisory comm.’s notes (Dec. 1, 2018)). Such analysis “cannot be done with arithmetic accuracy, but it can provide a benchmark for comparison with the settlement figure.” *Id.* As the Third Circuit has observed, “[t]he role of a district court is not to determine whether the settlement is the fairest possible resolution – a task particularly ill-advised given that the likelihood of success at trial . . . can only be estimated imperfectly.” *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 173-74.

Here, the adequacy of benefits provided by this Settlement is not only apparent but compares favorably to other approved automotive class action settlements in this district, by reimbursing half of the costs of a documented covered turbocharger failure, within the agreed-upon time/mileage parameters, and further extending the warranty of certain Settlement Class Vehicles. Importantly, the prospective Warranty Extension will be applied without Settlement Class Members having to fill out any claim form. These factors weigh in favor of granting preliminary approval of the proposed Settlement here. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *2 (D.N.J. Mar. 22, 2013) (granting final approval of settlement

for transmission repair or replacements with 50% reimbursement for new and certified pre-owned vehicles with failures prior to 100,000, and 25% reimbursement for used vehicles that were not certified pre-owned); *Careccio v. BMW of N. Am., LLC*, 2010 WL 1752347, at *2-3 (D.N.J. Apr. 29, 2010) (granting final approval of settlement for defective tires with a sliding scale of reimbursement up to 50% for cost of replacement tires).

Absent settlement, there would be significant costs and delay, including further motions to dismiss, a highly contested motion for class certification, motions for summary judgment, other pretrial proceedings, and trial, with the results at every stage substantially uncertain. Although Plaintiff and Class Counsel are confident in the merits of their case, there are nevertheless substantial risks of litigation including failure to obtain class certification or maintain it through trial, summary judgement, and non-recovery or much more limited recovery, as well as the substantial costs and delays of further litigation. Conversely, the Settlement proposed here affords substantial benefits now, without the costs, delays, risks and uncertainties. *See, e.g., Myers v. Jani-King of Phila., Inc.*, 2019 WL 4034736, at *9 (E.D. Pa. Aug. 26, 2019) (approving settlement amount representing “between 20% and 39% of the maximum damages’ calculations”).

4. Rule 23(e)(2)(C)(ii) – Effectiveness of the “proposed method of distributing relief” and “the method of processing class-member claims”

This factor is clearly satisfied where, as here, the Agreement provides for a generous warranty extension and a very reasonable and consumer friendly claims process, administered by an experienced Claims Administrator, which merely requires the timely submission of a completed claim with basic supporting documentation which is standard for automotive class action settlements.

5. Rule 23(e)(2)(C)(iii) – The terms and timing of any proposed attorney’s fee award

This factor recognizes that “[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement.” Fed. R. Civ. P. 23, advisory comm.’s notes to 2018 amendment. Here, there have been no discussions about reasonable attorneys’ fees, expenses, or a class representative service award, and any such awards will not affect or reduce the benefits to which any Settlement Class Member may be eligible. At the final approval stage, Plaintiff will fully brief the fairness and reasonableness of the requested attorneys’ fees under the Third Circuit’s *Gunter* factors. *See, e.g., Tumpa v. IOC-PA, LLC*, 2021 WL 62144, *10-12 (W.D. Pa. Jan. 7, 2021). However, such detailed analysis is not necessary at the preliminary approval stage. *See, e.g., Altnor v. Preferred Freezer Servs., Inc.*, 2016 WL 9776078, at *1 n.1 (E.D. Pa. Feb. 9, 2016) (attorney’s fees “will be addressed at the final fairness hearing”); *Kopchak v. United Res. Sys.*, 2016 WL 4138633, at *5 n.8 (E.D. Pa. Aug. 4, 2016) (“I will defer approval of attorneys’ fees until after the final fairness hearing.”).

6. Rule 23(e)(2)(C)(iv) – Any agreement required to be identified under Rule 23(e)(3)

Rule 23(e)(3) requires settling parties to “file a statement identifying any agreement made in connection with the proposal.” Here, the accompanying Settlement Agreement is the *only* agreement connected to the subject matter of this lawsuit or settlement.

7. Rule 23(e)(2)(D) – Whether the settlement treats class members equitably relative to each other

This factor seeks to prevent the “inequitable treatment of some class members *vis-a-vis* others.” Fed. R. Civ. P. 23, advisory comm.’s notes to 2018 amendment. Here, this factor is satisfied because, as discussed above, each Settlement Class Member can be eligible for reimbursement of certain past paid out-of-pocket expenses for covered repairs if they meet the settlement criteria for reimbursement, and all Settlement Class Members with Generation 3

engines will receive the Warranty Extension repair if, within the enumerated period, their vehicles' turbochargers malfunction due to fork head or link pin corrosion. And although the Warranty Extension does not apply to the older vehicles that have Generation 1 and Generation 2 engines, Settlement Class Members with those vehicles can still seek reimbursement if they had and paid for an enumerated covered turbocharger repair or replacement prior to the Notice Date and within the same 8.5 year or 85,000 mile (whichever occurred first) period that is covered by the Warranty Extension for the Generation 3 vehicles. Accordingly, this factor supports approving the Settlement. *See Hays v. Eaton Grp. Att'ys, LLC*, 2019 WL 427331, at *13 (M.D. La. Feb. 4, 2019) (the equitable-treatment factor "easily met as each class member, save the Class representative, will receive the same amount").

The named Plaintiff will seek a reasonable Service Award, which has not yet been negotiated, and any ultimate Service Award is subject to the Court's approval. Because of Ms. Kimball's efforts and willingness to become involved in this action, hundreds of thousands of passive class members will potentially receive significant benefits from the Settlement. "[S]ubstantial authority exists for the payment of an incentive award to the named plaintiff."⁷ *Smith*, 2007 WL 4191749, at *3 (citing *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 257 (D.N.J. 2005)). In addition, the proposed Service Award is in line with awards that have been approved in this Circuit. *See, e.g., Weissman v. Philip C. Gutworth, P.A.*, 2015 WL 333465, at *4 (D.N.J. Jan. 23, 2015) (\$2,500 service award); *Henderson*, 2013 WL 1192479, at *19 (\$6,000 and \$5,000 service awards); *Alin*, 2012 WL 8751045, at *16-17 (\$2,500 and \$12,500 service awards); *Moore v. Comcast Corp.*, 2011 WL 238821, at *6 (E.D. Pa. Jan. 24, 2011) (\$10,000 service award);

⁷ Courts generally defer assessment of service awards until the final approval stage. *Hardy v. Embark Tech., Inc.*, 2023 WL 6276728, at *8 (N.D. Cal. Sept. 26, 2023); *Hale v. Manna Pro Prods., LLC*, 2020 WL 3642490, at *12 (E.D. Cal. July 6, 2020).

Careccio, 2010 WL 1752347, at *7 (\$5,000 and \$3,500 service awards); *In re Am. Inv'rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (incentive awards up to \$10,500).

In sum, as discussed above, the Court “will likely be able to ... approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(1)(B)(i).

B. The *Girsh* Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval, courts sometimes consider the final approval factors to mitigate any potential issues in the future. *Udeen v. Subaru of Am., Inc.*, 2019 WL 4894568, at *3 (D.N.J. Oct. 4, 2019). The Third Circuit directs district courts to analyze the following nine factors at the final approval stage:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157. All of the *Girsh* factors that the Court can analyze at this stage support preliminary approval.⁸

As to the first factor, the complexity, expense, and likely duration support preliminary approval because, without the Settlement, the parties would be engaged in contested motion practice and adversarial litigation for years. The claims advanced on behalf of the Settlement Class Members involve complex technical, engineering and legal issues. Continued litigation would be complex, time consuming and expensive, with no certainty of a favorable outcome. The Settlement

⁸ The reaction of the class cannot be evaluated until after Class Notice is distributed.

Agreement secures substantial benefits for the Settlement Class while avoiding the delays, risks and uncertainties of continued litigation.

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. Plaintiff's counsel conducted their own extensive independent investigation into the alleged issues, and informally obtained detailed information from Defendant. The information investigated and obtained allowed Plaintiff's counsel to understand the strengths and weaknesses of the case, and to analyze the risks of future litigation in comparison to the relief offered by the Settlement. *Udeen*, 2019 WL 4894568, at *3.

The fourth, fifth, and sixth factors all analyze risks of continued litigation. If the parties had been unable to resolve this case through the Settlement, the litigation would likely have been protracted and costly. Plaintiff's counsel have litigated many automotive class actions that have taken several years to conclude. Before ever approaching a trial in this case, the parties likely would have briefed, and the Court would have had to decide, an additional motion to dismiss, discovery-related motions, a motion for class certification (along with a potential Rule 23(f) appeal), motions for summary judgment, as well as FRE 702 motions and other pre-trial and trial-related motions. Additionally, considerable resources would have been expended on discovery, depositions, and expert witnesses.

Moreover, there is a risk of not obtaining class certification should this action be litigated rather than settled. Defendant is likely to assert numerous defenses that may apply to many individual putative class members under the applicable laws of their respective states, such as lack of standing, statute of limitations, privity, and others, which, if litigated, could substantially if not completely bar many Settlements Class Members' claims and/or recoveries. Likewise, if this action is litigated, there are other potentially predominating individualized issues relating to each putative

class member's claim including the facts and circumstances of each putative class member's purchase or lease transaction; what, if anything, each putative class member viewed, heard and/or relied upon prior to purchase or lease; individual vehicle-related facts including the maintenance, use, repair history, and physical and mechanical condition of each vehicle; whether individual putative class members ever experienced the alleged issues; and the individual facts and circumstances of any putative class member's interactions, if any, with Volkswagen or Audi dealers with respect to the breach of warranty claims.

Conversely, in the context of a class settlement, these potential impediments do not preclude certification of a nationwide Settlement Class, since the Court is not faced with the significant manageability problems of a trial. *See Amchem Prods., Inc.*, 521 U.S. at 620 (individual issues that may preclude class certification in litigation do not preclude class certification for settlement purposes, since manageability at trial is no longer a concern).

Courts routinely find the seventh factor – Defendant's ability to withstand a greater judgement – to be neutral, as it is here. Such a factor is typically only relevant when "the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440. This not a factor here.

Finally, the remaining *Girsh* factors – the range of reasonableness of the settlement both independently and weighed against the risk of further litigation – support preliminary approval. The settlement must be judged "against the realistic, rather than theoretical potential for recovery after trial." *Sullivan*, 667 F.3d at 323. In conducting the analysis, the court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d at 806;

see also In re Shop-Vac Mktg. & Sales Pracs. Litig., 2016 WL 3015219, at *2 (M.D. Pa. May 26, 2016) (“The proposed settlement amount does not have to be dollar-for-dollar the equivalent of the claim...and a satisfactory settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.”) (internal citations and quotations omitted). Here, as shown, the settlement provides significant benefits to the Settlement Class Members in the form of a Warranty Extension and reimbursements for certain out-of-pocket costs of repair of failed or malfunctioning turbochargers.

C. THE COURT “WILL LIKELY BE ABLE TO CERTIFY THE CLASS”

Having determined that the parties “will likely be able to ... approve the proposal under Rule 23(e)(2),” Plaintiff addresses the second part of the preliminary approval analysis concerning whether the Court “will likely be able to ... certify the class.” Fed. R. Civ. P. 23(e)(1)(B)(ii).

Plaintiff requests that the Court preliminarily certify a Settlement Class and direct dissemination of notice concerning the Action and the Settlement. Defendant does not object to certification of the Settlement Class for purposes of settlement only and the Supreme Court has acknowledged the propriety of certifying a class solely for settlement purposes. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618 (1997). In conducting this task, a court’s “dominant concern” is “whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.” *Id.* at 621. To be certified under Rule 23, a putative class must for purposes of the settlement satisfy, by a preponderance of the evidence, each of the four requirements of Rule 23(a) as well as the requirements of one of the three provisions of Rule 23(b). *See* Fed R. Civ. P. 23.

1. Rule 23(a) is Satisfied for Settlement Purposes

Rule 23(a) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R Civ. P. 23(a). Here, as set forth below, all four elements are satisfied in regard to the proposed Settlement Class.

2. Rule 23(a)(1) – “Numerosity” – is met

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable[.]” Fed. R Civ. P. 23(a)(1). “[G]enerally, where the potential number of plaintiffs is likely to exceed forty members, the numerosity requirement will be met.” *Martinez-Santiago v. Public Storage*, 312 F.R.D. 380, 388 (D.N.J. 2015) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012)). Here, based on the applicable VIN numbers, there are approximately 1.6 million Settlement Class Vehicles (some with multiple owners.) The numerosity requirement is therefore readily satisfied.

3. Rule 23(a)(2) – “Commonality” – is met

Rule 23(a)(2) requires that there be “questions of law or fact common to the class,” and that the class members “have suffered the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345-50 (2011). The commonality inquiry focuses on the defendant’s conduct. *Sullivan v. DB Invs., Inc.*, 667 F. 3d 273, 297 (3d Cir. 2011) (“[C]ommonality is informed by the defendant’s conduct as to all class members and any resulting injuries common to all class members[.]”). A finding of commonality does not require that all class members share identical claims as long as

there are common questions at the heart of the case. *In re NFL Players*, 821 F.3d at 426-27 (stating that Rule 23(a) commonality is satisfied “if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class”); *Warfarin*, 391 F.3d at 530. “For purposes of Rule 23(a)(2), ‘even a single common question will do.’” *Wal-Mart Stores, Inc.*, 564 U.S. at 360.

Here, the claims of the Settlement Class raise common questions of law and fact. These common questions include whether the subject turbochargers are defective, whether Defendant knew of and ached a duty to disclose it, and whether the alleged defect caused an economic loss.

4. Rule 23(a)(3) – “Typicality” –is satisfied

Rule 23(a)(3) requires that a representative plaintiff’s claims be “typical” of those of other class members. As the Third Circuit has stated, “the named plaintiffs’ claims must merely be ‘typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.’” *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 598 (3d Cir. 2009). Where it is alleged that the defendant engaged in a behavior common to all members of the class, “there is a strong presumption that the claims of the representative parties will be typical of the absent class members.” *In re Merck & Co., Vytarin/Zetia Sec. Litig.*, 2012 WL 4482041, at *4 (D.N.J., Sept. 25, 2012); *see also Yaeger*, 2016 WL 4541861, at *6 (finding typicality where “plaintiffs allege that the class claims arise out of the same conduct of the defendants related to their design, manufacture, and sale of the class vehicles that suffered from an alleged oil consumption defect, and defendants’ alleged failure to disclose that material fact”).

Here, the named Plaintiff’s claim, and those of the Settlement Class, arose from a common course of alleged conduct by Defendant of providing Settlement Class Vehicles containing allegedly defective turbochargers which, Plaintiffs claim, were known but not disclosed.

5. Rule 23(a)(4) – “Adequacy”

The final requirement of Rule 23(a) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). In the Third Circuit, this requirement is met when two prongs are satisfied: 1) the plaintiff has no interests antagonistic to those of the class; and 2) the plaintiff’s counsel is qualified, experienced, and generally able to conduct the proposed litigation. *In re Schering Plough Corp.*, 589 F.3d at 602. The core analysis for the first prong is whether Plaintiff has an interest antagonistic to those of the Settlement Class. The second prong analyzes the capabilities and performance of Class Counsel based upon factors set forth in Rule 23(g). *See Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). Here, Plaintiffs satisfy both prongs.

First, Plaintiff has no interests adverse or “antagonistic” to absent Settlement Class Members. Plaintiff seeks to hold Defendant accountable for, among other things, manufacturing and distributing Settlement Class Vehicles containing allegedly defective turbochargers that fail or malfunction, causing monetary losses. Further, Plaintiff has demonstrated her allegiance and commitment to this litigation by consulting with Plaintiff’s Counsel, collecting documents for litigation, reviewing the pleadings, and keeping informed of the progress of the litigation. Plaintiff’s interests are aligned with the interests of absent Settlement Class Members.

Second, as discussed more extensively in the exhibits filed with this brief, Plaintiff’s Counsel are qualified, experienced, and competent in complex class litigation and have an established, successful track record with consumer class cases.⁹ Accordingly, the adequacy requirement is satisfied.

6. Rule 23(b)(3) – “Predominance” of Common Issues

⁹ See Graifman Decl., at Exhibits C and D.

Having demonstrated that each of the mandatory requirements of Rule 23(a) are met for settlement purposes only, Plaintiff now turns to consideration of the Rule 23(b)(3) factors – predominance and superiority. Under Rule 23(b)(3), a class action should be certified when the court finds that common questions of law or fact predominate over individual issues and a class action would be superior to other methods of resolving the controversy. Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S. at 623. Superiority requires the court “to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *In re NFL Players*, 821 F.3d at 434. Here, the Settlement Class readily meets both requirements.

First, common questions of both law and fact predominate for settlement purposes. The Settlement Class Members’ claims arise out of an allegedly common defect in their vehicles’ turbochargers and alleged conduct by Defendant in failing to disclose it, which for settlement purposes, predominate over any factual variations. Further, since the class is being certified in the context of a settlement, there are no “manageability” concerns as may exist if the case were litigated. *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *In re Merck & Co., Inc. Vytorin Erisa Litigation*, 2010 WL 547613, *5 (D.N.J. Feb. 9, 2010) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 519 (3d Cir. 2004)).

Second, certification of the Settlement Class under Rule 23 is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The settlement affords substantial benefits to numerous putative Settlement Class Members who, absent a class settlement, may not have been aware of their legal rights or may not have had the desire or resources to pursue an individual suit involving the complex matters at issue. The class

settlement also serves the interest of judicial economy by avoiding multiple similar lawsuits. Thus, resolving the Settlement Class Members' claims in a single, consolidated settlement proceeding is far superior to individual adjudication of their claims. And, as this is a class settlement, the court need not address manageability issues that may otherwise exist in a contested class action. *Amchem Prods., Inc.*, 521 U.S. at 620.

Accordingly, Plaintiff has satisfied this Circuit's standards for preliminary approval of the Settlement. This Court should grant preliminary approval so the proposed class may be certified for settlement purposes, Settlement Class Counsel and the Settlement Class Representative may be appointed, and Class Notices may be mailed. Once the Class Notice process is complete, the Court can then fully evaluate the fairness and adequacy of the Settlement at a Final Approval hearing.

IV. THE FORM, CONTENT, AND PLAN FOR DISSEMINATION OF THE CLASS NOTICE ARE PROPER AND SHOULD BE APPROVED

The manner in which Class Notice is disseminated, as well as its content, must satisfy Rule 23(c)(2) (governing class certification notice), Rule 23(e)(1) (governing settlement notice), and due process. *See In re Ocean Power Techs, Inc.*, 2016 WL 6778218, at *9 (D.N.J. Nov. 15, 2016). Plaintiffs meet these requirements.

Rule 23(e) requires that notice of a proposed settlement be provided to class members. Fed. R. Civ. P. 23. “[D]ue process requires that notice be ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *In re NFL Players*, 821 F.3d at 446. Additionally, Rule 23(c)(2) requires “the best notice practicable under the circumstances” and that such notice contain “sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when

relevant, opting out of the class.” *In re Ocean Power Techs., Inc.*, 2016 WL 6778218 at *10 (quoting *In re NFL Players*, 821 F.3d at 435).

Here, the Class Notice plan satisfies all requirements. The language of the Class Notice was drafted and agreed to by the Parties. The proposed Class Notice will be disseminated via postcard written in plain, simple terminology, containing a description of the Settlement benefits, instructions on how to request exclusion from the class or object to the Settlement, the date, time and location of the Final Fairness Hearing, and directing Settlement Class Members to the Settlement Website that includes the long-form class notice and detailed information about this Settlement and litigation, including: (1) a description of the Settlement Class; (2) a description of the claims asserted in the action; (3) Settlement Class Member’s rights and options with respect to the Settlement; (4) a VIN lookup tool that will allow individuals to check whether their vehicles are included in the Settlement; (5) instructions on how to file claim for reimbursement; (6) the long form Class Notice with further detailed information regarding the Settlement and the Settlement Class Members’ rights, options, and relevant deadlines and procedures; (7) a description of the Settlement and release of claims; (8) the deadlines and procedures for objecting to, and requesting exclusion from, the Settlement; (9) the identity and contact information of counsel for the Settlement Class; (10) the Final Approval Hearing date; (11) an explanation of eligibility for appearing at the Final Approval Hearing; and (12) the email and toll-free number of the Claim Administrator which es Settlement Class Members to obtain further information and address any questions they may have. The Class Notice provides Settlement Class Members with clear and accurate information as to the nature and principal terms of the Agreement to make an informed and intelligent decision whether to object to the Settlement.

The dissemination of the Class Notice likewise satisfies all requirements. Under the Agreement, the Claims Administrator will send individualized postcard Class Notice to Settlement Class Members that can be reasonably identified through Department of Motor Vehicle records via first class mail. Mail Notice will be sent to the current or last known address reflected in the records of each state Department of Motor Vehicles as obtained by S&P Global or an equivalent company (such as Experian) for each Settlement Class Member. Additionally, prior to the mailing of Class Notice, an address search through the United States Postal Service’s National Change of Address database will be conducted. For any Mail Notice that is returned as undeliverable, the Claims Administrator shall re-mail the Class Notice where a forwarding address has been provided. For any remaining undeliverable notice packets where no forwarding address is provided, the Claims Administrator will perform an advanced address search (*e.g.*, a skip trace) and re-mail any undeliverable Class Notices to the extent any new and current address are located. In addition, a website will be created so that Settlement Class Members can readily have questions answered, obtain additional copies of materials sent by the Claims Administrator, and find instructions on how to submit a Claim for reimbursement either by mail or online submission.

Accordingly, the proposed Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice, is the best practicable notice under the circumstances and fully comports with the requirements of Rule 23, applicable law and due process. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 151 (D.N.J. 2013) (approving notice plan that utilized postcard notices and website to provide settlement information as the “notice plan was thorough and included all of the essential elements necessary to properly apprise absent Settlement Class members of their rights”).

V. PROPOSED SCHEDULE FOLLOWING PRELIMINARY APPROVAL

Plaintiff, with the consent of Defendant, proposes that along with granting preliminary approval of the Agreement, the Court adopt the schedule for further proceedings set forth below and in the proposed Preliminary Approval Order:

Event	Timing
Deadline for Mailing of postcard Class Notice to the Settlement Class and Settlement Website to go live (the “Notice Date”)	100 days after issuance of Preliminary Approval Order
Deadline for Class Counsel’s Fee and Expense Application and Request for Service Awards for the Settlement Class Representative (Briefing schedule for Defendant’s Response, if Contested, to Be Agreed and Determined)	No later than 115 days after Preliminary Approval Order
Deadline to Request Exclusion from the Settlement or to file an Objection to the Settlement, Class Counsel’s Fee and Expenses, and/or the Class Representative service award.	No later than 130 days after issuance of Preliminary Approval Order
Deadline for Plaintiff to file Motion for Final Approval of the Settlement.	No later than 150 days after issuance of Preliminary Approval Order
Claim Administrator to submit a declaration to the Court (i) reporting the names of all persons and entities that submitted requests for exclusion; and (ii) attesting that Class Notice was disseminated in accordance with the Settlement Agreement and Preliminary Approval Order	No later than 150 days after issuance of Preliminary Approval Order
Any Submissions by any party in response to objections and opt-out requests and by Defendant in support of Final Approval	No later than 165 days after Issuance of Preliminary Approval Order
Final Fairness Hearing	Not earlier than one-hundred and eighty (180) days after Preliminary Approval

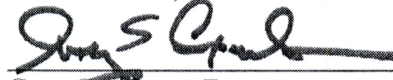
VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval, and enter the Proposed Order.

Dated: February 28, 2025

Respectfully submitted,

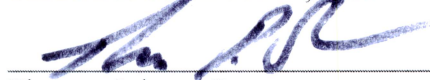
**KANTROWITZ, GOLDHAMER &
GRAIFMAN, P.C.**



Gary Graifman, Esq.
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Class Counsel for Plaintiff and the Settlement Class

THOMAS P. SOBRAN, P.C.



Thomas Sobran, Esq.
Thomas P. Sobran, P.C.
7 Evergreen Lane
Hingham, Massachusetts 02043

Class Counsel for Plaintiff and the Settlement Class

Proposed Settlement Class Counsel

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JULIE KIMBALL,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,
Defendant.

:
:
:
:
:
:
:
: Civil Action No. 2:22-cv-04163-JMV-MAH
:
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**DECLARATION OF GARY S. GRAIFMAN
IN SUPPORT OF PRELIMINARY APPROVAL**

GARY S. GRAIFMAN, declares under the penalties of perjury as follows:

1. I am an attorney licensed to practice in the states of New Jersey, New York and in this District Court and a partner at the law firm Kantrowitz, Goldhamer & Graifman, P.C. (“KGG”) and make this declaration in support of the within Motion for Preliminary Approval of the Class Action Settlement in the above-titled action. I have been involved in the prosecution of this action throughout and am familiar with the proceedings herein and have personal knowledge of the matters set forth herein.

2. After substantial discussions between the parties in arm’s-length negotiations, the parties have reached an agreement to resolve claims in the action resulting in the settlement being submitted to this Court.

3. Attached hereto as **Exhibit A** is a true and accurate copy of the executed Settlement Agreement together with exhibits comprised of: Exhibit 1 (proposed Claim Form); Exhibits 2 and

3 (the Proposed Class Notice (“Class Settlement Notice”); Exhibit 4 (Vehicle Identification Number (VIN) Lists);¹ Exhibit 5 (Proposed Preliminary Approval Order). Annexed hereto as **Exhibit B** is a Proposed Final Approval Judgment and Order. The Settlement Agreement and Exhibits are also referred to herein as the “Settlement”).

4. The terms of this Settlement are set out in the Plaintiffs’ Memorandum in Support of Preliminary Approval of Class Action Settlement. The settlement involves a warranty extension for failed or malfunctioning turbochargers in Generation 3 Settlement Class Vehicles, and partial reimbursement for repairs or replacements of turbochargers in Generation 1, Generation 2 and Generation 3 Settlement Class Vehicles up to 85,000 miles or eight and a half (8.5) years, whichever occurs first.² The reimbursement terms briefly are as follows:

- (i) For Settlement Class Members who purchased or leased Generation 3 Settlement Class Vehicles, Volkswagen Group of America, Inc. (“VWGoA”) will extend the New Vehicle Limited Warranties to cover fifty (50%) percent of the cost of repair or replacement (parts and labor), by an authorized Audi dealer (if an Audi vehicle) or Volkswagen dealer (if a VW vehicle), of a failed or malfunctioning turbocharger of said vehicle if the cause of the failure or malfunction was wastegate failure due to fork head and/or link pin corrosion, during a period of up to 8.5 years or 85,000 miles (whichever occurs first), from Settlement Class Vehicle’s In-Service Date. If, as of the Notice Date, a Generation 3 Settlement Class Vehicle is more than 8.5 years of age from its In-Service Date, then the warranty extension’s time duration

¹ The list of class vehicle VINS is a confidential document and is not being filed on the public docket but will be provided to the Court for *in camera* review upon request.

² Capitalized terms are those defined terms set forth in the Settlement Agreement.

for said vehicle will be extended until 60 days after the Notice Date or 85,000 miles from said vehicle's In-Service Date, whichever occurs first.

- (ii) Settlement Class Members who purchased or leased a Generation 1 Settlement Class Vehicle or a Generation 2 Settlement Class Vehicle, and who submit valid claims establishing they paid for one (1) repair and/or replacement (parts and/or labor) for a failed or malfunctioning turbocharger of said vehicle, if the cause of the failure or malfunction was due to the wastegate link plate or pin and whose failure or malfunction repair or replacement was performed and paid for prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurs first), from said vehicle's In-Service Date, will receive reimbursement of fifty (50%) percent of the past paid out-of-pocket expense for said repair and/or replacement, for work performed at an authorized Audi or VW dealer.
- (iii) Settlement Class Members who purchased or leased a Generation 3 Settlement Class Vehicle, and who submit valid claims establishing they paid for one (1) repair and/or replacement (parts and/or labor) for a failed or malfunctioning turbocharger of said vehicle, if the cause of the failure or malfunction was due to the wastegate fork head and/or link pin corrosion, and whose failure or malfunction repair or replacement was performed and paid for prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurs first), from said vehicle's In-Service Date, will receive reimbursement of fifty (50%) percent of the past paid out-of-pocket expense for said repair and/or replacement, for work performed at an authorized Audi or VW dealer.

- (iv) Notwithstanding subparagraphs (ii) and (iii) above, if a Settlement Class Member's required Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair and/or replacement was due to the reasons set forth in either (ii) and (iii) above, accordingly, then said Settlement Class Member will receive reimbursement of forty (40%) percent of the past paid invoice amount (parts and labor), provided that, in addition to the Proof of Repair Expense, the Settlement Class Member also submits, with said member's Claim for Reimbursement, Proof of Adherence to Maintenance Requirements documentation.
 - (v) If any said past paid covered repair and/or reimbursement of a Settlement Class Vehicle was performed at an independent repair facility ("IRF") center, then said Settlement Class Member will receive reimbursement based on the above schedule, but limited in an amount up to a \$3,850 cap.
5. The class definition and description of class vehicles involved in this action, are as

follows:

The definition of the Class: All persons and entities who purchased or leased, in the United States or Puerto Rico, Settlement Class Vehicles which are certain of the following model year Volkswagen and Audi brand vehicles which were distributed by Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico, and specifically identified by Vehicle Identification Number ("VIN") on VIN lists that are attached as Exhibits 4A-C to the Settlement Agreement: 2008-2014 and 2015-2021 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 and 2019-2024 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2015-2018 VW Golf vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas

vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2008-2009 and 2015-2020 Audi A3 vehicles, 2015-2024 Audi Q3, 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 and 2016-2023 Audi TT vehicles. (hereinafter “Settlement Class”).³

As the Court knows, the essence of the claims in this case are that VWGoA sold the Settlement Class Vehicles with defective turbochargers which were prone to fail and malfunction prematurely. The Settlement Class Vehicles, which contain the defective components were sold to Settlement Class Members without their knowledge of the defect and at the time of failure and/or malfunction, will result in repairs which have equaled or exceeded \$3,500.00.

6. The Settlement negotiated in this case was negotiated at arm’s-length and was the result of extensive negotiations between experienced counsel. The substance of the Settlement was agreed upon prior to agreement as to any attorney’s fees (which have not been agreed upon to date).

7. Counsel submits that the within Settlement is an excellent result and is fair, reasonable, and adequate and should be preliminarily approved by the Court.

8. As set forth in the Settlement Agreement, the notice program here will be similar to the notices used in many other automobile defect class action settlements and is also similar to the methodology used in NHTSA-mandated recalls. This procedure includes the Claims Administrator obtaining, through a third-party, the information as to the registered owners of the VWGoA and/or Audi Settlement Class Vehicles from the Department of Motor Vehicles (“DMV”) in the fifty states involved in this Settlement and Puerto Rico. In addition, VWGoA will utilize registration records in its database to be added to the notice program to notify Settlement Class

³ Class Vehicles are identified by the VIN numbers set forth in Exh. 4 to the Settlement Agreement.

Members. The Class Settlement Notice will be sent individually, via first class mail, to the current or last known addresses of the absent Settlement Class Members for which said class members' identities and addresses are reasonably ascertainable from S&P Global or an equivalent company (such as Experian), and based on the VINs of the Settlement Class Vehicles provided by VWGoA in Exh. 4 to the Settlement Agreement.

9. The Settlement Agreement also calls for the Claims Administrator to establish a settlement website, which among other things will provide additional information pertaining to the Settlement, as it will contain copies of the Class Notice as well as pertinent settlement documents, orders, deadlines, and an online portal to file claims, as well as instructions on how to submit a claim, opt-out, or object to the Settlement, FAQ's and answers and other information. *See* Settlement Agreement, Articles IV, Subdiv. 6.

10. The Class Settlement Notice will also identify the settlement website and provide contact information for the Settlement Administrator in the event of questions by class members. The Class Settlement Notice will also provide the specific dates by which objections must be filed and copies post marked and also the date by which proposed class members can exclude themselves from the Settlement, which date would be 30 days after the Notice Date. *See* Settlement Agreement, Article IV, Subdiv. B.

11. Accordingly, as the notice program provides the best notice practicable, the proposed Class Settlement Notice and plan of dissemination should therefore be approved by the Court.

12. Based on the schedule proposed, the Court should set the fairness hearing approximately 160 days after the date of entry of the Preliminary Approval Order. The time for

the Class Settlement Notice to be disseminated is approximately 100 days after the entry of the Preliminary Approval Order. *See* Settlement Agreement, ¶ IV.B.1.

13. A separate copy of the Preliminary Approval Order is also submitted herewith.

14. With regard to appointment of Class Counsel herein, both firms have significant experience and success in litigation of consumer class actions. With regard to Mr. Graifman and KGG, several recent consumer class action cases in which Mr. Graifman and KGG have served as lead counsel or co-lead counsel have resulted in decisions officially reported or on Westlaw which have refined the law in consumer class actions. These include:

- (i) *In Re Volkswagen Timing Chain Product Liability Litigation* 16-CV-2765-JLL-JAD (D.N.J.) (Mr. Graifman and the firm appointed co-lead counsel in the case brought on behalf of a multistate class consisting of twenty-seven states in the District of New Jersey, which was given final approval for a nationwide class settlement in December, 2018. The case involved approximately 477,000 class vehicles and was valued at approximately \$50 million);
- (ii) *Seifi, et al. v. Mercedes-Benz USA, LLC*, 2014 WL 8370026 (N.D.Ca. Dec. 17, 2014) (KGG was co-lead counsel and the matter settled on a nationwide basis at the class certification stage);
- (iii) *Seifi, et al. v. Mercedes-Benz USA, LLC*, 2013 WL 5568499 (N.D.Ca. Oct. 9, 2015);
- (iv) *In re Nissan Radiator Transmission Cooler Litigation*, 2013 WL 4080946 (S.D.N.Y. May 30, 2013) (referred to as “Nissan Radiator Transmission Cooler Litig.”) (KGG was co-lead counsel and the matter settled on a nationwide basis at the class certification stage);
- (v) *In re Nissan Radiator Transmission Cooler Litig.*, 2012 WL 1877306 (S.D.N.Y. May 15, 2012);
- (vi) *In re Nissan Radiator Transmission Cooler Litig.*, 2011 WL 7095432 (S.D.N.Y. Dec. 16, 2011);
- (vii) *Marshall v. Hyundai Motor America*, 51 F.Supp.3d 451 (S.D.N.Y. Sept. 30, 2014);
- (viii) *Sheris v. Nissan North America, Inc.*, 2008 WL 2354908 (D.N.J. June 3, 2008);
- (ix) *Chiarelli v. Nissan North America, Inc.*, 2015 WL 5686507 (E.D.N.Y. Sept. 25, 2015).

- (x) *Jermyn v. Best Buy Stores, LP*, 08-cv-0214 (CM), 256 F.R.D. 418 (S.D.N.Y. 2009) (class certified on behalf of thousands of New York consumers alleging false advertising and consumer protection law violations).

A copy of the firm resume of KGG is annexed hereto as **Exhibit C**.

15. With respect to Thomas P. Sobran, Mr. Sobran has more than 40 years of experience concentrating on automotive and consumer product defect cases. He also has significant experience in consumer product class actions including leadership roles as class counsel or served on executive committees including the following:

- (i) *In Re Volkswagen Timing Chain Product Liability Litigation* 16-CV-2765-JLL-JAD (D.N.J.) (Mr. Sobran was appointed to the Executive Committee in the case brought on behalf of a multistate class consisting of twenty-seven states in the District of New Jersey, which was given final approval of a nationwide class settlement in December, 2018. The case involved approximately 477,000 class vehicles and was valued at approximately \$50 million);
- (ii) *Coffeng, et al. v. Volkswagenwerk Aktiengesellschaft, et al.*, United States District Court for the District of Northern California, Civil Action No. 3:17-cv-01825-JD (Mr. Sobran was co-lead counsel for over 874,781 class vehicle owners where repair reimbursements paid and warranty extension was valued in excess of \$33 million);
- (iii) *Salcedo, et al. v. Subaru of America, Inc.*, United States District Court for the District of New Jersey, Civil Action No. 3:17-cv-01825-JD (Mr. Sobran was a member of the executive committee in a case involving hundreds of thousands of vehicles with potentially defective engines that prematurely catastrophically failed); and,
- (iv) *Fisher, et al. v. Mitsubishi Electric Corporation, et al.*, United States District Court, District of Connecticut Civil Action No. 3:09-cv-1899-RNC (Mr. Sobran was lead counsel involving defective consumer products that resulted in tens of millions of dollars in monetary relief and warranty extensions to consumers).⁴

A copy of the resume of Thomas P. Sobran, P.C. is annexed hereto as **Exhibit D**.

⁴ Mr. Sobran is currently serving as interim co-lead counsel in at least four other complex automotive products liability class actions pending in the United States District Court for the District of New Jersey.

16. For the reasons set forth herein, and in the Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Class Action Settlement, the parties request that the Court grant Preliminary Approval of the Settlement and (i) order that the Class Notice in the form contained in Exhibits 2 and 3 to the Settlement Agreement be disseminated to the Settlement Class Members; (ii) that the Court conditionally certify the putative nationwide Class of owners and lessees of the class vehicles; (iii) that the Court appoint the proposed class representatives as class representatives for the Class; (iv) that the Court appoint Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran as Class Counsel for the class; and (vi) that the Court set the Fairness Hearing Date for determination of whether this Settlement should be finally approved.

Declared and executed under the penalties of perjury this 28th day of February, 2025.


GARY S. GRAIFMAN

Exhibit A

Settlement Agreement with Exhibits

Exhibit B

Proposed Final Approval Judgment and Order

Exhibit C

KGG Firm Resume

Exhibit D

Thomas P. Sobran, P.C. Resume

Exhibit A

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (the “Settlement Agreement” or the “Agreement”), is made and entered into as of this 6th day of January, 2025, by and between Plaintiff Julie Kimball (“Plaintiff”), individually and as representative of the Settlement Class defined below, and Volkswagen Group of America, Inc. (“VWGoA”) (“Defendant”) (all collectively referred to as the “Parties”).

WHEREAS, on June 21, 2022, Plaintiff filed a putative class action entitled *Julie Kimball, on behalf of herself and all others similarly situated v. Volkswagen Group of America, Inc., et al.*, 2:22-cv-04163-JMV-MAH, United States District Court, District of New Jersey, asserting various individual and putative class claims relating to the turbochargers of the putative class vehicles (hereinafter, “the Action”);

WHEREAS, VWGoA filed Motions to Dismiss Plaintiffs’ original and amended class action complaints (ECF 20, 33, and 60) which were fully briefed, and decided by Orders of this Court dated March 2, 2023 (ECF 28), August 28, 2023 (ECF 45), and September 3, 2024 (ECF 78);

WHEREAS, VWGoA denies Plaintiff’s allegations and claims with respect to both liability and damages, and maintains, *inter alia*, that the putative class vehicles and their turbochargers function properly and are not defective, that no applicable warranties (express or implied) were breached, that no common law or legal duties or applicable statutes, laws, rules and/or regulations were violated, that the subject vehicles’ components and systems were properly designed, tested, manufactured, distributed, marketed, advertised, warranted, and sold, and that the Action is not suitable for class treatment if it were to proceed through litigation and trial;

WHEREAS, the Parties, after investigation and careful analysis of their respective claims and defenses, and with full understanding of the potential risks, benefits, expense, and uncertainty

of continued litigation, desire to compromise and settle all issues and claims that were asserted or could have been asserted in the Action by or on behalf of Plaintiff and members of the Settlement Class;

WHEREAS, the Parties agree that neither this Settlement Agreement and exhibits, the underlying Settlement itself, nor its negotiations, documents, or any filings relating thereto, shall constitute or be construed as, (i) any admission or evidence of liability, damages, or wrongdoing on the part of Defendant or any Released Party, and/or (ii) the existence or validity of any fact, allegation, claim, and/or issue of law that was or could have been asserted in the Action, all of which are expressly denied by Defendant.

WHEREAS, this Settlement Agreement is the result of vigorous and extensive arm's length negotiations of highly disputed claims, with adequate knowledge of the facts, issues, and the strengths or weaknesses of the Parties' respective positions, and with the assistance of an experienced neutral Mediator from JAMS; and

WHEREAS, the Settlement is fair, reasonable, and adequate; in all respects satisfies the requirements of Fed. R. Civ. P. 23; and is in the best interests of the Settlement Class.

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

I. DEFINITIONS

A. "Action"

"Action" refers to the putative class action entitled *Julie Kimball, on behalf of herself and all others similarly situated v. Volkswagen Group of America, Inc., et al.*, 2:22-cv-04163-JMV-MAH, pending in the United States District Court for the District of New Jersey.

B. “Agreement,” “Settlement,” or “Settlement Agreement”

“Agreement,” “Settlement,” or “Settlement Agreement” means this Settlement Agreement including all terms, provisions and conditions embodied herein and all attached Exhibits (which are an integral part of, and incorporated by reference in, this Settlement Agreement).

C. “Claim Administrator” or “Settlement Administrator”

The “Claim Administrator” or “Settlement Administrator” shall mean JND Legal Administration.

D. “Claim” or “Claim for Reimbursement”

“Claim” or “Claim for Reimbursement” means the timely and proper mailing or submission online, to the Claim Administrator, of the required fully completed, signed, and dated Claim Form, together with all required Proof of Repair Expense documents (as defined in Section I.S. of this Agreement), and to the extent required under the terms of this Settlement, Proof of Adherence to Maintenance Requirements (as defined in Section I.R. of this Agreement) and other required documentation, in which a Settlement Class Member (as defined in Section I.V. of this Agreement) seeks to claim reimbursement for a percentage of certain past paid and unreimbursed out-of-pocket repair expenses pursuant to the terms, conditions and limitations set forth in Section II.B. of this Settlement Agreement.

E. “Claim Form”

“Claim Form” means the form that must be fully completed, signed, dated, and timely mailed to the Claim Administrator or timely submitted through the Settlement Website, together with all required Proof of Repair Expense, Proof of Adherence to Maintenance Requirements documentation, and any other required documentation in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which Claim Form will be substantially in the form attached hereto as Exhibit 1.

F. “Claim Period”

“Claim Period” means the period of time within which a Claim for Reimbursement under this Settlement must be mailed (postmarked) or submitted online to the Claim Administrator, which period shall expire seventy-five (75) days after the Notice Date.

G. “Class Counsel” or “Plaintiff’s Counsel”

“Class Counsel” or “Plaintiff’s Counsel” shall mean Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C.

H. “Class Notice”

“Class Notice” means the postcard Class Notice that will be mailed to the Settlement Class, which will be substantially in the form attached hereto as Exhibit 2, and the long form Class Notice that will be made available on the Settlement Website, which will be substantially in the form attached hereto as Exhibit 3.

I. “Class Notice Plan” or “Notice Plan”

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

J. “Court”

“Court” means the United States District Court for the District of New Jersey, located in Newark, New Jersey.

K. “Defense Counsel”

“Defense Counsel” means Shook, Hardy & Bacon L.L.P.

L. “Effective Date”

“Effective Date” means the third business day after: (1) the Court enters a Final Order and Judgment approving the Settlement Agreement, substantially in the form 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 or service/incentive payments, have expired or been completely exhausted in such a manner as to affirm such Final Order and Judgment. "Appellate rights" will presumptively be deemed to have expired or been completely exhausted if after thirty (30) days after the Judgment is filed, no Notice of Appeal has been filed by any class member.

M. "Fee and Expense Application"

"Fee and Expense Application" means Class Counsel's application for an award of reasonable attorneys' fees, costs, and expenses ("Class Counsel Fees and Expenses"), and for a Class Representative Service Award.

N. "Final Fairness Hearing"

"Final Fairness Hearing" means the hearing at or after which the Court will determine whether to grant final approval of the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).

O. "Final Order and Judgment"

"Final Order and Judgment" means the Final Order and Judgment granting final approval of this Settlement Agreement and dismissing the Action with prejudice, the form of which will be agreed by the Parties and submitted to the Court prior to the Final Fairness Hearing.

P. "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.

Q. “Notice Date”

“Notice Date” means the Court-ordered date by which the Claim Administrator shall mail the Class Notice of this Settlement to the Settlement Class, substantially in the form attached hereto as Exhibit 2. The Notice Date shall be a date that is up to one-hundred (100) days after the Court enters a Preliminary Approval Order.

R. “Proof of Adherence to Maintenance Requirements”

“Proof of Adherence to Maintenance Requirements” means original or legible copies of documents or records evidencing the Settlement Class Member’s adherence to the oil maintenance aspects of the Settlement Class Vehicle’s maintenance schedule set forth in the Warranty and Maintenance Booklet during the time he/she/it owned and/or leased the vehicle up to the date/mileage of the covered repair or replacement, within a variance of ten percent (10%) of each scheduled time and mileage oil maintenance interval. If, however, the Settlement Class Member is unable to obtain said documents or records despite a good faith effort to obtain them, the Settlement Class Member may submit a Declaration, signed under penalty of perjury, detailing: (i) the good faith efforts that were made to obtain the records including why the records are not available, and (ii) attesting to adherence to the oil maintenance aspects of the vehicle’s maintenance schedule during the time he/she/it owned or leased the vehicle, up to the date and mileage of the covered repair or replacement, within the ten percent (10%) variance set forth above.

S. “Proof of Repair Expense”

“Proof of Repair Expense” shall mean all of the following: (1) an original or legible copy of the repair invoice for the subject repair, containing the claimant’s name, the make and model and Vehicle Identification Number (VIN) of the Settlement Class Vehicle, the name and address of the dealer or repair shop that performed the repair covered under this Agreement, the date of

the covered repair and vehicle mileage at the time of the repair, a description of the repair work including the parts repaired or replaced and a breakdown of parts and labor costs of the covered repair and demonstrating that the repair is, in fact, a covered repair under this Agreement; (2) proof of payment of, and the amount paid for, the covered repair; (3) a declaration, signed by the Settlement Class Member under penalty of perjury, confirming that he/she/it did not alter or modify, or have another person or entity alter or modify, the vehicle's engine prior to the covered repair, and (4) if the person claiming reimbursement is not the person to whom the Class Notice was mailed, proof of ownership or lease of the Settlement Class Vehicle at the time of the covered repair. Any cash payment may be verified by an invoice marked "paid" if the invoice is from an authorized dealer or, if from an independent repair facility (e.g., not an authorized dealer) by an invoice marked "paid" and a declaration from the independent repair facility confirming the payment amount received. In addition, if the covered repair was performed within the vehicle's original NVLW time/mileage period by a facility that was not an authorized Audi or VW dealer, then in addition to the above requirements, the Settlement Class Member must submit records showing that he/she/it first attempted to have the repair completed at an authorized dealer but the dealer refused to or was unable to complete the repair under the warranty. If such records could not be obtained after a good faith effort to obtain them, the Settlement Class Member may submit a declaration signed under penalty of perjury to that effect and setting forth the good faith effort(s) made to obtain the records.

T. "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, costs, expenses, and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, and regardless of any legal or equitable

theory, existing now or arising in the future, by Plaintiff and any and all Settlement Class Members (including their successors, heirs, assigns and representatives) which, in any way, arise from, involve or relate to the Settlement Class Vehicles' turbochargers (and any of their component and related parts including wastegate linkages and actuators), including but not limited to all matters, issues, claims, and requests for damages or other relief 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, consequential damages or 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 including any consumer protection, consumer fraud, unfair or deceptive business or trade practices, false or misleading advertising, and/or other sales, marketing, advertising and/or consumer statutes, laws, rules and/or regulations, under any common law cause of action or theory, and under any legal or equitable causes of action or theories whatsoever, and on any basis whatsoever including tort, contract, products liability, express warranty, implied warranty, negligence, fraud, misrepresentation, concealment, false or misleading advertising or marketing, unfair, deceptive and/or inequitable business practice, consumer protection, express or implied covenants, restitution, quasi-contract, unjust enrichment, injunctive relief of any kind and nature, including, but not limited, to the California Consumer Legal Remedies Act, California Unfair Competition Law, the Song-Beverly Consumer Warranty Act, the Magnuson-Moss Warranty Act, each and every federal, state and local consumer protection, consumer fraud, deceptive trade practices, unfair practices, false advertising, and/or related statute, law, rule and regulation in the United States and Puerto Rico, all other or similar federal, state or local statutes, laws, rules or derivations thereof, any state Lemon Laws, secret warranty, and/or any other theory of liability and/or recovery whatsoever, whether in law or in

equity, and for any and all injuries, losses, damages, remedies (legal or equitable), costs, recoveries or entitlements of any kind, nature and description, under statutory and/or common law, and including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, injunctive relief, costs, expenses, counsel fees, and any other legal or equitable relief or theory of relief. This Settlement Agreement expressly exempts claims for personal injuries and property damage (other than for damage to the Settlement Class Vehicle itself).

U. “Released Parties”

“Released Parties” means Volkswagen Group of America, Inc., Volkswagen AG, Audi AG, Audi of America LLC, Volkswagen International America, Inc., Audi of America, Inc., Volkswagen de México S.A. de C.V., Volkswagen Group of America Chattanooga Operations, LLC, Volkswagen Credit, Inc.; all designers, manufacturers, suppliers, assemblers, distributors, importers, retailers, marketers, advertisers, testers, inspectors, sellers, 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, successors, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives of the 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, as defined in Section I.X. of this Agreement, in the United States of America or 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 that 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.

W. “Settlement Class Representative”

“Settlement Class Representative” means Plaintiff Julie Kimball.

X. “Settlement Class Vehicles”

“Settlement Class Vehicles” collectively means certain specific Volkswagen and Audi brand vehicles, distributed by VWGoA in the United States and Puerto Rico, which are equipped with Generation 1, Generation 2 or Generation 3 EA888 engines (as delineated in X(1)-(3) below) and specifically identified by Vehicle Identification Number (“VIN”) on VIN lists that are attached as Exhibits 4A-C to this Agreement.

(1) “Generation 1 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 1 EA888 Engines: certain model year 2008-2014 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2008-2009 Audi A3

vehicles, and 2015-2018 Audi Q3 vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 4A to this Agreement.

(2) “Generation 2 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 2 EA888 Engines: certain model year 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 4B to this Agreement.

(3) “Generation 3 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 3 EA888 Engines: certain model year 2015-2018 VW Golf vehicles, 2015-2021 VW GTI vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2024 VW Jetta GLI vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2015-2020 Audi A3, 2019-2024 Audi Q3 vehicles, and 2016-2023 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 4C to this Agreement.

II. SETTLEMENT CONSIDERATION

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

A. Warranty Extension for Current Owners and Lessees of Generation 3 Settlement Class Vehicles

Effective on the Notice Date, for Generation 3 Settlement Class Vehicles, VWGoA will extend the New Vehicle Limited Warranties (NVLWs) to cover fifty percent (50%) of the cost of repair or replacement (parts and labor), by an authorized Audi dealer [if an Audi vehicle] or Volkswagen dealer [if a VW vehicle], of a failed or malfunctioning turbocharger of said vehicle if the cause of the failure or malfunction was that the wastegate failed due to fork head and/or link pin corrosion, during a period of up to 8.5 years or 85,000 miles (whichever occurs first) from said Settlement Class Vehicle's In-Service Date.

If, as of the Notice Date, a said Generation 3 Settlement Class Vehicle is more than 8.5 years of age from its In-Service Date, then this Warranty Extension's time duration for that vehicle will be extended until sixty (60) days after the Notice Date or 85,000 miles from vehicle's the In-Service Date, whichever occurs first, subject to the same conditions and limitations set forth above.

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover or apply to turbocharger/wastegate failures or malfunctions due to abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact, or damage from an outside source.

B. Reimbursement of Certain Past Paid (and Unreimbursed) Out-Of-Pocket Repair Expenses (All Settlement Class Vehicles)

1. Reimbursement: Settlement Class Members who timely mail to the Settlement Claim Administrator a Claim for Reimbursement (fully completed, dated and signed Claim Form together with all Proof of Repair Expense and other required documentation) shall be eligible for

reimbursement of fifty percent (50%) of the past paid out-of-pocket expense for one (1) repair or replacement (parts and labor) of a failed or malfunctioned turbocharger of a Settlement Class Vehicle that was performed and paid for prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from said vehicle's In-Service date, if:

(i) for a Generation 1 Settlement Class Vehicle or Generation 2 Settlement Class Vehicle, the past paid turbocharger repair or replacement was due to the wastegate having no longer functioned properly because of wear at the link plate and pin, and

(ii) for a Generation 3 Settlement Class Vehicles, the past paid turbocharger repair or replacement was due to the wastegate having failed because of fork head and/or link pin corrosion.

However, if the Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair or replacement was due to II.B.(1)(i) above (for a Generation 1 Settlement Class Vehicle or Generation 2 Settlement Class Vehicle), or II.B.(1)(ii) above (for a Generation 3 Settlement Class Vehicle), then the reimbursement for the one (1) covered repair will be forty percent (40%) of the past paid invoice amount (parts and labor) provided that, in addition to the Proof of Repair Expense, the Settlement Class Member also submits, with his/her/its Claim for Reimbursement, the Proof of Adherence to Maintenance Requirements documentation.

If the past paid covered repair for which reimbursement under this Section is sought was not performed by an authorized Audi dealer (if an Audi vehicle) or Volkswagen dealer (if a VW vehicle), then the maximum paid invoice amount to which the applicable reimbursement percentage shall be applied shall not exceed \$3,850.

If the past paid covered repair for which reimbursement is sought under this Section was performed within the Settlement Class Vehicle's original NVLW time and mileage period, but not

by an authorized Audi or Volkswagen dealer, then the Settlement Class Member must also submit with his/her/its Claim, in addition to the Proof of Repair Expense and Proof of Adherence to Maintenance Requirements (if applicable), 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 said repair performed by an authorized Audi or Volkswagen dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements set forth in Sections II.B.2 and II.B.3 below.

2. Limitations and Other Conditions:

a. Any reimbursement under Section II.B.1. shall be reduced by goodwill or other amount or concession paid by an authorized Audi or Volkswagen dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free repair covered under this Agreement, or was otherwise already reimbursed the full amount for the covered repair, then he/she/it will not be entitled to any reimbursement.

b. Defendant shall not be responsible for, and shall not warrant, any repair/replacement work that was not performed by an authorized Audi or Volkswagen dealer.

c. Reimbursement under Section II.B.1. shall not apply to turbocharger/wastegate failures that were caused by abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact or outside source.

3. Requirements for a Valid and Timely Claim for Reimbursement:

a. In order to submit a valid and timely Claim for Reimbursement pursuant to Section II.B. of this Agreement, the Settlement Class Member must mail by first-class U.S. mail to the

Settlement Claim Administrator, postmarked no later than 75-days after the Notice Date, or submit to the Settlement Claim Administrator online through the Settlement Website no later than 75-days after the Notice Date, a fully completed, signed and dated Claim Form, together with the required Proof of Repair Expense, Proof of Adherence to Maintenance Requirements (if applicable), and any other documentary proof required under this Agreement.

b. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Class Notice, the Claim must contain proof that the claimant is a Settlement Class Member and that the vehicle that is the subject of the Claim is a Settlement Class Vehicle.

c. The completed Claim Form and supporting documentation must demonstrate the Settlement Class Member's right to reimbursement, for the amount requested, under the terms and conditions of this Settlement Agreement.

III. CLAIMS ADMINISTRATION

A. Costs of Administration and Notice

As between the Parties, VWGoA shall be responsible for the Claim Administrator's reasonable costs of class notice and settlement administration. The Parties retain the right to audit and review the Claims handling by the Claim Administrator, and the Claim Administrator shall report to both parties jointly.

B. Claim Administration

1. Only timely Claims that are complete and which satisfy the Settlement criteria for reimbursement can be approved for payment. For each approved reimbursement claim, the Claim Administrator, on behalf of VWGoA, shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check to be sent within one hundred fifty (150)

days of the date of receipt of the completed Claim, or within one hundred fifty (150) days of the Effective Date, whichever is later. The reimbursement checks shall remain valid for 180 days. The Settlement Class Member may make one (1) request for reissuance of an expired un-negotiated check from the Claims Administrator within 225 days of its original issuance.

2. The Claim Administrator's denial of any Claim in whole or in part shall be binding and non-appealable, except that Class Counsel and Defendant's counsel will, if needed, confer and attempt to resolve in good faith any disputed denial by the Claim Administrator.

3. If the Claims Administrator initially determines that the Claim Form is incomplete, deficient or otherwise not fully completed, signed and/or dated, and/or that supporting documentation is missing, deficient, or otherwise incomplete, then the Claim Administrator will send the Settlement Class Member a letter or notice by regular mail advising of the deficiency(ies) in the Claim Form and/or the documentation. The Settlement Class Member will then have until thirty (30) days after the date of said letter or notice to mail a response to the Claim Administrator that cures all said deficiencies and supplies all missing or deficient information and documentation, or the claim will be denied.

4. If a Claim is denied in whole or in part, either for not meeting the Settlement criteria for reimbursement, or for failure to timely cure any deficiencies or missing or incomplete information/documentation, the Claim Administrator will so notify the Settlement Class Member by sending a letter or notice of the denial by regular mail. Any Settlement Class Member whose claim is denied shall have fourteen (14) days from the date of the Claim Administrator's letter/notice of denial to request an "attorney review" of the denial, after which time Class Counsel and Defense Counsel shall meet and confer and determine whether said denial, based upon the Claim Form and documentation previously submitted, was correct under the terms of the

Settlement, whether the denial should be modified if it is not correct, and/or whether any disputed issues can amicably be resolved. The Claim Administrator will thereafter advise the Settlement Class Member of the attorney review determination, which shall be binding and not appealable.

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. The Claim Administrator shall also provide contemporaneous notice to the Parties.

B. To Settlement Class: The Claim Administrator shall be responsible for the following Settlement Class Notice Plan (“Notice Plan”):

1. On an agreed upon date with the Claim Administrator, but in no event more than one-hundred (100) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual postcard Class Notice, substantially in the form attached hereto as Exhibit 2, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. The postcard Class Notice will also direct Settlement Class Members to the Settlement Website where they can obtain further information about the Settlement, their applicable rights and deadlines, and to review and download the long form Class Notice, substantially in the form attached hereto as Exhibit 3, and other documentation about the Settlement. Defendant VWGoA 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 mailing of the Class Notice.

2. For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from S & P Global or an equivalent company (such as Experian) 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.

3. Prior to mailing the postcard Class Notice, the Claim Administrator shall conduct an address search through the United States Postal Service's National Change of Address database to update the address information for Settlement Class Vehicle owners and lessees. For each individual postcard Class Notice that is returned as undeliverable, the Claim Administrator shall re-mail all such postcard 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 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 postcard Class Notices originally mailed to Settlement Class Members, the number of such individual Class Notices initially returned as undeliverable, the number of additional individual postcard Class Notices re-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 mailed a postcard Class Notice pursuant to this section.

6. The Claim Administrator shall implement a Settlement website that contains the following information:

- (i) instructions on how to submit a Claim for Reimbursement by mail or online via the Settlement Website;
- (ii) instructions on how to contact the Claim Administrator, Class Counsel and Defense Counsel for assistance;
- (iii) a copy of the Claim Form, Class Notice and this Settlement Agreement, the Preliminary Approval Order, the motion for Final Approval, the Class Counsel Fee and Expense Application, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and
- (iv) the deadlines for any objections, requests for exclusion and mailing of claims, the date, time and location 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 to Class Counsel and Defense counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of the Class Notice Plan of this Agreement or those required by the Court and agreed by counsel.

8. Notification to Authorized Audi and Volkswagen dealers: Prior to the Notice Date, VWGoA will advise authorized Audi and Volkswagen dealers of the Settlement's Warranty Extension, so that the Warranty Extension may be implemented in accordance with the terms and conditions of this Settlement Agreement. VWGoA shall provide Class Counsel with written confirmation that the notification has been made to authorized Audi and Volkswagen dealers.

V. RESPONSE TO NOTICE

A. Objection to Settlement

Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement and/or to Class Counsel's Fee and Expense Application must, by the date specified in

the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, either (i) file any such objection, together with any supporting briefs and/or documents, with the Court either in person at the Clerk's Office of the United States District Court for the District of New Jersey, located at Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, or (ii) file same via the Court's electronic filing system, or (iii) if not filed in person or via the Court's electronic system, then, by U.S. first-class mail postmarked within the said 30-day deadline, mail the objection, together with any supporting briefs and/or documents, to the United States District Court for the District of New Jersey, located at Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, and also, by U.S. first-class mail postmarked within said deadline, serve same upon the following counsel for the Parties: Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645, on behalf of Plaintiff, and Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, New York 10020, on behalf of Defendant.

1. Any objecting Settlement Class Member must include with his or her 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 or registration);
 - (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and
 - (d) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;

(e) the name and address of the lawyer(s), if any, who is/are representing the objecting Settlement Class Member in making the objection;

(f) a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Fairness Hearing; and

(g) a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements 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 and/or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, then he/she/it shall affirmatively so state in the objection.

2. Any Settlement Class Member who has not timely and properly filed an objection in accordance with the deadlines and requirements set forth herein shall be deemed to have waived and relinquished his/her/its right to object to any aspect of the Settlement, or any adjudication or review of the Settlement, by appeal or otherwise.

3. Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing in support of Settlement approval or to explain the bases for a timely filed objection to final approval of the proposed Settlement and/or to any motion for Class Counsel Fees and Expenses or service award. In order to appear at the Final Fairness Hearing, the Settlement Class Member must, no later than 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 Final Fairness Hearing. The Notice of Intention to Appear must include

copies of any papers, exhibits, or other evidence and identity of any witnesses that the Settlement Class Member (or the Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other specifications set forth in the Class Notice, shall be deemed to have waived and relinquished 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 timely mail a request for exclusion ("Request for Exclusion") to the Claim Administrator, Class Counsel and Defense Counsel, at the addresses specified in the Class Notice, by first-class U.S. mail postmarked no later than the deadline set forth below and specified in the Preliminary Approval Order. To be effective, the Request for Exclusion must be timely mailed and contain all of the following:

- (a) 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 the Settlement Class Member is or was the owner or lessee of the

Settlement Class Vehicle; and

- (c) specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

2. 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, and mailed to all of the following: the Claims Administrator, Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645, on behalf of Class Counsel, and Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite

2801, New York, NY 10020, on behalf of Defense Counsel. Any Settlement Class Member who fails to timely and properly mail a complete Request for Exclusion containing all required information shall not be excluded from the Settlement and shall be subject to and bound by this Settlement Agreement, the Release, and every order or judgment entered relating to this Settlement Agreement.

3. Class Counsel and Defense Counsel will review the purported Requests for Exclusion and determine whether they meet the requirements of a valid and timely 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 meant to exclude himself/herself/itself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. The Claim Administrator will maintain a database of all Requests for Exclusion, and will send written communications memorializing those Requests for Exclusion to Class Counsel and Defense counsel. The Claim Administrator shall report the names of all such persons and entities requesting exclusion, and the VINs of the Settlement Class Vehicles owned or leased by the persons and entities requesting exclusion, to the Court, Class Counsel and Defense Counsel at least eighteen (18) days prior to the Final Fairness Hearing, and the list of persons and entities deemed by the Court to have timely and properly excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

VI. WITHDRAWAL FROM SETTLEMENT

Plaintiff 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 increases the costs of the Settlement, alters 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); or

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, alters 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 expenses, if any, shall not be a basis for withdrawal; or

4. In addition to the above grounds, the Defendant shall 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.

5. To withdraw from this Settlement Agreement under this paragraph, 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 or proceeding 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, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendant and Plaintiff, and shall not be deemed or construed to be an admission or confession by any party of any fact, claim, 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.

6. 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 the Settlement and any responses thereto. The Claim Administrator, on a monthly basis, shall provide to Class Counsel and Defense Counsel summary information concerning the number of Claims made, number of Claims approved, the number of

Claims denied, the number of Claims determined to be deficient, and total dollar amount of payouts on Claims made, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

B. Except as otherwise stated in this Agreement, as between the Parties, the reasonable costs of the Claim Administrator in dissemination of the Class Notice and administration of the Settlement pursuant to the terms of this Agreement shall be borne by VWGoA.

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 5.

B. Final Approval of Settlement

1. If this Settlement Agreement is preliminarily approved by the Court, and pursuant to a schedule set forth in the Preliminary Approval Order or otherwise agreed by the Parties, Class Counsel shall present a motion requesting that the Court grant final approval of the Settlement and issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) substantially in a form to be agreed by the Parties.

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

C. Plaintiff's Application for Reasonable Class Counsel Fees and Expenses and Class Representative Service Award

1. If the Court grants Preliminary Approval of the Settlement, Class Counsel has stated their intent to make an application for reasonable Class Counsel Fees and Expenses and for a reasonable service award for Settlement Class Representative Plaintiff Julie Kimball (hereinafter, "Fee and Expense Application"), to which Defendant may respond as appropriate. The scheduling of such Fee and Expense Application and any response by Defendant shall be agreed by the Parties and subject to the Court's approval. Prior to Class Counsel's filing of a Fee and Expense Application, the Parties shall discuss the matters in good faith to ascertain if any agreements can be reached with respect thereto, and submit to the Court an agreed schedule for (i) the timing and briefing of the Fee and Expense Application and Defendant's response, and (ii) if the Parties are unable to reach agreement on Class Counsel Fees and Expenses and/or the Settlement Class Representative Service Award, the fact and expert discovery on the issues relevant to the Fee and Expense Application that will be conducted prior to the time that Defendant must file its response. If the Parties cannot agree, then such scheduling and/or discovery matters shall be submitted to the Court for resolution.

2. The Court's determination of the Fee and Expense Application shall be subject to rights of appeal by any of the Parties.

3. The procedure for, and the grant, denial, allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. 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, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the Effective Date of the Settlement if it is granted final approval by the Court. Payment of Class Counsel Fees and Expenses and the Settlement Class Representative Service Award will not reduce the benefits to which Settlement Class Members may be eligible under the Settlement terms, and the Settlement Class Members will not be required to pay any portion of the Class Counsel Fees and Expenses and Settlement Class Representative Service Award.

D. Release of Plaintiff's and Settlement Class Members' Claims

1. Upon the Effective Date, the Plaintiff and each and every 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 Defendant and all Released Parties from all Released Claims.

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiff 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 will 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 and made a part of this Agreement.

B. No Admission of Liability

Neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim, allegation or fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind and nature on the part of Defendant and the Released Parties, or any admission by Defendant or any Released Parties of any claim or allegation made in any action or proceeding against them. The Parties understand and agree that neither this Agreement, its content and substance, any documents prepared and/or filed in connection therewith, nor the negotiations that preceded it, shall be offered or be admissible in evidence against Defendant, the Released Parties, the Plaintiff or the Settlement Class Members, or cited or referred to, either in the Action or in any other action or proceeding (judicial or otherwise), except as needed to enforce the terms of this Agreement, its Release of Claims against the Released Parties, and the Final Approval Order and Judgment herein.

C. Entire Agreement

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

D. Arm's-Length Negotiations and Good Faith

The Parties have negotiated all of the terms and conditions of this Agreement at arm's-length and in good faith. All terms, conditions and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. In addition, the Parties hereby acknowledge that they have had ample opportunity to, and that they did, confer with counsel of their choice regarding, and before executing, this Agreement, and that this Agreement is fully entered into voluntarily and with no duress whatsoever.

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, executors, administrators, 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 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 Plaintiff: Gary S. Graifman
Kantrowitz Goldhamer & Graifman
Suite 200
135 Chestnut Ridge Road
Montvale, NJ 07645

As to Defendant: Michael B. Gallub, Esq.
Brian T. Carr, Esq.
Shook, Hardy & Bacon L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, NY 10020

I. Authority to Execute Settlement Agreement

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

J. Return of Confidential Materials

All documents and information designated as “confidential” and produced or exchanged in the Action, shall be returned or destroyed within thirty (30) days after entry of the Final Order and Judgment.

K. 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.

L. 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. However, this does not apply to, or in any way limit, any Released Party’s right to enforce the Release of Claims set forth in this Agreement.

M. 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.

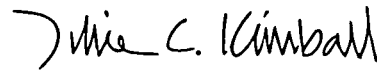
N. Captions

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.

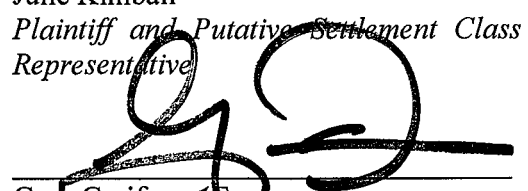
ON BEHALF OF PLAINTIFF:

Dated: December 28, 2024




Julie Kimball
Plaintiff and Putative Settlement Class Representative

Dated: December 29, 2024



Gary Graifman, Esq.
Kantrowitz, Goldhamer & Graifman, PC
135 Chestnut Ridge Road, Suite 200
Montvale, New Jersey 07645
Class Counsel for Plaintiff and the Settlement Class


Dated: December ²⁹__, 2024



Thomas Sobran, Esq.
Thomas P. Sobran PC
7 Evergreen Lane
Hingham, Massachusetts 02043
*Class Counsel for Plaintiff and the
Settlement Class*

ON BEHALF OF DEFENDANT:

Dated: January 6, 2025



Michael B. Gallub, Esq.
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, New York 10020
*Attorneys for Defendant Volkswagen
Group of America, Inc.*

EXHIBIT 1

REIMBURSEMENT CLAIM FORM

TO RECEIVE REIMBURSEMENT FOR CERTAIN PAST EXPENSES:

You must complete, sign and submit this form and provide the specified records to receive reimbursement of certain past out-of-pocket expenses for one repair or replacement of the turbocharger of a Settlement Class Vehicle that is covered (“covered repair”) under the class settlement in *Kimball v. Volkswagen Group of America, Inc.*, No. 2:22-cv-04163-JKS-MAH (D.N.J.).

FIVE STEPS FOR SUBMITTING A CLAIM FOR REIMBURSEMENT:

(1) Contact Information:

First Name: MI: Last Name:

Address:

City: State: ZIP Code:

Telephone Number: - -

Vehicle ID Number (VIN):

Vehicle Make: Vehicle Model:

(2) Provide a Repair Order and/or Other Records (original or legible copies) for the Covered Repair, which Must Include the Following Information:

- (a) Your name and address;
- (b) The make, model and Vehicle Identification Number (VIN) of your Settlement Class Vehicle that had the repair;
- (c) The date of the repair of your Settlement Class Vehicle;
- (d) The name and address of the authorized Audi dealership or non-dealer service facility that performed the repair;
- (e) A description of the repair work performed (demonstrating that this was a repair covered under the Settlement) including the parts repaired/replaced and a breakdown of the parts and labor costs;
 - If your supporting repair documents do not state a specific cause of the turbocharger failure or malfunction, then you must also provide documents or records evidencing your adherence to the oil maintenance aspects of the Settlement Class Vehicle’s maintenance schedule set forth in the Warranty and Maintenance Booklet, during the period of time that you owned and/or leased the vehicle up to the date/mileage of the covered repair or replacement. Your adherence to these oil maintenance requirements can be within a variance of ten percent (10%) of each required time/mileage maintenance interval. If you cannot obtain said documents or records despite a good faith effort to obtain them, you may submit a Declaration, signed under penalty of perjury, detailing the good faith efforts that you made and why the records are unavailable, and attesting to your adherence to the above oil maintenance requirements within the ten percent (10%) variance. A form Declaration is available for you on the Settlement Website at www.XXXXXXXX.com, or obtained from the Claim Administrator (1-800-_____)

- (f) The vehicle’s mileage at the time of the repair;
- (g) A declaration, signed under penalty of perjury, confirming that you did not alter or modify, or have another person alter or modify, the vehicle’s engine prior to the covered repair; and
- (h) Proof of payment, including the amount paid, for the covered repair. *(If your only Proof of payment consists of the invoice for the covered repair that is marked “paid,” and that repair was not performed by an authorized Audi dealer, then you must also submit a declaration from the repair facility confirming that the payment was made and the amount received*
- (i) *If you are not the person to whom Class Notice was mailed, proof that you were the owner or lessee of the vehicle at the time of the covered repair.*
- (j) *If the repair was performed during your vehicle’s original New Vehicle Limited Warranty period, but not by an authorized Audi dealer, you must also submit documents (such as a written estimate or invoice) confirming that before having it performed, you first attempted to have the repair performed by an authorized Audi dealer and that the dealer would not or was unable to perform the repair free of charge. If you cannot obtain such documentation after making a good faith effort to do so, you may, instead, submit, with your completed Claim Form and other required documents, a signed Declaration attesting to this fact and setting forth the good faith efforts you made to obtain the documentation. A form Declaration can be downloaded from the settlement website, www.XXXXXXX.com, or obtained from the Claim Administrator (1-800-_____)*

Total Dollar Amount Claimed For Repair:

\$ [] [] [] [] • [] []

(3) Answer the Following Question:

For the amount of the repair cost for which you are seeking to be reimbursed, did you receive any payment, credit, coverage, concession, or reimbursement for all or any part of the repair cost from any other source, including from Audi, any third party, a coupon, or other full or partial reimbursement or refund

Yes No

If you answered YES, list the total amount of the cost for which you received a payment, reimbursement, coverage, credit, or concession:

\$ [] [] [] [] • [] []

(4) Sign & Date:

All the information that I (we) supplied in this Claim Form is true and correct to the best of my (our) knowledge and belief, and this document is signed under penalty of perjury.

[Signature Line]

Date: [] [] MM [] [] DD [] [] [] [] YYYY

Signature

(5) This Claim Form and all required documents/paperwork must be submitted through www.XXXXXXX.com no later than XXXX XX, 2025, or mailed by regular first-class mail, postmarked no later than XXXX XX, 2025, to the following:

JND Claim Administration
Address
Address

For more information, please view the Class Notice, call the Claims Administrator at 1-XXX-XXX-XXXX, or visit www.XXXXX.com

Exhibit 2

**Notice of Proposed
Class Action Settlement**

If you currently or previously owned or leased a certain Model Year 2008-2009 Audi A3, 2015-2020 Audi A3, 2015-2024 Audi Q3, 2009-2014 Audi A4, 2010-2014 Audi A5, 2013-2015 Audi A6, 2011-2014 Audi Q5, 2011-2012 Audi TT, or 2016-2023 Audi TT vehicle in the United States or Puerto Rico, you may be entitled to benefits under a class action settlement. This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

For more information on the proposed Settlement and its benefits, your rights, important deadlines and procedures, how and when to file a claim for reimbursement, and the deadline and procedures for objecting to, or excluding yourself from, the Settlement, visit the Settlement Website at www._____.com or call toll-free _____.

Do not contact the Court for information about the settlement.

Settlement
c/o JND Legal Administration
PO Box 91500
Seattle, WA 98111

«ScanString»

Postal Service: Please do not mark barcode
«CF_PRINTED_ID»

«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

1450

A Settlement has been reached in a class action lawsuit regarding turbochargers in certain specific Audi vehicles. The Court has preliminarily approved the Settlement and will decide whether to grant final approval of it.

Am I a Class Member? You are a Settlement Class Member if you are a current or former owner or lessee of a certain Model Year 2008-2009 Audi A3, 2015-2020 Audi A3, 2015-2024 Audi Q3, 2009-2014 Audi A4, 2010-2014 Audi A5, 2013-2015 Audi A6, 2011-2014 Audi Q5, 2011-2012 Audi TT, or 2016-2023 Audi TT vehicle, in the United States or Puerto Rico, whose specific Vehicle Identification Number (“VIN”) is included in the Settlement (a “Settlement Class Vehicle”), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a Settlement Class Member, by searching the VIN Lookup Tool on the Settlement Website: www._____.com.

What benefits can I get from the settlement? If the Court grants final approval, the Settlement will provide the following benefits: 1) a Warranty Extension for certain of the Settlement Class Vehicles; and 2) Reimbursement of certain past paid out-of-pocket repair expenses. For details of these benefits, what is covered and for which Settlement Class Vehicles, the terms and conditions of the Settlement, your rights and applicable deadlines, procedures, and requirements for requesting exclusion from or objecting to the Settlement, and submitting a claim for reimbursement, please refer to the full Class Notice which is available on the Settlement Website, www._____.com. The Settlement Website also contains a Claim Form that you would need to complete, sign, and timely submit to the Settlement Claim Administrator, together with all required supporting documentation, either by mail or online through the Settlement Website **no later than** _____ in order to claim a reimbursement under the Settlement. You can also call the Settlement Claim Administrator toll free at _____ to obtain a Claim Form and for any questions you may have.

How can I exclude myself from the class? You do not have to do anything to stay in the Settlement Class. However, if you want to exclude yourself from the Settlement, you must mail a request for exclusion **postmarked no later than** _____. The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the full Class Notice on the Settlement Website, www._____.com. If you timely exclude yourself, you will not be eligible to receive any benefits of the Settlement. If you do not timely exclude yourself, you will remain part of the Settlement Class, and if the Settlement is approved by the Court, you can receive any benefits to which you are eligible and will be bound by the terms and provisions of the Settlement including the Release of Claims. Read the full Class Notice at www._____.com for further details including the requirements deadline for a request for exclusion.

How can I object? If you want to stay in the Settlement Class and object to the Settlement and/or Class Counsel's request for Attorneys' Fees and Costs and/or the Settlement Class Representative service award, you must file an objection with the Court **no later than** _____. Further details on the requirements and procedure for and deadline to file an objection, are contained in the full Class Notice that you can view on the Settlement Website, www._____.com.

Do I have a lawyer in this case? The Court has appointed the law firms of Kantrowitz, Goldhamer & Graifman PC and Thomas P. Sobran PC to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel, you may do so at your own expense.

The Court's Final Fairness Hearing. The Court will hold a Final Fairness Hearing on _____ at _____ am, at the United States District Court for the District of New Jersey located at Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102, to consider whether to grant final approval of the Settlement and Class Counsel's request for attorneys' fees and costs and a service award for the Named Plaintiff-Settlement Class Representative. The date of the hearing may change without further notice, so please visit _____ .com for any updated information. The website will also contain copies of relevant documents including the preliminary approval order, the motions for final approval of the Settlement, Class Counsel fees and expenses, and the Settlement Class Representative service award, and other important documents and submissions.

Please also visit the Settlement Website at _____ .com or call toll free 1- _____ to obtain more complete information about the proposed Settlement, your rights, and all applicable procedures, requirements and deadlines.

UNIQUE ID:	<<UNIQUE_ID>> 0452
PIN:	<<PIN>>
VIN:	<<VIN>>

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

Place
Stamp
Here

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

Kimball v. Volkswagen Group of America Settlement
c/o JND Legal Administration
PO Box 91500
Seattle, WA 98111

**Notice of Proposed
Class Action Settlement**

If you currently or previously owned or leased a certain Model Year 2008-2014 or 2015-2021 VW GTI or Golf R; 2012-2013 VW Beetle, 2009 VW Jetta Sportwagen, 2008-2013 or 2019-2014 VW Jetta, 2009-2016 VW Eos, 2008-2010 VW Passat, 2009-2017 VW CC, 2009-2018 VW Tiguan; 2015-2018 VW Golf; 2015-2019 Golf Sportwagen or Alltrack; 2019-2021 VW Arteon; 2018-2023 VW Atlas or 2020-2023 VW Atlas Cross Sport vehicle in the United States or Puerto Rico, you may be entitled to benefits under a class action settlement. This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

For more information on the proposed Settlement and its benefits, your rights, important deadlines and procedures, how and when to file a claim for reimbursement, and the deadline and procedures for objecting to, or excluding yourself from, the Settlement, visit the Settlement Website at www._____.com or call toll-free _____.

Do not contact the Court for information about the settlement.

Kimball v. Volkswagen Group of America, Inc.
Settlement
c/o JND Legal Administration
PO Box 91500
Seattle, WA 98111

«ScanString»

Postal Service: Please do not mark barcode
«CF_PRINTED_ID»

«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

1454

A Settlement has been reached in a class action lawsuit regarding turbochargers in certain specific Volkswagen vehicles. The Court has preliminarily approved the Settlement and will decide whether to grant final approval of it.

Am I a Class Member? You are a Settlement Class Member if you are a current or former owner or lessee of a certain Model 2008-2014 or 2015-2021 VW GTI or Golf R; 2012-2013 VW Beetle, 2009 VW Jetta Sportwagen, 2008-2013 or 2019-2014 VW Jetta, 2009-2016 VW Eos, 2008-2010 VW Passat, 2009-2017 VW CC, 2009-2018 VW Tiguan; 2015-2018 VW Golf; 2015-2019 Golf Sportwagen or Alltrack; 2019-2021 VW Arteon; 2018-2023 VW Atlas or 2020-2023 VW Atlas Cross Sport vehicle, in the United States or Puerto Rico, whose specific Vehicle Identification Number ("VIN") is included in the Settlement (a "Settlement Class Vehicle"), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a Settlement Class Member, by searching the VIN Lookup Tool on the Settlement Website: www._____.com.

What benefits can I get from the settlement? If the Court grants final approval, the Settlement will provide the following benefits: 1) a Warranty Extension for certain of the Settlement Class Vehicles; and 2) Reimbursement of certain past paid out-of-pocket repair expenses. For details of these benefits, what is covered and for which Settlement Class Vehicles, the terms and conditions of the Settlement, your rights and applicable deadlines, procedures, and requirements for requesting exclusion from or objecting to the Settlement, and submitting a claim for reimbursement, please refer to the full Class Notice which is available on the Settlement Website, www._____.com. The Settlement Website also contains a Claim Form that you would need to complete, sign, and timely submit to the Settlement Claim Administrator, together with all required supporting documentation, either by mail or online through the Settlement Website **no later than** _____ in order to claim a reimbursement under the Settlement. You can also call the Settlement Claim Administrator toll free at _____ to obtain a Claim Form and for any questions you may have.

How can I exclude myself from the class? You do not have to do anything to stay in the Settlement Class. However, if you want to exclude yourself from the Settlement, you must mail a request for exclusion **postmarked no later than** _____. The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the full Class Notice on the Settlement Website, www._____.com. If you timely exclude yourself, you will not be eligible to receive any benefits of the Settlement. If you do not timely exclude yourself, you will remain part of the Settlement Class, and if the Settlement is approved by the Court, you can receive any benefits to which you are eligible and will be bound by the terms and provisions of the Settlement including the Release of Claims. Read the full Class Notice at www._____.com for further details including the requirements deadline for a request for exclusion.

1455

How can I object? If you want to stay in the Settlement Class and object to the Settlement and/or Class Counsel's request for Attorneys' Fees and Costs and/or the Settlement Class Representative service award, you must file an objection with the Court **no later than** _____. Further details on the requirements and procedure for and deadline to file an objection, are contained in the full Class Notice that you can view on the Settlement Website, www._____.com.

Do I have a lawyer in this case? The Court has appointed the law firms of Kantrowitz, Goldhamer & Graifman PC and Thomas P. Sobran PC to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel, you may do so at your own expense.

The Court's Final Fairness Hearing. The Court will hold a Final Fairness Hearing on _____ at _____ am, at the United States District Court for the District of New Jersey located at Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102, to consider whether to grant final approval of the Settlement and Class Counsel's request for attorneys' fees and costs and a service award for the Named Plaintiff-Settlement Class Representative. The date of the hearing may change without further notice, so please visit _____ .com for any updated information. The website will also contain copies of relevant documents including the preliminary approval order, the motions for final approval of the Settlement, Class Counsel fees and expenses, and the Settlement Class Representative service award, and other important documents and submissions.

Please also visit the Settlement Website at _____ .com or call toll free 1- _____ to obtain more complete information about the proposed Settlement, your rights, and all applicable procedures, requirements and deadlines.

UNIQUE ID:	<<UNIQUE_ID>> 0456
PIN:	<<PIN>>
VIN:	<<VIN>>

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

Place
Stamp
Here

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

Kimball v. Volkswagen Group of America Settlement
c/o JND Legal Administration
PO Box 91500
Seattle, WA 98111

EXHIBIT 3

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court authorized this notice. This is not a solicitation from a lawyer.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you currently or previously owned or leased a certain Audi brand vehicle (listed below) in the United States or Puerto Rico, you may be entitled to benefits afforded by a class action settlement.

- **This proposed class action, pending in the United States District Court for the District of New Jersey, is captioned *Kimball v. Volkswagen Group of America, Inc.*, Civil Action No. 2:22-cv-04163-JKS-MAH (the “Action”). The parties have agreed to a class settlement of the Action, which the Court has preliminarily approved, and will ask the Court to grant final approval of the proposed Settlement. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to grant final approval of the Settlement.**
- **This Notice explains the Action, the proposed Settlement, your legal rights and options, available benefits, who is eligible for and how to obtain the benefits, and applicable dates, time deadlines and procedures.**
- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**
- **The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will be made only if the Court grants final approval of the Settlement and after appeals, if any, are resolved.**

BASIC INFORMATION

1. What is involved in the Lawsuit and what are the settlement benefits?

If you are a current or past owner or lessee of a “Settlement Class Vehicle,” you may be entitled to benefits under the proposed Settlement. The Settlement Class Vehicles are certain model/model year Audi vehicles, identified by specific Vehicle Identification Number (“VIN”), that were distributed by Volkswagen Group of America, Inc. (“VWGoA”) in the United States or Puerto Rico and equipped with a Generation 1, Generation 2 or Generation 3 EA888 engine as delineated below:

“Generation 1 Settlement Class Vehicles”:

- Certain model year 2008-2009 Audi A3*
- Certain model year 2015-2018 Audi Q3*

“Generation 2 Settlement Class Vehicles”:

- Certain model year 2009-2014 Audi A4*
- Certain model year 2010-2014 Audi A5*
- Certain model year 2013-2015 Audi A6*
- Certain model year 2011-2014 Audi Q5*
- Certain model year 2011-2012 Audi TT*

“Generation 3 Settlement Class Vehicles”:

- Certain model year 2015-2020 Audi A3*

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

- Certain model year 2019-2024 Audi Q3*
- Certain model year 2016-2023 Audi TT*

*Not every such model and model year vehicle is covered by this Settlement (i.e., a Settlement Class Vehicle). The Settlement Class Vehicles are determined by specific Vehicle Identification Numbers (VINs). You can look up whether your vehicle is a Settlement Class Vehicle by typing your vehicle's VIN, where indicated, in the VIN Lookup Portal on the Settlement website at www._____.com, or you can call the Settlement Claim Administrator toll-free at 1-XXX-XXX-XXXX to find out.

A "Settlement Class Member" is defined as a current or past owner or lessee of a Settlement Class Vehicle.

The Action claims that the turbochargers in certain Audi vehicles were defective and potentially prone to premature failure. VWGoA denies the claims and maintains that the turbochargers in the Settlement Class Vehicles are not defective, function properly, were properly designed, manufactured, marketed and sold, and that no applicable warranties were breached nor any applicable statutes violated. The Court has not decided in favor of either party. Instead, the Action has been resolved through a Settlement, which the Court preliminarily approved, under which eligible Settlement Class Members who qualify may obtain the following benefits:

I. Warranty Extension for Current Owners or Lessees of Generation 3 Settlement Class Vehicles

Effective on _____ [the Notice Date], VWGoA will extend the New Vehicle Limited Warranties (NVLWs) of Generation 3 Settlement Class Vehicles until 8.5 years or 85,000 miles (whichever occurs first) from said vehicle's In-Service Date, to cover fifty percent (50%) of the cost of repair or replacement (parts and labor), by an authorized Audi dealer, of a failed or malfunctioning turbocharger of said vehicle if the cause was that the wastegate failed due to fork head and/or link pin corrosion. However, if, as of _____ [Notice Date], a said Generation 3 Settlement Class Vehicle is more than 8.5 years of age from its In-Service Date, then this Warranty Extension's duration for that vehicle will be until _____ [60-days after Notice Date] or 85,000 miles from vehicle's the In-Service Date, whichever occurs first.

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover or apply to turbocharger/wastegate failures or malfunctions due to abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact, or damage from an outside source.

II. Reimbursement for a Certain Past Paid (and Unreimbursed) Out-of-Pocket Repair Expenses (All Settlement Class Vehicles)

If, prior to _____ [Notice Date] and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, you incurred and paid for a repair or replacement of a failed or malfunctioned turbocharger in that vehicle, you may submit, to the Settlement Claim Administrator, a Claim for Reimbursement (a fully completed, dated and signed Claim Form together with all Proof of Repair Expense and other required documentation) for fifty percent (50%) of the paid invoice expense of one (1) such turbocharger repair or replacement (parts and labor), if:

- for a Generation 1 or Generation 2 Settlement Class Vehicle, the past paid turbocharger repair or replacement was due to the wastegate having no longer functioned properly because of wear at the link plate and pin, and
- for a Generation 3 Settlement Class Vehicle, the past paid turbocharger repair or replacement was due to the wastegate having failed because of fork head and/or link pin corrosion.

However, if the Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair or replacement was due to II.B.(i) or (ii) above, as applicable to that vehicle, then the

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

reimbursement for the one (1) said covered repair will be forty percent (40%) of the past paid invoice amount (parts and labor) and in addition to the Proof of Repair Expense documentation, the Settlement Class Member must also submit, with his/her/its Claim for Reimbursement, the Proof of Adherence to Maintenance Requirements documentation (explained below).

If the past paid covered repair was not performed by an authorized Audi dealer, then the maximum paid invoice amount to which the applicable reimbursement percentage shall be applied shall not exceed a maximum of \$3,850. In addition, if that past paid covered repair was performed within the Settlement Class Vehicle's original NVLW time and mileage period, then the Settlement Class Member must also submit with his/her/its Claim, in addition to the other applicable proof requirements, 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 he/she/it first attempted to have that repair performed by an authorized Audi dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

The above relief is subject to certain limitations and proof requirements, which are set forth below and in the Settlement Agreement, which can be found on the Settlement website at www._____.com.

III. Required Proof for a Claim for Reimbursement:

To qualify for a Claim for Reimbursement of past paid and unreimbursed out-of-pocket expenses provided under Section II above, you must comply with the following requirements:

A. In order to submit a valid Claim for Reimbursement under this Settlement, you must submit online no later than _____, or mail to the Settlement Claim Administrator by first-class mail post-marked no later than _____, a fully completed, signed and dated Claim Form, a copy of which is available at www._____, together with all required supporting documentation listed below.

1. An original or legible copy of a repair invoice(s) documenting the repair covered under the Settlement and containing your name; the make, model and vehicle identification number ("VIN") of the Settlement Class Vehicle; the name and address of the authorized Audi dealer or non-dealer service center that performed the repair; the date of repair and Settlement Class Vehicle's mileage at the time of repair; a description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs of the covered repair demonstrating that the repair is, in fact, a covered repair under the Settlement; and the amount charged for the covered repair and proof of payment. If the covered repair was not performed by an authorized Audi dealer, and the only proof of payment you have is a repair invoice marked "Paid," then you also must also submit a declaration from the repair facility, signed under the penalty of perjury, confirming that the payment was in fact made. Please note that if you opt to send original documents with your Claim, please make and retain copies for yourself.

2. A declaration, signed under penalty of perjury, confirming that you did not alter or modify, or have another person alter or modify, the vehicle's engine prior to the covered repair;

3. If your covered repair occurred within your Settlement Class Vehicle's New Vehicle Limited Warranty period but was not performed by an authorized Audi dealer, you must also submit records showing that you first attempted to have the repair completed at an authorized Audi dealer but the dealer refused or was unable to complete the repair free of charge under warranty. If such records cannot be obtained despite a good faith effort, then you may submit a declaration to that effect, signed under the penalty of perjury, and stating the good faith efforts you made to obtain the records.

4. If your supporting repair documents do not state a specific cause of the turbocharger failure or malfunction, then you must also provide documents or records evidencing your adherence to the oil maintenance aspects of the Settlement Class Vehicle's maintenance schedule set forth in the Warranty and Maintenance Booklet, during the period of time that you owned and/or leased the vehicle up to the date/mileage of the covered repair or replacement. Your adherence to these oil maintenance requirements can be within a variance of ten percent (10%) of each required time/mileage maintenance interval. If you are unable to obtain said documents or records despite a good faith effort to obtain them, you may submit a Declaration, signed under penalty of perjury, detailing the good faith efforts that you made and why the records are unavailable, and attesting to your adherence to the above oil maintenance requirements within the ten percent (10%) variance. A form Declaration is available for you on the Settlement Website at

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

www.XXXXXXXX.com, or obtained from the Claim Administrator (1-800-_____).

B. If you are not a person to whom the Class Notice was addressed, the Claim shall contain proof that you are a Settlement Class Member and that the vehicle is a Settlement Class Vehicle;

C. For your convenience, forms for any declarations required above are available to you at www._____ or you can request them from the Settlement Claim Administrator.

IV. Limitations:

A. Any reimbursement under the Settlement shall be reduced by goodwill or other amount or concession paid by an authorized Audi dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free repair covered under this Agreement, or was otherwise already reimbursed the full amount for the covered repair, then he/she/it will not be entitled to any reimbursement.

B. VWGoA will not be responsible for, and shall not warrant, repair or replacement work performed at any service center or facility that is not an authorized Audi dealer.

C. Reimbursement shall not apply to turbocharger/wastegate failures that were caused by abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact or outside source.

2. Why is this a class action settlement?

In a class action lawsuit, one or more persons, called Plaintiffs and Class Representatives, sue on behalf of other people who have similar claims. All of these people are Class Members or Settlement Class Members. The companies they sued are called the Defendants. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Class.

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a Settlement, which the Court preliminarily approved, with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the Settlement Class Members) will receive benefits quickly. The Class Representatives and the attorneys believe the Settlement is best for the Settlement Class.

WHO IS PART OF THE SETTLEMENT?

3. Am I in this Settlement Class?

The Court has conditionally approved the following definition of a Settlement Class Member: All persons or entities who purchased or leased a Settlement Class Vehicle in the United States of America and Puerto Rico. (The Settlement Class Vehicles are discussed in Section 1 above).

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 that 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 (see Section 10 below).

4. I'm still not sure if I am included in this Settlement.

If you are still not sure whether you are included in this Settlement, you can enter your vehicle's VIN in the VIN look-up Portal at www._____.com to determine if it is a Settlement Class Vehicle. You can also call the Settlement Claim Administrator at 1-_____ or visit www._____.com for more information.

SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The benefits afforded by the Settlement are described in Section 1. Additional details are provided below.

6. Who can send in a Claim for reimbursement?

Any United States or Puerto Rico resident who purchased or leased a Settlement Class Vehicle can send in a timely Claim for Reimbursement for money spent on a prior covered repair/replacement prior to _____ if the Claim satisfies the parameters and criteria required for reimbursement described in Section 1.

7. How do I send in a Claim for reimbursement?

To submit a Claim for reimbursement, you must do the following no later than _____:

- A. Complete, sign under penalty of perjury, and date a Claim Form (you can download one at www._____.com). It is recommended that you keep a copy of the completed Claim Form; and
- B. Submit your completed, signed and dated Claim Form, together with all supporting documents, either (i) through the Settlement Website at www._____.com no later than _____; or (ii) mail the completed, signed, and dated Claim Form, together with your supporting documentation, by first-class mail, post-marked no later than _____, to the Settlement Claim Administrator at the address provided on the Claim Form. The information that must be reflected in your records is described on the Claim Form. It is recommended that you keep a copy of your records and receipts.

If you are eligible for reimbursement benefits under the Settlement but fail to submit the completed Claim Form and supporting documents by the required deadline, you will not receive a reimbursement.

8. When do I get my reimbursement or learn whether I will receive a payment?

If the Settlement Claim Administrator determines your Claim is valid, your reimbursement will be mailed to you within one hundred fifty (150) days of either (i) the date of receipt of the completed Claim (with all required proof), or (ii) the date that the Settlement becomes final (the "Effective Date"), whichever is later. The Court will hold a Final Fairness Hearing on _____ to decide whether to grant final approval of the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at www._____.com.

If the Settlement Claim Administrator determines that there is/are deficiency(ies) in your Claim Form and/or the supporting documentation that is required, then you will be mailed a letter or notice informing you of the deficiency(ies), what needs to be submitted to correct it/them, and the deadline for doing so. Deficiencies that are not timely corrected will result in denial of your Claim. To check on the status of your Claim, you can call 1-_____.

9. What am I giving up to participate in the Settlement and stay in the Class?

Unless you exclude yourself by taking the steps described in Section 10 below, you will remain in the Class, and that means that you may receive any Settlement benefits to which you are eligible, and will be bound by the release of claims and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were or could have been asserted in this case, and the Released Claims set forth in the Settlement Agreement (except for claims of personal injury or property damage other than damage to the Settlement Class Vehicle itself). It also means that all of the Court's orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in sections I.T and I.U of the Settlement Agreement, a copy of which is available for review on the settlement website, www._____.com.

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I Exclude Myself from this Settlement?

You do not have to do anything to remain in this Settlement. However, you have a right, if you so desire, to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must send a letter by first-class U.S. mail post-marked no later than _____, stating clearly that you want to be excluded from this Settlement (“Request for Exclusion”). You must include in the Request for Exclusion your full name, address, telephone number, the model, model year and VIN of the Settlement Class Vehicle; a statement that you are a present or former owner or lessee of a Settlement Class Vehicle; and specifically and unambiguously state your desire to be excluded from the Settlement Class. You must mail your exclusion request, post-marked no later than _____, to each of the following:

SETTLEMENT CLAIM ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
JND Legal Administration	GARY GRAIFMAN, , ESQ. KANTROWITZ, GOLDHAMER & GRAIFMAN PC 135 CHESTNUT RIDGE ROAD, SUITE 200 MONTVALE, NJ 07645	MICHAEL B. GALLUB, ESQ. SHOOK, HARDY & BACON LLP 1 ROCKEFELLER PLAZA SUITE 2801 NEW YORK, NY 10020

You cannot exclude yourself on the phone or by email. If you have timely mailed a Request for Exclusion that contains all of the required information, and the Court grants your request for exclusion upon final approval of the Settlement, then you will be excluded from the Settlement Class. You will not receive any benefits of the Settlement, you cannot object to the Settlement, and you will not be legally bound by anything that happens in this Lawsuit..

11. If I don’t exclude myself, can I sue later?

No, not for the same matters and legal claims that were or could have been asserted in the Action or any of the Released Claims in the Settlement Agreement, unless your claim is for personal injury or property damage (other than damage to the Settlement Class Vehicle itself).

12. If I exclude myself, can I get the benefits of this Settlement?

No, if you exclude yourself from the Settlement Class, you will not receive any money or benefits from this Settlement, and you should not submit a Claim Form. You cannot do both.

13. Do I have a lawyer in this case?

The Court has appointed the law firms of Kantrowitz, Goldhamer & Graifman PC, and Thomas P. Sobran PC as “Class Counsel” to represent the Settlement Class Members.

14. Should I get my own lawyer?

You do not need to hire your own lawyer to participate in the Settlement because Class Counsel will be representing you and the Settlement Class. But, if you want your own lawyer, you may hire one at your own cost.

15. How will the lawyers be paid, and will the Plaintiff Settlement Class Representative receive a service award?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees and reasonable costs and expenses (“Fees and Expenses”) in a combined total sum not \$_____ for Class Counsel. VWGoA has agreed not to oppose Class Counsel’s application for Fees and Expenses to

the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any Fees and Expenses in excess of that combined total sum.

Class Counsel will also apply to the Court for a service award in the amount of \$_____ for Plaintiff-Settlement Class Representative Julie Kimball for her efforts in pursuing this litigation for the benefit of the Settlement Class.

Any award for Class Counsel Fees and Expenses, and any service award to Settlement Class Representative, will be paid separately by Defendant and will not reduce any benefits that may be available to you or the rest of the Settlement Class under the Settlement. You won't have to pay these Fees and Expenses.

Class Counsel's motion for fees and expenses and the Settlement Class Representative service award will be filed by _____, and a copy will be made available for review at www._____.com.

SUPPORTING OR OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I like or dislike the Settlement?

If you are a member of the Settlement Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or you can ask the Court to deny approval by filing a written objection. You can object to the Settlement and/or to Class Counsel's requests for Fees and Expenses and Settlement Class Representative service award. You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object on a timely basis. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object to or comment on the Settlement, you must do either of the following:

- i. File your written objection or comment, and any supporting papers or materials, on the Court's docket for this case, *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH, via its electronic filing system, no later than _____, or
- ii. File your written objection or comment, and any supporting papers or materials, with the Court in person at the Clerk's Office, United States District Court for the District of New Jersey, 4015 Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102, no later than _____, or
- iii. Mail your written objection or comment, and any supporting papers or materials, to each of the following, by U.S. first-class mail, post-marked no later than _____:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
CLERK'S OFFICE MARTIN LUTHER KING JR. FEDERAL BUILDING AND UNITED STATES COURTHOUSE 50 WALNUT STREET NEWARK, NJ 07102	GARY GRAIFMAN, , ESQ. KANTROWITZ, GOLDHAMER & GRAIFMAN PC 135 CHESTNUT RIDGE ROAD, SUITE 200 MONTVALE, NJ 07645	MICHAEL B. GALLUB, ESQ. SHOOK, HARDY & BACON LLP 1 ROCKEFELLER PLAZA SUITE 2801 NEW YORK, NY 10020

Regardless of the above method you choose, your written objection must state clearly that you are objecting to the Settlement or the request for Class Counsel Fees and Expenses and/or Class Representative Service Awards in *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH, and must include all of the following: (i) your full name, current address and telephone number; (ii) the model, model year and VIN of your Settlement Class Vehicle; (iii) proof that you own(ed) or lease(d) the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration or license receipt); (iv) a written statement of all your factual and legal grounds for objecting; (v) copies of any papers, briefs and/or other documents upon which the objection is based and which are pertinent to the objection; (vi) the name, address, and telephone number of any counsel representing you; and (vii) a detailed list of any other objections submitted by you and/or any counsel representing you to any class action settlements 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, or affirmatively state, in your objection,

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

that you and/or your counsel have not objected to any other class action settlement in the United States in the previous five (5) years.

Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing. In order to appear, the Settlement Class Member must, by the objection deadline of _____, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice (see above), 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 identity of witnesses that the Settlement Class Member (or his/her counsel) intends to present to the Court in connection with the Fairness Hearing.

Any Settlement Class Member who does not submit a written objection to the proposed Settlement, or Class Counsel's application for Fees and Expenses and/or the Class Representative service award, within the above deadline and in full compliance with the above requirements and procedure for a valid objection shall waive his/her/its right to do so, and to appeal from any order or judgment of the Court concerning the Settlement, Fees and Expenses and/or service award.

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 Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

17. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

FINAL FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing at **on _____ at _____ a.m.**, before the Honorable Jamel K. Semper, Courtroom ____, United States District Judge, United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07102, to determine whether the Settlement should be granted final approval. At the Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and thus, should receive final approval. The Court will also consider Class Counsel's application for Fees and Expenses and the Settlement Class Representative service award. The date and/or time of the Final Fairness Hearing may change without further notice to the Settlement Class. You should check the Settlement Website or the Court's PACER site to confirm that the date and/or time has not changed, or if it has, learn to the new date and time.

19. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. You may also pay your own lawyer to attend. However, if your objection is timely and compliant with the requirements, the Court will consider it whether or not you or your lawyer attend.

20. May I speak at the Fairness Hearing?

If you do not exclude yourself, you may ask the Court's permission to speak in favor of the proposed Settlement at the Final Fairness Hearing, and any Settlement Class Member who has properly filed a timely objection may ask the Court's permission to appear and speak regarding that objection. To do so, you must file with the Clerk of the Court, and serve upon all counsel identified in Section 16 above, a Notice of Intention to Appear at the Fairness Hearing, saying that it is your intention to appear at the Fairness Hearing in *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH. 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.

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

You must file your Notice of Intention to Appear with the Clerk of the Court and serve a copy upon all counsel designated in the Class Notice no later than _____. You cannot speak at the Final Fairness Hearing if you have excluded yourself from the Settlement.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, you will remain in the Settlement Class. If the Court approves the Settlement, you can receive any benefits of the Settlement to which you are eligible, and you will be bound by the Settlement and its terms and provisions, including the Release of Claims, and by all orders and judgments of the Court.

MORE INFORMATION

22. Where can I get more information?

The settlement website located at www._____.com allows you to submit a claim online, look up your vehicle's VIN to determine if it is a Settlement Class Vehicle, obtain Claim Forms, find a copy of the Settlement Agreement and other pertinent documents, and access more information about this Litigation and Settlement. Updates regarding the Action, including important dates and deadlines, will also be available on the website. You may also call the Settlement Claim Administrator at 1-_____ or email info@_____.com.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court authorized this notice. This is not a solicitation from a lawyer.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you currently or previously owned or leased a certain Volkswagen brand vehicle (listed below) in the United States or Puerto Rico, you may be entitled to benefits afforded by a class action settlement.

- **This proposed class action, pending in the United States District Court for the District of New Jersey, is captioned *Kimball v. Volkswagen Group of America, Inc.*, Civil Action No. 2:22-cv-04163-JKS-MAH (the “Action”). The parties have agreed to a class settlement of the Action, which the Court has preliminarily approved, and will ask the Court to grant final approval of the proposed Settlement. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to grant final approval of the Settlement.**
- **This Notice explains the Action, the proposed Settlement, your legal rights and options, available benefits, who is eligible for and how to obtain the benefits, and applicable dates, time deadlines and procedures.**
- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**
- **The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will be made only if the Court grants final approval of the Settlement and after appeals, if any, are resolved.**

BASIC INFORMATION

1. What is involved in the Lawsuit and what are the settlement benefits?

If you are a current or past owner or lessee of a “Settlement Class Vehicle,” you may be entitled to benefits under the proposed Settlement. The Settlement Class Vehicles are certain model/model year Volkswagen vehicles, identified by specific Vehicle Identification Number (“VIN”), that were distributed by Volkswagen Group of America, Inc. (“VWGoA”) in the United States or Puerto Rico and equipped with a Generation 1 or Generation 3 EA888 engine as delineated below:

“Generation 1 Settlement Class Vehicles”:

- Certain model year 2008-2014 VW GTI and Golf R*
- Certain model year 2012-2013 VW Beetle*
- Certain model year 2009 VW Jetta Sportwagen*
- Certain model year 2008-2013 VW Jetta Sedan and GLI*
- Certain model year 2009-2016 VW Eos*
- Certain model year 2008-2010 VW Passat*
- Certain model year 2009-2017 VW CC*
- Certain model year 2009-2018 VW Tiguan**

“Generation 3 Settlement Class Vehicles”:

- Certain model year 2015-2018 VW Golf*
- Certain model year 2015-2021 VW GTI*

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

- Certain model year 2015-2019 VW Golf R*
- Certain model year 2015-2019 VW Golf Sportwagen and Alltrack*
- Certain model year 2019-2024 VW Jetta GLI*
- Certain model year 2019-2021 VW Arteon*
- Certain model year 2018-2023 VW Atlas*
- Certain model year 2020-2023 VW Atlas Cross Sport*

*Not every such model and model year vehicle is covered by this Settlement (i.e., a Settlement Class Vehicle). The Settlement Class Vehicles are determined by specific Vehicle Identification Numbers (VINs). You can look up whether your vehicle is a Settlement Class Vehicle by typing your vehicle's VIN, where indicated, in the VIN Lookup Portal on the Settlement website at www.XXXXXXXXXX.com, or you can call the Settlement Claim Administrator toll-free at 1-XXX-XXX-XXXX to find out.

A "Settlement Class Member" is defined as a current or past owner or lessee of a Settlement Class Vehicle.

The Action claims that the turbochargers in certain Volkswagen vehicles were defective and potentially prone to premature failure. VWGoA denies the claims and maintains that the turbochargers in the Settlement Class Vehicles are not defective, function properly, were properly designed, manufactured, marketed and sold, and that no applicable warranties were breached nor any applicable statutes violated. The Court has not decided in favor of either party. Instead, the Action has been resolved through a Settlement, which the Court preliminarily approved, under which eligible Settlement Class Members who qualify may obtain the following benefits:

V. Warranty Extension for Current Owners or Lessees of Generation 3 Settlement Class Vehicles

Effective on _____ [the Notice Date], VWGoA will extend the New Vehicle Limited Warranties (NVLWs) of Generation 3 Settlement Class Vehicles until 8.5 years or 85,000 miles (whichever occurs first) from said vehicle's In-Service Date, to cover fifty percent (50%) of the cost of repair or replacement (parts and labor), by an authorized Volkswagen dealer, of a failed or malfunctioning turbocharger of said vehicle if the cause was that the wastegate failed due to fork head and/or link pin corrosion. However, if, as of _____ [Notice Date], a said Generation 3 Settlement Class Vehicle is more than 8.5 years of age from its In-Service Date, then this Warranty Extension's duration for that vehicle will be until _____ [60-days after Notice Date] or 85,000 miles from vehicle's the In-Service Date, whichever occurs first.

The Warranty Extension is subject to the same terms, conditions, and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover or apply to turbocharger/wastegate failures or malfunctions due to abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact, or damage from an outside source.

VI. Reimbursement for a Certain Past Paid (and Unreimbursed) Out-of-Pocket Repair Expenses (All Settlement Class Vehicles)

If, prior to _____ [Notice Date] and within 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, you incurred and paid for a repair or replacement of a failed or malfunctioned turbocharger in that vehicle, you may submit, to the Settlement Claim Administrator, a Claim for Reimbursement (a fully completed, dated and signed Claim Form together with all Proof of Repair Expense and other required documentation) for fifty percent (50%) of the paid invoice expense of one (1) such turbocharger repair or replacement (parts and labor), if:

- (i) for a Generation 1 Settlement Class Vehicle, the past paid turbocharger repair or replacement was due to the wastegate having no longer functioned properly because of wear at the link plate and pin, and

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

- (ii) for a Generation 3 Settlement Class Vehicle, the past paid turbocharger repair or replacement was due to the wastegate having failed because of fork head and/or link pin corrosion.

However, if the Proof of Repair Expense documentation does not specifically state that the reason for the past paid turbocharger repair or replacement was due to II.B.(i) or (ii) above, as applicable to that vehicle, then the reimbursement for the one (1) said covered repair will be forty percent (40%) of the past paid invoice amount (parts and labor) and in addition to the Proof of Repair Expense documentation, the Settlement Class Member must also submit, with his/her/its Claim for Reimbursement, the Proof of Adherence to Maintenance Requirements documentation (explained below).

If the past paid covered repair was not performed by an authorized Volkswagen dealer, then the maximum paid invoice amount to which the applicable reimbursement percentage shall be applied shall not exceed a maximum of \$3,850. In addition, if that past paid covered repair was performed within the Settlement Class Vehicle's original NVLW time and mileage period, then the Settlement Class Member must also submit with his/her/its Claim, in addition to the other applicable proof requirements, 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 he/she/it first attempted to have that repair performed by an authorized Volkswagen dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

The above relief is subject to certain limitations and proof requirements, which are set forth below and in the Settlement Agreement, which can be found on the Settlement website at www._____.com.

VII. Required Proof for a Claim for Reimbursement:

To qualify for a Claim for Reimbursement of past paid and unreimbursed out-of-pocket expenses provided under Section II above, you must comply with the following requirements:

D. In order to submit a valid Claim for Reimbursement under this Settlement, you must submit online no later than _____, or mail to the Settlement Claim Administrator by first-class mail post-marked no later than _____, a fully completed, signed and dated Claim Form, a copy of which is available at www._____.com, together with all required supporting documentation listed below.

1. An original or legible copy of a repair invoice(s) documenting the repair covered under the Settlement and containing your name; the make, model and vehicle identification number ("VIN") of the Settlement Class Vehicle; the name and address of the authorized Volkswagen dealer or non-dealer service center that performed the repair; the date of repair and Settlement Class Vehicle's mileage at the time of repair; a description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs of the covered repair demonstrating that the repair is, in fact, a covered repair under the Settlement; and the amount charged for the covered repair and proof of payment. If the covered repair was not performed by an authorized Volkswagen dealer, and the only proof of payment you have is a repair invoice marked "Paid," then you also must also submit a declaration from the repair facility, signed under the penalty of perjury, confirming that the payment was in fact made. Please note that if you opt to send original documents with your Claim, please make and retain copies for yourself.

2. A declaration, signed under penalty of perjury, confirming that you did not alter or modify, or have another person alter or modify, the vehicle's engine prior to the covered repair;

3. If your covered repair occurred within your Settlement Class Vehicle's New Vehicle Limited Warranty period but was not performed by an authorized Volkswagen dealer, you must also submit records showing that you first attempted to have the repair completed at an authorized Volkswagen dealer but the dealer refused or was unable to complete the repair free of charge under warranty. If such records cannot be obtained despite a good faith effort, then you may submit a declaration to that effect, signed under the penalty of perjury, and stating the good faith efforts you made to obtain the records.

4. If your supporting repair documents do not state a specific cause of the turbocharger failure or malfunction, then you must also provide documents or records evidencing your adherence to the oil maintenance aspects of the Settlement Class Vehicle's maintenance schedule set forth in the Warranty and Maintenance Booklet, during the period of time that you owned and/or leased the vehicle up to the

date/mileage of the covered repair or replacement. Your adherence to these oil maintenance requirements can be within a variance of ten percent (10%) of each required time/mileage maintenance interval. If you are unable to obtain said documents or records despite a good faith effort to obtain them, you may submit a Declaration, signed under penalty of perjury, detailing the good faith efforts that you made and why the records are unavailable, and attesting to your adherence to the above oil maintenance requirements within the ten percent (10%) variance. A form Declaration is available for you on the Settlement Website at www.XXXXXXXX.com, or obtained from the Claim Administrator (1-800-_____).

E. If you are not a person to whom the Class Notice was addressed, the Claim shall contain proof that you are a Settlement Class Member and that the vehicle is a Settlement Class Vehicle;

F. For your convenience, forms for any declarations required above are available to you at www._____ or you can request them from the Settlement Claim Administrator.

VIII. Limitations:

A. Any reimbursement under the Settlement shall be reduced by goodwill or other amount or concession paid by an authorized Volkswagen dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free repair covered under this Agreement, or was otherwise already reimbursed the full amount for the covered repair, then he/she/it will not be entitled to any reimbursement.

B. VWGoA will not be responsible for, and shall not warrant, repair or replacement work performed at any service center or facility that is not an authorized Volkswagen dealer.

C. Reimbursement shall not apply to turbocharger/wastegate failures that were caused by abuse, misuse, alteration or modification, lack of proper maintenance, a collision or crash, vandalism and/or other impact or outside source.

2. Why is this a class action settlement?

In a class action lawsuit, one or more persons, called Plaintiffs and Class Representatives, sue on behalf of other people who have similar claims. All of these people are Class Members or Settlement Class Members. The companies they sued are called the Defendants. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Class.

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a Settlement, which the Court preliminarily approved, with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the Settlement Class Members) will receive benefits quickly. The Class Representatives and the attorneys believe the Settlement is best for the Settlement Class.

WHO IS PART OF THE SETTLEMENT?

3. Am I in this Settlement Class?

The Court has conditionally approved the following definition of a Settlement Class Member: All persons or entities who purchased or leased a Settlement Class Vehicle in the United States of America and Puerto Rico. (The Settlement Class Vehicles are discussed in Section 1 above).

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 that 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

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

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 (see Section 10 below).

4. I'm still not sure if I am included in this Settlement.

If you are still not sure whether you are included in this Settlement, you can enter your vehicle's VIN in the VIN look-up Portal at www._____.com to determine if it is a Settlement Class Vehicle. You can also call the Settlement Claim Administrator at 1-_____ or visit www._____.com for more information.

SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The benefits afforded by the Settlement are described in Section 1. Additional details are provided below.

6. Who can send in a Claim for reimbursement?

Any United States or Puerto Rico resident who purchased or leased a Settlement Class Vehicle can send in a timely Claim for Reimbursement for money spent on a prior covered repair/replacement prior to _____ if the Claim satisfies the parameters and criteria required for reimbursement described in Section 1.

7. How do I send in a Claim for reimbursement?

To submit a Claim for reimbursement, you must do the following no later than _____:

- C. Complete, sign under penalty of perjury, and date a Claim Form (you can download one at www._____.com). It is recommended that you keep a copy of the completed Claim Form; and
- D. Submit your completed, signed and dated Claim Form, together with all supporting documents, either (i) through the Settlement Website at www._____.com no later than _____; or (ii) mail the completed, signed, and dated Claim Form, together with your supporting documentation, by first-class mail, post-marked no later than _____, to the Settlement Claim Administrator at the address provided on the Claim Form. The information that must be reflected in your records is described on the Claim Form. It is recommended that you keep a copy of your records and receipts.

If you are eligible for reimbursement benefits under the Settlement but fail to submit the completed Claim Form and supporting documents by the required deadline, you will not receive a reimbursement.

8. When do I get my reimbursement or learn whether I will receive a payment?

If the Settlement Claim Administrator determines your Claim is valid, your reimbursement will be mailed to you within one hundred fifty (150) days of either (i) the date of receipt of the completed Claim (with all required proof), or (ii) the date that the Settlement becomes final (the "Effective Date"), whichever is later. The Court will hold a Final Fairness Hearing on _____ to decide whether to grant final approval of the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at www._____.com.

If the Settlement Claim Administrator determines that there is/are deficiency(ies) in your Claim Form and/or the supporting documentation that is required, then you will be mailed a letter or notice informing you of the deficiency(ies), what needs to be submitted to correct it/them, and the deadline for doing so. Deficiencies that are not timely corrected will result in denial of your Claim. To check on the status of your Claim, you can call 1-_____.

9. What am I giving up to participate in the Settlement and stay in the Class?

Unless you exclude yourself by taking the steps described in Section 10 below, you will remain in the Class, and that means that you may receive any Settlement benefits to which you are eligible, and will be bound by the release of claims and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were or could have been asserted in this case, and the Released Claims set forth in the Settlement Agreement

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

(except for claims of personal injury or property damage other than damage to the Settlement Class Vehicle itself). It also means that all of the Court’s orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in sections I.T and I.U of the Settlement Agreement, a copy of which is available for review on the settlement website, www._____.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I Exclude Myself from this Settlement?

You do not have to do anything to remain in this Settlement. However, you have a right, if you so desire, to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must send a letter by first-class U.S. mail post-marked no later than _____, stating clearly that you want to be excluded from this Settlement (“Request for Exclusion”). You must include in the Request for Exclusion your full name, address, telephone number, the model, model year and VIN of the Settlement Class Vehicle; a statement that you are a present or former owner or lessee of a Settlement Class Vehicle; and specifically and unambiguously state your desire to be excluded from the Settlement Class. You must mail your exclusion request, post-marked no later than _____, to each of the following:

SETTLEMENT CLAIM ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
JND Legal Administration	GARY GRAIFMAN, , ESQ. KANTROWITZ, GOLDHAMER & GRAIFMAN PC 135 CHESTNUT RIDGE ROAD, SUITE 200 MONTVALE, NJ 07645	MICHAEL B. GALLUB, ESQ. SHOOK, HARDY & BACON LLP 1 ROCKEFELLER PLAZA SUITE 2801 NEW YORK, NY 10020

You cannot exclude yourself on the phone or by email. If you have timely mailed a Request for Exclusion that contains all of the required information, and the Court grants your request for exclusion upon final approval of the Settlement, then you will be excluded from the Settlement Class. You will not receive any benefits of the Settlement, you cannot object to the Settlement, and you will not be legally bound by anything that happens in this Lawsuit..

11. If I don’t exclude myself, can I sue later?

No, not for the same matters and legal claims that were or could have been asserted in the Action or any of the Released Claims in the Settlement Agreement, unless your claim is for personal injury or property damage (other than damage to the Settlement Class Vehicle itself).

12. If I exclude myself, can I get the benefits of this Settlement?

No, if you exclude yourself from the Settlement Class, you will not receive any money or benefits from this Settlement, and you should not submit a Claim Form. You cannot do both.

13. Do I have a lawyer in this case?

The Court has appointed the law firms of Kantrowitz, Goldhamer & Graifman PC, and Thomas P. Sobran PC as “Class Counsel” to represent the Settlement Class Members.

14. Should I get my own lawyer?

You do not need to hire your own lawyer to participate in the Settlement because Class Counsel will be representing you and the Settlement Class. But, if you want your own lawyer, you may hire one at your own cost.

15. How will the lawyers be paid, and will the Plaintiff Settlement Class Representative receive a service award?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees and reasonable costs and expenses (“Fees and Expenses”) in a combined total sum not \$ _____ for Class Counsel. VWGoA has agreed not to oppose Class Counsel’s application for Fees and Expenses to the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any Fees and Expenses in excess of that combined total sum.

Class Counsel will also apply to the Court for a service award in the amount of \$ ____ for Plaintiff-Settlement Class Representative Julie Kimball for her efforts in pursuing this litigation for the benefit of the Settlement Class.

Any award for Class Counsel Fees and Expenses, and any service award to Settlement Class Representative, will be paid separately by Defendant and will not reduce any benefits that may be available to you or the rest of the Settlement Class under the Settlement. You won’t have to pay these Fees and Expenses.

Class Counsel’s motion for fees and expenses and the Settlement Class Representative service award will be filed by _____, and a copy will be made available for review at www._____.com.

SUPPORTING OR OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I like or dislike the Settlement?

If you are a member of the Settlement Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or you can ask the Court to deny approval by filing a written objection. You can object to the Settlement and/or to Class Counsel’s requests for Fees and Expenses and Settlement Class Representative service award. You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object on a timely basis. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object to or comment on the Settlement, you must do either of the following:

- iv. File your written objection or comment, and any supporting papers or materials, on the Court’s docket for this case, *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH, via its electronic filing system, no later than _____, or
- v. File your written objection or comment, and any supporting papers or materials, with the Court in person at the Clerk’s Office, United States District Court for the District of New Jersey, 4015 Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102, no later than _____, or
- vi. Mail your written objection or comment, and any supporting papers or materials, to each of the following, by U.S. first-class mail, post-marked no later than _____:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
CLERK’S OFFICE MARTIN LUTHER KING JR. FEDERAL BUILDING AND UNITED STATES COURTHOUSE 50 WALNUT STREET NEWARK, NJ 07102	GARY GRAIFMAN, , ESQ. KANTROWITZ, GOLDHAMER & GRAIFMAN PC 135 CHESTNUT RIDGE ROAD, SUITE 200 MONTVALE, NJ 07645	MICHAEL B. GALLUB, ESQ. SHOOK, HARDY & BACON LLP 1 ROCKEFELLER PLAZA SUITE 2801 NEW YORK, NY 10020

Regardless of the above method you choose, your written objection must state clearly that you are objecting to the Settlement or the request for Class Counsel Fees and Expenses and/or Class Representative Service Awards in *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH, and must include all of the following: (i) your full name, current address and telephone

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

number; (ii) the model, model year and VIN of your Settlement Class Vehicle; (iii) proof that you own(ed) or lease(d) the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration or license receipt); (iv) a written statement of all your factual and legal grounds for objecting; (v) copies of any papers, briefs and/or other documents upon which the objection is based and which are pertinent to the objection; (vi) the name, address, and telephone number of any counsel representing you; and (vii) a detailed list of any other objections submitted by you and/or any counsel representing you to any class action settlements 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, or affirmatively state, in your objection, that you and/or your counsel have not objected to any other class action settlement in the United States in the previous five (5) years.

Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing. In order to appear, the Settlement Class Member must, by the objection deadline of _____, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice (see above), 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 identity of witnesses that the Settlement Class Member (or his/her counsel) intends to present to the Court in connection with the Fairness Hearing.

Any Settlement Class Member who does not submit a written objection to the proposed Settlement, or Class Counsel's application for Fees and Expenses and/or the Class Representative service award, within the above deadline and in full compliance with the above requirements and procedure for a valid objection shall waive his/her/its right to do so, and to appeal from any order or judgment of the Court concerning the Settlement, Fees and Expenses and/or service award.

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 Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

17. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

FINAL FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing at **on _____ at _____ a.m.**, before the Honorable Jamel K. Semper, Courtroom ____, United States District Judge, United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07102, to determine whether the Settlement should be granted final approval. At the Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and thus, should receive final approval. The Court will also consider Class Counsel's application for Fees and Expenses and the Settlement Class Representative service award. The date and/or time of the Final Fairness Hearing may change without further notice to the Settlement Class. You should check the Settlement Website or the Court's PACER site to confirm that the date and/or time has not changed, or if it has, learn to the new date and time.

19. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. You may also pay your own lawyer to attend. However, if your objection is timely and compliant with the requirements, the Court will consider it whether or not you or your lawyer attend.

20. May I speak at the Fairness Hearing?

If you do not exclude yourself, you may ask the Court's permission to speak in favor of the proposed Settlement at the Final Fairness Hearing, and any Settlement Class Member who has properly filed a timely objection may ask the Court's

Questions? Call 1-XXX-XXX-XXXX or visit www.XXXXXXXXXX.com

permission to appear and speak regarding that objection. To do so, you must file with the Clerk of the Court, and serve upon all counsel identified in Section 16 above, a Notice of Intention to Appear at the Fairness Hearing, saying that it is your intention to appear at the Fairness Hearing in *Kimball v. Volkswagen Group of America, Inc., et al.*, United States District Court for the District of New Jersey, Civil Action No. 2:22-cv-04163-JKS-MAH. 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.

You must file your Notice of Intention to Appear with the Clerk of the Court and serve a copy upon all counsel designated in the Class Notice no later than _____. You cannot speak at the Final Fairness Hearing if you have excluded yourself from the Settlement.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, you will remain in the Settlement Class. If the Court approves the Settlement, you can receive any benefits of the Settlement to which you are eligible, and you will be bound by the Settlement and its terms and provisions, including the Release of Claims, and by all orders and judgments of the Court.

MORE INFORMATION

22. Where can I get more information?

The settlement website located at www._____.com allows you to submit a claim online, look up your vehicle's VIN to determine if it is a Settlement Class Vehicle, obtain Claim Forms, find a copy of the Settlement Agreement and other pertinent documents, and access more information about this Litigation and Settlement. Updates regarding the Action, including important dates and deadlines, will also be available on the website. You may also call the Settlement Claim Administrator at 1-_____ or email info@_____.com.

EXHIBIT 4

Exhibit 4, Comprised of Class
Vehicle VINs, is not filed on the
Public Docket

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JULIE KIMBALL, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC., VOLKSWAGEN
AKTIENGESELLSCHAFT, AUDI
AKTIENGESELLSCHAFT and AUDI OF
AMERICA, INC.,

Defendants.

Civil Action No. 2:22-cv-04163-JKS-MAH

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

WHEREAS, pursuant to Fed. R. Civ. P. (“Rule”) 23(a), 23(b)(3), and 23(e), the parties seek entry of an order, *inter alia*, preliminarily approving the class Settlement of this Action (“Settlement”) pursuant to the terms and provisions of the Class Settlement Agreement dated January 6, 2025 with attached exhibits (“Settlement Agreement”); preliminarily certifying the Settlement Class for settlement purposes only; directing Notice to the Settlement Class pursuant to the parties’ proposed Notice Plan; preliminarily appointing the Settlement Class Representative, Settlement Class Counsel and the Claims Administrator; directing the timing and procedures for objecting to, or requesting for exclusion from, the Settlement; and scheduling any other filings and the Final Fairness Hearing; and

WHEREAS, the Court has carefully reviewed and considered the Settlement Agreement and Plaintiffs’ Unopposed Motion for Preliminary Approval;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. The Court preliminarily approves the Settlement Agreement and all of its Settlement terms as fair, reasonable and adequate under Rule 23, subject to further consideration at the Final Fairness Hearing.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

All persons and entities who purchased or leased, in the United States or Puerto Rico, Settlement Class Vehicles which are certain of the following model year Volkswagen and Audi brand vehicles which were distributed by Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico, and specifically identified by Vehicle Identification Number (“VIN”) on VIN lists that are attached as Exhibits 4A-C to the Settlement Agreement: 2008-2014 and 2015-2021 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 and 2019-2024 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2015-2018 VW Golf vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2008-2009 and 2015-2020 Audi A3 vehicles, 2015-2024 Audi Q3, 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 and 2016-2023 Audi TT vehicles. (hereinafter “Settlement Class”).

The aforesaid Settlement Class Vehicles are categorized as follows:

(1) “Generation 1 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 1 EA888 Engines: certain model year 2008-2014 VW GTI and Golf R vehicles, 2012-2013 VW Beetle

vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2008-2009 Audi A3 vehicles, and 2015-2018 Audi Q3 vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5A to this Agreement.

(2) “Generation 2 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 2 EA888 Engines: certain model year 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5B to this Agreement.

(3) “Generation 3 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 3 EA888 Engines: certain model year 2015-2018 VW Golf vehicle, 2015-2021 VW GTI vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2024 VW Jetta GLI vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2015-2020 Audi A3, 2019-2024 Audi Q3 vehicles, and 2016-2023 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5C to this Agreement

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 that 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.

4. The Court preliminarily appoints Plaintiff Julie Kimball as the Settlement Class Representative.

5. The Court preliminarily appoints the law firms of Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C., collectively, as Class Counsel for the Settlement Class (“Settlement Class Counsel”).

6. The Court preliminarily appoints JND Legal Administration as the Settlement Claim Administrator (“Claim Administrator”).

7. The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class exists in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over individual questions; (c) the claims of the Settlement Class Representative are typical of the claims of the Settlement Class; (d) the Settlement Class Representative and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

8. In addition, the Court preliminarily finds that certification of the Settlement Class is appropriate, especially when balanced against the risks and delays of further litigation, and that

the proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate, and reflects those considerations.

9. The Court also preliminarily finds that the Settlement Agreement has been reached as a result of intensive arm's-length negotiations of disputed claims and that the proposed Settlement is not the result of any collusion.

10. The Court approves, and directs the implementation of, the parties' Notice Plan for dissemination of the Class Notice pursuant to the terms of the Settlement Agreement (the "Notice Plan"). The Court approves the form and content of the postcard Settlement Class Notice, the long form Class Notice, and the Claim Form (Exhibits 1, 2 and 3 to the Settlement Agreement). The Court finds that the Notice Plan, consisting of mailing of the postcard Settlement Class Notice in the manner set forth in the Settlement Agreement, as well as the establishment of a settlement website that, *inter alia*, will contain the long form Class Notice, satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action; the certification of the Settlement Class for settlement purposes only; the terms of the Settlement, its benefits and the Release of Claims; the Settlement Class Members' rights including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement and/or Settlement Class Counsel's application for Fees and Expenses and Settlement Class representative service award; the deadline, procedures and requirements for submitting a Claim for Reimbursement pursuant to the Settlement terms; the time and place of, and right to appear at, the Final Fairness hearing; and other pertinent information about the Settlement and the Settlement Class Members' rights.

11. The Court further authorizes the Parties to make non-material modifications to the Settlement Class Notices and Claim Form prior to the Notice Date if they jointly agree that any such changes are appropriate.

12. The Claim Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including mailing of the CAFA Notice, implementing and maintaining the Settlement Website, implementing the Notice Plan, the processing, review and determination of timely submitted and proper Claims for Reimbursement under the Settlement terms, and the submission of any declarations and other materials to Settlement Class Counsel and the Court, as well as any other duties required under the Settlement Agreement.

13. The Departments of Motor Vehicles within the United States and its territories are ordered to provide approval to S&P Global, or any other company so retained by the parties and/or the Claim Administrator, to release the names and addresses of Settlement Class Members in the Action associated with the titles of the Vehicle Identification Numbers at issue in the Action for the purposes of disseminating the Settlement Class Notice to the Settlement Class Members. S&P Global, or any other company so retained, is ordered to license, pursuant to agreement between Defendant and S&P Global or such other company, and/or the Claim Administrator and S&P Global or such other company, the Settlement Class Members' contact information to the Claim Administrator and/or Defendant solely for the use of providing Settlement Class Notice in the Action and for no other purpose.

14. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than thirty (30) days after the Notice Date, a written request for exclusion ("Request for Exclusion") to each of the following: (a) the Claim Administrator at the address specified in the Class Notice; (b) Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645 on behalf of Settlement Class Counsel; and (c) Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defendant. To be effective, the Request for Exclusion must be timely and 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/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.

15. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion containing all of the above required information, and mailed to the proper addresses, shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

16. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Settlement Class Counsel Fees and Expenses and/or Settlement Class Representative service award.

- a. To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within thirty (30) days of the Notice Date; or (ii) mail, via first-class mail postmarked within thirty (30) days of the Notice Date, the objection, together with any supporting briefs and/or documents, to each of the following: (a) the Clerk's Office of the United States District Court, District of New Jersey, Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102; (b) Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645 on behalf of Settlement Class Counsel; and (c) Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defendant.
- b. Any objecting Settlement Class Member must include the following with his/her/their/its objection: (i) the objector's full name, address, and telephone number; (ii) 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 or registration); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Fairness Hearing; and (vii) 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, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he/she/they/it shall affirmatively so state in the objection.

17. Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should be approved, or to speak regarding any objection that he/she/it had properly and timely filed with the Court. In order to appear, any Settlement Class Member must, no later than 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 Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of all witnesses that the Settlement Class Member (or the Settlement Class Member's counsel) intends to present to the Court in connection with the Final 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 Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

18. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement Agreement and/or its approval by appeal or otherwise.

19. In the event the Settlement is not granted final approval by the Court, or for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;
- b. All of the Parties' respective pre-Settlement claims, defenses and procedural rights will be preserved, and the parties will be restored to their positions *status quo ante*;
- c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant, the Released Parties, or the Plaintiff on any allegation, claim, defense, or point of fact or law in connection with this Action;
- d. Neither the Settlement terms, the existence of the Settlement itself, nor any publicly filed, available, or disseminated information regarding the Settlement, including, without limitation, the Settlement Agreement, the Class Notices, the Settlement Website, court filings, court orders, and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and
- e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

20. Pending the Final Fairness Hearing and the Court’s decision whether to grant final approval of the Settlement, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in, against Defendant and/or any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative or otherwise) asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. § 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court’s continuing jurisdiction and authority over the Action.

21. Pending the Final Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

22. Based on the foregoing, the Court sets forth the following schedule for the Final Fairness Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Settlement Class Members must check the Settlement Website regularly for updates and further details regarding this Settlement and any applicable deadlines and dates including any changes in the date, time and/or place of the Final Fairness Hearing:

Event	Deadline Pursuant to Settlement Agreement
Notice shall be mailed in accordance with the Notice Plan and this Order	_____ [100-days after issuance of Preliminary Approval Order]

Settlement Class Counsel’s Fee and Expense Application and request for service awards for the Plaintiff-Settlement Class Representative	_____ [115-days after issuance of Preliminary Approval Order]
Deadline for filing of any Objections to the Settlement, Settlement Class Counsel’s Fee and Expense Application, and/or the request for Settlement Class Representative service award	_____ [130 days after issuance of Preliminary Approval Order; 30-days after the Notice Date]
Deadline for Requests for Exclusion from the Settlement	_____ [130 days after issuance of Preliminary Approval Order; 30-days after the Notice Date]
Plaintiffs to file Motion for Final Approval of the Settlement	_____ [150-days after issuance of Preliminary Approval Order; 50-days after the Notice Date]
Claim Administrator shall submit a declaration to the Court (i) reporting the names of all persons and entities that submitted Requests for Exclusion; and (ii) attesting that Notice was disseminated in accordance with the Settlement Agreement and this Preliminary Approval Order.	_____ [150-days after issuance of Preliminary Approval Order; 50-days after the Notice Date]
Responses of Any Party to any Objections and/or Requests for Exclusion	_____ [165-days after issuance of Preliminary Approval Order; 65-days after the Notice Date]
Any submissions by Defendant concerning Final Approval of Settlement	_____ [165-days after issuance of Preliminary Approval Order; 65-days after the Notice Date]

Final Fairness Hearing will be held at Martin Luther King Building & U.S. Courthouse, 50 Walnut St., Newark, NJ 07102 or by video conference as determined by the Court	_____ [180-days after issuance of Preliminary Approval Order; 30-days after Plaintiffs' filing of Final Approval Motion]
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SO ORDERED:

Date: _____

Honorable Michael A. Hammer
United States Magistrate Judge

Exhibit B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JULIE KIMBALL, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendant.

Civil Action No. 2:22-cv-04163-JMV-MAH

**ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, this Court, having reviewed and carefully considered all of the filed submissions relating to the proposed Class Settlement of this Action (“Settlement” or “Class Settlement”) including the Plaintiffs’ Unopposed Motion for Final Approval of the Class Action Settlement and exhibits thereto (the “Motion”), the Parties’ Class Settlement Agreement dated January 6, 2025 with exhibits (“Settlement Agreement”), the supporting Declaration of counsel, the Declaration of the Claim Administrator, Defendant’s Memorandum of Law in Support of Final Approval and all other submissions and filings in this Action;

WHEREAS, this Court, having issued its Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) which granted preliminary approval of the Class Settlement, provisionally certified, for settlement purposes only, the proposed Settlement Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), preliminarily appointed the Settlement Class Representative, Settlement Class Counsel, and the Settlement Claim Administrator, approved the form and content of the Class Notice and Claim Form, and approved and directed the dissemination of the Class Notices and Claim Forms pursuant to the Parties’ Class Notice Plan set forth in the Settlement Agreement (“Notice Plan”) as the best notice practicable under the circumstances and comporting in all respects with Fed. R. Civ. P. 23(e) and due process;

WHEREAS, the approved Notice Plan has been effectuated in a timely and proper manner; and

WHEREAS, this Court having held a Final Fairness Hearing on _____, 2025 and having carefully considered all of the submissions, arguments and applicable law, and with due deliberation thereon,

NOW, this Court hereby finds, determines, and orders as follows:

1. **Final Approval of the Class Settlement.** The Court hereby grants final approval of the Class Settlement and all of the terms and provisions of the Settlement Agreement. The Court finds that the Class Settlement is fair, reasonable, and adequate, and in all respects satisfies the requirements of Fed. R. Civ. P. 23 and the applicable law.

2. **Certification of the Settlement Class.** The Court here certifies, for Settlement purposes only, the proposed Settlement Class set forth in the Settlement Agreement and in the Preliminary Approval Order. The Court finds that, for the purposes of Settlement, the applicable prerequisites for certification of the proposed Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3) are fully satisfied, to wit: the Settlement Class is so numerous that joinder of all members is not practicable; questions of law and fact are common to the Settlement Class; the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; the Settlement Class Representatives and Settlement Class Counsel have fairly and adequately represented, and will continue to fairly and adequately represent, the interests of the Settlement Class; questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members; and a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. In addition, because

this Action is being settled rather than litigated to conclusion, the Court need not consider manageability issues that might be presented by a trial of this action. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3. **Notice of the Settlement to the Settlement Class.** The Court finds that Notice of the Class Settlement was timely and properly disseminated and effectuated pursuant to the approved Notice Plan, and that said Notice constitutes the best notice practicable under the circumstances and satisfies all requirements of Rule 23(e) and due process.

4. **CAFA Notice.** The Court finds that in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), the Settlement Claim Administrator properly and timely caused to be mailed a copy of the proposed Settlement and all other documents required by law to the Attorney General of the United States and the Attorneys General of each State where class members reside and of Puerto Rico. No Attorney General has filed any objection to, or voiced any concern over, the Class Settlement or any of its terms and provisions.

5. **Defined Terms of the Settlement Agreement.** Unless otherwise defined herein, the terms used in this Order that are defined in the Settlement Agreement shall have the same definition and meaning as set forth in the Settlement Agreement.

6. **The Settlement is Fair, Reasonable, and Adequate.** The Court finds that the Class Settlement is fair, reasonable, and adequate, and in all respects satisfies Fed. R. Civ. P. 23. The Settlement provides substantial benefits to, and is in the best interests of, the Settlement Class, and is particularly fair, reasonable, and adequate when considering the issues of this case including, but not limited to, the disputed nature of the claims, the potential defenses thereto, the risks of non-recovery or reduced recovery to the Settlement Class, the risks of inability to certify a class and/or to maintain any class certification through trial and potential appeal if this action is litigated rather than settled, the substantial burdens, time and expense of further litigation, and the delays of any potential recovery associated with the continued litigation of the Action.

7. **The Class Settlement is the Result of Extensive Arm's-Length Negotiation of Highly Disputed Claims by Experienced Class Action Counsel, and is Not the Product of Collusion.** The Court further finds that the Class Settlement was entered into as a result of extensive arm's-length negotiations of highly disputed claims among experienced class action counsel on both sides. The Settlement is not the product of collusion, and was entered into with a sufficient understanding by counsel of the strengths and weaknesses of their respective claims

and defenses, and of the potential risks versus benefits of continued litigation, including but not limited to the ability to establish and/or extent of establishing liability, alleged damages, class certification, and maintenance of a class certification through trial and appeal. In addition, the Court finds that the issues of Class Representative service award and Class Counsel reasonable attorneys' fees and expenses were not even discussed by the Parties, let alone agreed to, until after agreement had already been reached on the material terms of this Class Settlement, and were, likewise, negotiated at arm's length and without any collusion.

8. **No Admission of Wrongdoing.** This Class Settlement is a compromise of vigorously disputed allegations and claims. As set forth in the Settlement Agreement, the Court finds that the Settlement, and any documents and submissions relating thereto, do not and shall not constitute a finding of either fact or law regarding the merits of any allegation, claim, fact, issue of law, or defense that was or could have been asserted in this Action. The Court further finds that nothing in this Final Approval Order and Judgment, the Settlement Agreement, the underlying proceedings, or any documents, filings, submissions, or statements related thereto, is or shall be deemed, construed to be, or argued as, an admission of, or any evidence of, any allegation, claim, fact, or issue of law that was or could have been asserted in the Action or of any liability, wrongdoing or responsibility on the part of any Defendant or Released Party.

9. **Appointment of Settlement Class Representatives and Settlement Class Counsel.** The Court hereby grants final approval and appointment of Plaintiff Julie Kimball, as Representative of the Settlement Class (“Settlement Class Representatives”), and of the law firms of Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C., collectively, as Class Counsel for the Settlement Class (“Settlement Class Counsel” or “Class Counsel”). The Court finds that said Settlement Class Representative and Settlement Class Counsel have fairly and adequately represented, and will continue to fairly and adequately represent, the interests of the Settlement Class.

10. **Appointment of Settlement Claims Administrator.** The Court further grants final appointment of JND Group as the Settlement Claims Administrator to effectuate its duties and responsibilities set forth in the Settlement Agreement.

11. **Objections and Requests for Exclusion.** Settlement Class Members were duly afforded a reasonable and ample opportunity to object to or request exclusion from the Settlement, and were duly advised of the deadlines and procedures for doing so. Of the approximately _____ Settlement Class Members, the Court has received (no) (only _____) objections to the Settlement. The Parties have received _____ requests for exclusion, of which _____ are timely and valid.

The court finds that the very small number of objections and requests for exclusion demonstrates overwhelmingly that the Settlement Class favors the Settlement, and further supports that the Class Settlement is fair, reasonable and adequate, and warrants final approval by this Court.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

12. The Court certifies, for the purpose of settlement, the following Settlement Class consisting of:

All persons and entities who purchased or leased, in the United States or Puerto Rico, Settlement Class Vehicles which are certain of the following model year Volkswagen and Audi brand vehicles which were distributed by Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico, and specifically identified by Vehicle Identification Number (“VIN”) on VIN lists that are attached as Exhibits 4A-C to the Settlement Agreement: 2008-2014 and 2015-2021 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 and 2019-2024 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2015-2018 VW Golf vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2008-2009 and 2015-2020 Audi A3 vehicles, 2015-2024 Audi Q3, 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 and 2016-2023 Audi TT vehicles. (hereinafter “Settlement Class”).

13. The Court hereby grants final approval of the Class Settlement as set forth in the Settlement Agreement and all of its terms and provisions. The Settlement is fair, reasonable, adequate, and in all respects satisfies the requirements of Fed. R.

Civ. P. 23. Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. 23(e)(2), *Girsh v. Jepson*, 521 F.2 153, 157 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 323 (3d Cir. 1998), and finds that they support, justify, and warrant, final approval of this Class Settlement.

14. The Court excludes from the Settlement and Release, on the basis of their timely and valid requests for exclusion, the _____ Settlement Class Members who are listed on Exhibit A annexed hereto. The request for exclusion of Donegal Mutual Insurance Company is hereby denied.

15. The Parties are directed to perform all obligations under the Settlement Agreement in accordance with its terms and provisions.

16. The Parties and all Settlement Class Members are hereby bound in all respects by the terms and conditions of the Settlement Agreement, including but not limited to the Released Claims against all Released Parties contained therein, and the Plaintiffs and each and every Settlement Class Member shall be deemed to have, and by operation of this Final Order and Judgment shall have, fully, completely and forever released, acquitted and discharged all Released Parties from all Released Claims as set forth in the Settlement Agreement, except for the _____ persons

identified in Exhibit A who have timely and properly excluded themselves from the Settlement Class.

17. The Action is hereby dismissed with prejudice and without costs.

18. Neither this Settlement, its negotiations, any agreements, documents, submissions and Orders relating thereto, nor this Final Order and Judgment, shall in any way constitute, or be deemed to constitute, any admission by any Party as to, or as any evidence of, the merits of any allegation, claim or defense that was or could have been asserted in this Action; shall not constitute a finding of either fact or law as to the merits of any claim or defense that was, or could have been, asserted in the Action; shall not be deemed, construed to be, or argued as, an admission or evidence of any liability, wrongdoing or responsibility on the part of the Defendants or any Released Party; and shall not be offered or be admissible as evidence against any Defendant, Released Party, or the Plaintiffs, except to enforce the terms of the Settlement Agreement and/or this Final Order and Judgment.

19. In the event that any provision of the Settlement or this Final Order and Judgment is asserted by Defendants or any Released Party as a defense (including, without limitation, as a basis for dismissal and/or a stay), in whole or in part, to any claim, suit, action or proceeding in any forum, judicial or otherwise, brought by a Settlement Class Member or any person acting or purporting to act on behalf of any Settlement Class Member(s), that claim, suit, action and/or

proceeding shall immediately be stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion.

20. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement and this Order and any obligations thereunder.

21. Plaintiffs and each and every Settlement Class Member, and any person or entity acting or purporting to act on behalf of any said Settlement Class Member, is/are hereby permanently barred and enjoined from commencing, instituting, pursuing, maintaining, prosecuting, or continuing to pursue, maintain or prosecute, any Released Claim against Defendants and/or any of the Released Parties (including, without limitation, in any individual, class/putative class, representative or other action or proceeding, directly or indirectly, in any judicial, administrative, arbitral, or other forum). This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Order and Judgment, and this Court's authority to enforce and effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. However, this provision will not bar any communications with, or compliance with requests or inquiries from, any governmental authorities.

22. Without affecting the finality of this Final Order and Judgment, this Court hereby retains exclusive jurisdiction, and all Settlement Class Members are

hereby deemed to have submitted to the exclusive jurisdiction of this Court, of, over, and with respect to, the consummation, implementation and enforcement of this Settlement and its terms, including the release of claims therein, and any suit, action, proceeding (judicial or otherwise) or dispute arising out of or relating to this Final Order and Judgment, the Settlement Agreement and its terms, or the applicability of the Settlement Agreement, which exclusive jurisdiction includes, without limitation, the Court's power pursuant to the All Writs Act, 28 U.S.C. § 1651, or any other applicable law, to enforce the above-described bar and injunction against the pursuit, commencement, maintenance, prosecution, and/or continuation of any Released Claim against any Defendant or Released Party.

IT IS SO ORDERED AND ADJUDGED.

Dated:

Hon. Michael A. Hammer
United States Magistrate Judge

Exhibit C

New York Office:

747 Chestnut Ridge Road
Chestnut Ridge, New York 10977
Tel: 845-356-2570
Fax: 845-356-4335



New Jersey Office:

135 Chestnut Ridge Road
Montvale, New Jersey 07645
Tel: 201-391-7000
Fax: 201-307-1086

KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C. (“KGG”) has a nationwide class action practice and has litigated numerous cases involving complex business litigation, consumer class actions and securities class actions. The firm has litigated a number of cases resulting in reported decisions, including cases of first impression. The firm also has an active personal injury and medical malpractice practice, chaired by Barry S. Kantrowitz, and represents clients in mass tort actions.

GARY S. GRAIFMAN is a partner in the Firm and co-chair of the Consumer Class Action Litigation Group at KGG with Melissa R. Emert. Mr. Graifman specializes in the area of consumer and securities class action litigation. He is admitted to practice before the courts of the State of New York, the State of New Jersey, the United States Federal Courts for the Southern District of New York, the Eastern District of New York, the Northern District of New York, the District of New Jersey, the United States Court of Appeals for the First Circuit, Second Circuit, Third Circuit and the Eighth Circuit. He is also a member of the Class Action Committee of the New Jersey State Bar Association. Mr. Graifman is rated “AV-Preeminent” by Martindale Hubbell and has been nominated by Super Lawyers Magazine as a New Jersey Super Lawyer for 2010-2021. He has been a panelist and speaker on class action issues before various bar organizations including those sponsored by the Class Action Committee of the New Jersey State Bar Association and by the National Employment Lawyers Association, New York Chapter.

A sampling of some of the cases Mr. Graifman has recently been involved in include:

- *In re Volkswagen Timing Chain Products Liability Class Action*, 16-cv-2765 (JLL) (D.N.J.). Mr. Graifman and the Firm served as Co-Lead Counsel in this products liability class action which was settled on a nationwide basis on behalf of the owners and lessees of approximately 477,000 class vehicles. Final approval was granted to the Settlement on December 14, 2018. The Settlement provided one hundred percent reimbursement for timing chain repairs to class members and was valued at approximately \$50 million (inclusive of warranty extension repairs).
- *Schmidt, et al. v. Jaguar Land Rover Automotive PLC, et al.*, United States District Court for the District of New Jersey, Civil Action No. 18-cv-08528 CCC-JBC (appointed Co-Lead Counsel in a multi-state class action involving over 50,000 class vehicles and resulted in a settlement valued at approximately \$4 million).
- *Gelis, et al. v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, Civ. Action No. 17-cv-7386-SDW-CLW (appointed Co-Lead Class Counsel in the class action involving approximately 575,303 BMW class vehicles alleged to have defective timing chains. Settled on a nationwide basis in the District of New Jersey with settlement valued between \$42 to \$64 million. Final approval was granted on February 16, 2021).

- *In re Home Depot Consumer Data Security Breach Litig.*, 1:14-MD-02583-TWT (N.D.Ga.). Mr. Graifman and the Firm served on the five member Plaintiffs' Steering Committee in this massive data breach consumer class action affecting approximately 50 million consumers which was settled on a nationwide basis in 2016. The settlement was valued at approximately \$27 million.
- *In re Premera Blue Cross Customer Data Security Breach Litig.* 3:15-md-2633 (D. Ore). Mr. Graifman and the Firm were one of the counsel in the *Premera Blue Cross Customer Data Breach* Matter, having done substantial and essential work in the case, which was given Final Approval in early March 2020. The firm's client was the sole named plaintiff and representative for the putative California state subclass. The California subclass asserted a claim under the California Confidential Medical Information Act, Cal. Civ. Code §§ 56, *et seq.* which was sustained by Court on a motion to dismiss. The matter settled and final approval was granted on March 2, 2020. Under the terms of the settlement approved, the California subclass was entitled to additional compensation as a result of the California CMIA claim.
- *Oliver, et al. v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, 2:17-cv-12979-CCC-MF (D.N.J.). Mr. Graifman and the Firm served as Co-Lead Counsel on this case which involved defective electric coolant pumps on various BMW model vehicles. The matter settled and Final Approval was granted on March 9, 2021. The class includes approximately 575,000 vehicles. The Settlement is valued at approximately \$24 Million.
- *Coffeng, et al. v. Volkswagen Group of America, et al.*, 3:17-cvb—01825-JD (N.D. Cal.). Mr. Graifman and the Firm serve as Co-Lead Counsel on this consumer class action involving defective water pumps in a multitude of Volkswagen and Audi model vehicles. Final Approval was granted to the settlement on May 14, 2020. The case encompassed a nationwide class of owners and lessees of approximately 873,779 class vehicles and was valued at approximately \$22 million.
- *Chiarelli, et al. v. Nissan, N.A. and Duncan, et al. v. Nissan N.A.*, 14-CV-4327(NGG) (E.D.N.Y.) and 1:16-CV-12120-DJC (D. Mass.), these two companion cases involve multi-state claims concerning defective timing chains on various Nissan model vehicles and involve claims in the states of Massachusetts, New York, Texas, Florida, North Carolina, Maryland, Colorado and Oregon. Final Approval was granted to the settlement on August 25, 2020 before Judge Denise Casper in the U.S. District Court for the District of Massachusetts. The settlement was valued at approximately \$8,650,00.
- *Seifi, et al. v. Mercedes-Benz USA, LLC*, 3:12-cv-5495-TEH (N.D. Ca.). Mr. Graifman and the Firm served as co-lead counsel in this litigated consumer class action seeking reimbursement for repairs to various Mercedes model vehicles due to a balance shaft defect. The action settled on a nationwide basis in 2015, valued at approximately \$25 million.

- *In re Rambus Securities Inc. Litigation.*, 06-c-v4346-JF (U.S. District Ct., N.D. Cal.) Mr. Graifman and the Firm served as Co-Lead Counsel for the class in this securities class action involving allegations of backdating of options. The matter was settled for \$18.33 million and approved on May 14, 2008.
- *Sheris v. Nissan North America, Inc.*, 07-cv-2516 (WHW) (U.S. District Ct., D. New Jersey). Mr. Graifman and the Firm served as Co-Lead Counsel for the class in this consumer class action against Nissan for alleged brake defect in the 2005 G35x model vehicle. The Court certified a New Jersey settlement class which involved reimbursement of the cost of brake and rotor replacement up to \$340 per brake replacement.
- *Szymczak v. Nissan N. Am. Inc.* (S.D.N.Y.), Case No. 10-cv-0-7493 (VB) (U.S. District Ct., S.D.N.Y.). Mr. Graifman and the Firm served as co-lead counsel in this litigated consumer class action seeking reimbursement for repairs to Nissan Pathfinder, Xterra or Frontier vehicles caused by cross-contamination of radiator fluid with transmission fluid seeping into the transmission. The matter was settled with Defendants agreeing to extend the warranty to 100,000 miles or 10 years and pay for the repairs during that extended mileage and time period, subject to certain deductibles that applied. The nationwide class action settlement, which involved approximately 300,000 vehicles was approved by the Court in May 2013. The settlement was valued at approximately \$17 million.
- *Jermyn v. Best Buy Stores, L.P.*, 1:08-cv-00214 (CM) (U.S. District Ct., S.D.N.Y.). Mr. Graifman and the Firm served as Co-Lead Counsel in this litigated consumer class action certified as a New York consumer class by Hon. Colleen McMahon. The class consisted of Best Buy purchasers who were denied price match guarantees by Best Buy. The matter settled on a class-wide basis shortly before trial.
- *Lubitz, et al. v. DaimlerChrysler Corp.*, BER-L-4883-04 (New Jersey Superior Court, Bergen Co.) Mr. Graifman and the Firm served as Co-Lead Counsel for the class in this consumer class action against DaimlerChrysler Corp. The Court certified a nationwide settlement class and approved a settlement valued at \$14.5 million to owners of Jeep Grand Cherokees, model years 1999 through 2004.
- *In re Trend Micro Class Action Litigation*, Case No. CV 11-02488 (RMW) (U.S. District Ct., N.D. Calif.). Mr. Graifman and the Firm served as Co-Lead Counsel for the class in this consumer class action concerning the failure to provide the remaining time left on current trial subscriptions when the subscriber on the trial subscription converted to a paid subscription. The case was settled in 2013 and Final Approval of the settlement was entered November 15, 2013 by the Court granting subscribers cash refunds or credit towards their future subscriptions and changing the policy of the Company going forward.
- *In re Symantec Class Action Litig.*, 1-05-cv-053711 (Superior Ct. Of State of California, Co. Of Santa Clara) (Komar, J.). Mr. Graifman and the Firm served as Co-Lead counsel in this consumer class action involving the cut-off of subscription time when the subscriber to Norton's anti-virus software renewed or upgraded earlier than the end of the then-current

subscription. After the class was certified upon a litigated motion, the matter was settled for a cash payment or a voucher for further use with the anti-virus subscription (at the consumer's option), with the settlement valued in excess of \$5 million.

- *Lowrance, et al. v. Equinox International Corp.*, 2:99-cv-0969 (D.Nev.). Mr. Graifman and the Firm participated in trying a nationwide consumer class action case in the District of Nevada against multi-level marketing company, Equinox, International Corp. through the entire bench trial, and settling the matter on or about the last day of trial before Judge Johnnie B. Rawlinson, just prior to her elevation to the U.S. Court of Appeals for the Ninth Circuit. The matter was tried with other plaintiffs' counsel, who Mr. Graifman second-seated, and a multi-state Attorney General Task Force and resulted in the liquidation of Equinox and a settlement fund in excess of \$30 million to repay Equinox distributors.

MELISSA R. EMERT, ESQ., has been representing aggrieved stockholders and consumers for more than 30 years. Ms. Emert recently joined KGG after spending most of her career at a national class action firm where she founded and was Co-Chair of its Consumer and Antitrust Class Action Litigation Groups. Ms. Emert's practice focuses on consumer, antitrust and securities class actions. She has litigated cases throughout the United States and held prominent leadership positions in many large multidistrict litigations ("MDLs"). Melissa is a member of the New York State Bar and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York. Melissa graduated from Brooklyn Law School with a Juris Doctor in 1988 and received a Bachelor of Arts from the State University of New York at Stony Brook in 1985.

Examples of Ms. Emert's nationwide class action experience include:

- Court-appointed Co-Lead Counsel in *Carder v. Graco Children's Products, Inc.*, 2:20-cv-00137-LMM (N.D. Ga. 2021) (alleging state consumer protection and common law claims on behalf of consumers resulting from defendant's defective and allegedly unsafe children's car seat products);
- Court appointed Co-Lead Counsel in *In re: Daily Fantasy Sports Litig.*, 1:16-md-02677-GAO (D. Mass 2016) (alleging violations of state consumer protection statutes and common law claims on behalf of consumers participating in defendants' online fantasy sports websites).
- Court appointed member of plaintiffs' executive committee in *In re: Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, 19-md-2887 (D. Kan.) (alleging violations of state consumer protection statutes and common law on behalf of consumers who purchased dog food that contained toxic levels of Vitamin D).
- Discovery Committee in a court approved leadership structure in *In re: Rock 'N Play Sleeper Marketing, Sales Practices, and Products Liability Litigation*, 1:19-md-2903 (W.D.N.Y. 2019) (alleging violations of state consumer protection statutes and common law claims on behalf of consumers who purchased the defective and inherently unsafe Fisher-Price Rock 'n Play Sleeper for their infant children).

- Court appointed member of Plaintiffs’ Steering Committee in *In re: Intel Corp. CPU Marketing and Products Liability Litig.*, 3:18-md-02828 (D. Or. 2018) (claims on behalf of Intel processor users that have been affected by Intel’s alleged defective processors).
- Court appointed member of Plaintiffs’ Executive Committee in *In re: Apple Inc. Device Performance Litig.*, 5:18-md-02827 (N.D. Cal. 2018) (claims on behalf of iPhone and iPad users that have been affected by the alleged intentional slowdown of the processors).
- Court appointed member of Plaintiffs’ Steering Committee in *In re: German Automotive Mfr. Antitrust Litig.*, 3:17-md-02796 (N.D. Cal. 2017) (alleging anticompetitive conduct in the market for German-made automobiles).
- Court appointed member of Plaintiffs’ Steering Committee in *In Re: Sonic Corp. Customer Data Sec. Breach Litig.*, 1:17-md-02807 (N.D. Ohio 2017) (claims on behalf of persons allegedly affected by Sonic’s data breach resulted in a class wide settlement).
- Class Representative Communications and Client Vetting Committee in a court approved leadership structure in *Echavarria, et al. v. Facebook, Inc.*, C 18- 05982 (N.D. Cal. 2018) (claims on behalf of persons that have been allegedly affected by Facebook’s “View As” data breach).
- Co-Chair of Plaintiffs’ Vetting Committee in a court approved leadership structure in *In re Wawa, Inc. Data Breach Litigation*, No. 19-6019 (E.D. Pa. 2019) (claims on behalf of persons affected by Wawa’s data breach and had their personal information compromised).
- Court appointed Interim Class Counsel in *In re: Google Location History Litig.*, 5:18-cv-05062-EJD (N.D. Cal. 2019) (a privacy breach action alleging Google tracked millions of mobile device users’ geolocation after falsely representing that activating certain settings will prevent the tracking).
- One of three lead co-counsel in *Hughley, et al. v. Univ. of Central Florida Bd. of Tr.*, 2016-CA-001654-O (9th Judicial Circuit, Florida) (February 2016 data breach; settled November 2017, with UCF spending an additional \$1,000,000 annually to protect students’ and employees’ personal information).

Melissa also has developed and oversees the following litigation, among others:

- *County of Osceola v. Purdue Pharma Inc.*, 6:18-cv-00164 (M.D. Fl.); *County of Alachua v. Purdue Pharma Inc.*, 1:18-cv-00086-MW-GRJ (N.D. Fl.); *County of Palm Beach v. Purdue Pharma Inc.*, 50-2018-CA-004109 (N.D. Fl.) (each alleging opioid manufacturers and distributors defrauded the counties, among others, to generate improper revenue at the county’s expense).
- *In Re: Uber Tech., Inc., Data Sec. Breach Litig.*, 2:18-ml-02826-PSG-GJS (C.D. Cal.) (alleging a failure to secure and safeguard riders’ and drivers’ personally identifiable information (“PII”) caused 57 million driver and rider accounts to be compromised).

- *In Re: 21st Century Oncology Customer Data Sec. Breach Litig.*, 8:16-md-02737 (M.D. Fla.) (October 2015 data breach in which the PII of more than two million 21 Century patients was compromise).
- *Suvino v. Time Warner Cable, Inc.*, 1:16-cv-07046 (S.D.N.Y.) (settled action which alleged violations of the Americans with Disabilities Act by Time Warner).
- *Guariglia et al v. The Procter & Gamble Company*, 2:15-cv-04307 (E.D.N.Y.) (settled action which alleged violations of law in connection with P&G's design, manufacture, marketing, advertising, and selling of Tide Pods).

JAY I BRODY, ESQ. is a commercial litigator with an emphasis in class action litigation, including consumer fraud, automotive defect, and securities and shareholder actions, as well as commercial litigation. Prior to joining the firm, Mr. Brody served as a law clerk for Justice Miriam Naor, President of the Supreme Court of Israel and the Superior Courts of the State of Connecticut. While in law school, Mr. Brody served as a Student Assistant District Attorney in the Office of the New York County District Attorney, and interned at the New York State Department of Financial Services and United States Department of Justice. He is currently heading the Firm's SAME Supplement consumer class action litigation.

Mr. Brody received his B.S. in accounting from Yeshiva University, and his J.D. from The Benjamin N. Cardozo School of Law in 2013, where he served on the Public Law, Policy and Ethics Journal. He is admitted to practice before the State Courts of New York and New Jersey, and the United States Federal Court in the Southern District of New York, Eastern District of New York, Northern District of New York, District of New Jersey, Eastern District of Michigan, the United States Court of Appeals for the First Circuit and Second Circuit.

SARAH HAQUE, ESQ. is currently of counsel to Kantrowitz, Goldhamer & Graifman, P.C. with an emphasis in class action litigation. Ms. Haque received a Bachelor's of Commerce from McGill University in Montreal, Quebec, with a minor in Economics. Following her undergraduate experience, she attended State University of New York Buffalo Law School, and graduated in 2014. While in law school, Ms. Haque was an editor for the Buffalo Human Rights Law Review. She was also President of the Labor and Employment Relations Society and Treasurer of the Latin American Law Students Association. Ms. Haque has worked on various class actions with the firm, including the *In re Anthem Data Breach* litigation and the *In re Premera Data Breach* litigation.

WILLIAM T. SCHIFFMAN, ESQ., is a senior associate in the firm of Kantrowitz, Goldhamer & Graifman, P.C. Mr. Schiffman received his J.D. degree from Brooklyn Law School in 1974 and is admitted to practice in New York (1975), Texas (1976), and New Jersey (1981). Mr. Schiffman was Law Clerk to the Honorable Woodrow Seals, United States District Judge, Southern District of Texas from 1974-1977. In that position Mr. Schiffman was responsible for preparing decisions and orders on motions as well as observing trials and assisting Judge Seals in preparing finds of fact and conclusions of law.

From 1977-1979, Mr. Schiffman was associated with the law firm of Urban & Coolidge in Houston Texas. Mr. Schiffman's principal practice area was commercial litigation. From 1979 to 1985, Mr. Schiffman was an attorney for AT&T, first in the Long Lines Department in Atlanta,

Georgia, and then in company headquarters in New Jersey. Mr. Schiffman's responsibilities were principally in the area of general litigation and the AT&T antitrust litigation prior to divestiture. From 1985 to 1993, Mr. Schiffman was with the law firm of Jacobi & Meyers, first as the managing attorney of several offices, then as New Jersey resident partner in charge of the northern New Jersey offices. The practice was principally in the area of litigation. From 1993 to date, Mr. Schiffman has been associated with Kantrowitz & Goldhamer, P.C., in New York, and its affiliate, Kantrowitz & Goldhamer in New Jersey. Mr. Schiffman's responsibilities are principally in the area of litigation including securities and employment class action, as well as complex contested matrimonial and general commercial litigation.

Exhibit D

THOMAS P. SOBRAN, P.C.

**7 EVERGREEN LANE
HINGHAM, MA 02043**

**TELEPHONE (781) 741-6075
FACSIMILE (781) 741-6074
EMAIL: tsobran@sobranlaw.com**

Thomas P. Sobran (“Sobran”) has over 40 years of experience in complex products liability litigation concentrating on automotive defects (including multiple class actions) and vehicle crashworthiness. Sobran has also been retained as an expert witness in the subject matter area of automotive products liability in legal malpractice proceedings both as a testifying trial witness and consultant. With respect to Volkswagen, Sobran was co-counsel on three separate crashworthiness cases involving multiple deaths and permanent brain injuries. Sobran was also involved in multiple class actions involving millions of VW/Audi vehicles for improper maintenance instructions, engine water pump defects and engine timing chain defects that resulted in catastrophic engine failure.

Class action experience includes:

- Co-lead class counsel *Gelis, et al. v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, United States District Court for the District of New Jersey, Civil Action No. 17-cv-7386-WHW
- Co-lead class counsel *Oliver, et al. v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, United States District Court for the District of New Jersey, Civil Action No. 17-cv-12979-CCC
- Co-lead class counsel *Coffeng, et al. v. Volkswagenwerk Aktiengesellschaft, et al.*, United States District Court for the District of Northern California, Civil Action No. 3:17-cv-01825-JD
- Executive committee *Salcedo v. Subaru of America, Inc., et al.*, United States District Court, District of New Jersey Civil Action No. 1:17-cv-08173-JHR
- Executive committee *In Re Volkswagen Timing Chain Product Liability Litigation*, United States District Court, District of New Jersey Civil Action No. 2:16-cv-2765-JLL
- Lead class counsel *Fisher, et al. v. Mitsubishi Electric Corporation, et al.*, United States District Court, District of Connecticut Civil Action No. 3:09-CV-1899-RNC
- Lead counsel *Diveroli, et al. v. Volkswagenwerk Aktiengesellschaft, et al.*, United States District Court, District of Massachusetts Civil Action No. 07-cv-10196-JLT later consolidated into *In re Volkswagen*, MDL 1790
- Other class action proceedings involve defective consumer products including automobiles, automotive products and electronic goods

Non-class action experience includes:

- Thirty-five years of experience involving complex products liability litigation with an emphasis on automotive defects and crashworthiness proceedings

- In excess of fifteen (15) personal injury cases resulting in verdicts or settlements of more than one million dollars
- Representation of gas turbine helicopter engine manufacturer in aviation accidents involving loss of aircraft and personal injury
- Expert witness in subject matter area of automotive products liability in legal malpractice proceedings
- Qualified and testified at trial as an expert witness in the subject matter area of Porsche 911 engine design and repair procedures in Massachusetts District Court
- Co-authored papers presented at Massachusetts Continuing Legal Education products liability seminars
- Prepared course materials presented by past American Association of Justice (formerly ATLA) President at the 34th Annual Advocacy Institute

Automotive experience

- Factory-trained Volvo, Honda, BMW, Mercedes-Benz and Porsche automotive technician and service manager
- Extensive knowledge of vehicle-component design and manufacture together with assembly, test and repair procedures
- Extensive experience in automotive engine blueprinting and race preparation including designing, machining / fabricating automotive components
- Extensive motor vehicle modification and race preparation experience including turbo charging, internal engine components as well as other components including transmissions and suspension systems
- Ability to read and interpret design drawings, schematics and test protocols employing SAE and DIN standards
- Crew member of NASCAR Craftsman Truck Series and NASCAR Busch Series race teams; crew chief for SCCA Porsche 916 race team responsible for engine build and crew member on SCCA Trans-Am Pro Series team

Miscellaneous

- Professional memberships include Society of Automotive Engineers, Association for the Advancement of Automotive Medicine, Center for Auto Safety and Insurance Institute for Highway Safety
- Familiarity with National Highway Traffic Safety Administration investigation procedures, testing protocol and data bases

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JULIE KIMBALL, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC., VOLKSWAGEN
AKTIENGESELLSCHAFT, AUDI
AKTIENGESELLSCHAFT and AUDI OF
AMERICA, INC.,

Defendants.

Civil Action No. 2:22-cv-04163-JKS-MAH

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

WHEREAS, pursuant to Fed. R. Civ. P. (“Rule”) 23(a), 23(b)(3), and 23(e), the parties seek entry of an order, *inter alia*, preliminarily approving the class Settlement of this Action (“Settlement”) pursuant to the terms and provisions of the Class Settlement Agreement dated January 6, 2025 with attached exhibits (“Settlement Agreement”); preliminarily certifying the Settlement Class for settlement purposes only; directing Notice to the Settlement Class pursuant to the parties’ proposed Notice Plan; preliminarily appointing the Settlement Class Representative, Settlement Class Counsel and the Claims Administrator; directing the timing and procedures for objecting to, or requesting for exclusion from, the Settlement; and scheduling any other filings and the Final Fairness Hearing; and

WHEREAS, the Court has carefully reviewed and considered the Settlement Agreement and Plaintiffs’ Unopposed Motion for Preliminary Approval;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. The Court preliminarily approves the Settlement Agreement and all of its Settlement terms as fair, reasonable and adequate under Rule 23, subject to further consideration at the Final Fairness Hearing.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

All persons and entities who purchased or leased, in the United States or Puerto Rico, Settlement Class Vehicles which are certain of the following model year Volkswagen and Audi brand vehicles which were distributed by Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico, and specifically identified by Vehicle Identification Number (“VIN”) on VIN lists that are attached as Exhibits 4A-C to the Settlement Agreement: 2008-2014 and 2015-2021 VW GTI and Golf R vehicles, 2012-2013 VW Beetle vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 and 2019-2024 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2015-2018 VW Golf vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2008-2009 and 2015-2020 Audi A3 vehicles, 2015-2024 Audi Q3, 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 and 2016-2023 Audi TT vehicles. (hereinafter “Settlement Class”).

The aforesaid Settlement Class Vehicles are categorized as follows:

(1) “Generation 1 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 1 EA888 Engines: certain model year 2008-2014 VW GTI and Golf R vehicles, 2012-2013 VW Beetle

vehicles, 2009 VW Jetta Sportwagen vehicles, 2008-2013 VW Jetta Sedan and GLI vehicles, 2009-2016 VW Eos vehicles, 2008-2010 VW Passat vehicles, 2009-2017 VW CC vehicles, 2009-2018 VW Tiguan vehicles, 2008-2009 Audi A3 vehicles, and 2015-2018 Audi Q3 vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5A to this Agreement.

(2) “Generation 2 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 2 EA888 Engines: certain model year 2009-2014 Audi A4 vehicles, 2010-2014 Audi A5 vehicles, 2013-2015 Audi A6 vehicles, 2011-2014 Audi Q5 vehicles, and 2011-2012 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5B to this Agreement.

(3) “Generation 3 Settlement Class Vehicles” means certain of the following Settlement Class Vehicles equipped with Generation 3 EA888 Engines: certain model year 2015-2018 VW Golf vehicle, 2015-2021 VW GTI vehicles, 2015-2019 VW Golf R vehicles, 2015-2019 VW Golf Sportwagen and Alltrack vehicles, 2019-2024 VW Jetta GLI vehicles, 2019-2021 VW Arteon vehicles, 2018-2023 VW Atlas vehicles, 2020-2023 VW Atlas Cross Sport vehicles, 2015-2020 Audi A3, 2019-2024 Audi Q3 vehicles, and 2016-2023 Audi TT vehicles, which were distributed by VWGoA in the United States and Puerto Rico and specifically identified by Vehicle Identification Number (“VIN”) on a VIN list that is attached as Exhibit 5C to this Agreement

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 that 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.

4. The Court preliminarily appoints Plaintiff Julie Kimball as the Settlement Class Representative.

5. The Court preliminarily appoints the law firms of Kantrowitz, Goldhamer & Graifman, P.C. and Thomas P. Sobran, P.C., collectively, as Class Counsel for the Settlement Class (“Settlement Class Counsel”).

6. The Court preliminarily appoints JND Legal Administration as the Settlement Claim Administrator (“Claim Administrator”).

7. The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class exists in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over individual questions; (c) the claims of the Settlement Class Representative are typical of the claims of the Settlement Class; (d) the Settlement Class Representative and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

8. In addition, the Court preliminarily finds that certification of the Settlement Class is appropriate, especially when balanced against the risks and delays of further litigation, and that

the proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate, and reflects those considerations.

9. The Court also preliminarily finds that the Settlement Agreement has been reached as a result of intensive arm's-length negotiations of disputed claims and that the proposed Settlement is not the result of any collusion.

10. The Court approves, and directs the implementation of, the parties' Notice Plan for dissemination of the Class Notice pursuant to the terms of the Settlement Agreement (the "Notice Plan"). The Court approves the form and content of the postcard Settlement Class Notice, the long form Class Notice, and the Claim Form (Exhibits 1, 2 and 3 to the Settlement Agreement). The Court finds that the Notice Plan, consisting of mailing of the postcard Settlement Class Notice in the manner set forth in the Settlement Agreement, as well as the establishment of a settlement website that, *inter alia*, will contain the long form Class Notice, satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action; the certification of the Settlement Class for settlement purposes only; the terms of the Settlement, its benefits and the Release of Claims; the Settlement Class Members' rights including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement and/or Settlement Class Counsel's application for Fees and Expenses and Settlement Class representative service award; the deadline, procedures and requirements for submitting a Claim for Reimbursement pursuant to the Settlement terms; the time and place of, and right to appear at, the Final Fairness hearing; and other pertinent information about the Settlement and the Settlement Class Members' rights.

11. The Court further authorizes the Parties to make non-material modifications to the Settlement Class Notices and Claim Form prior to the Notice Date if they jointly agree that any such changes are appropriate.

12. The Claim Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including mailing of the CAFA Notice, implementing and maintaining the Settlement Website, implementing the Notice Plan, the processing, review and determination of timely submitted and proper Claims for Reimbursement under the Settlement terms, and the submission of any declarations and other materials to Settlement Class Counsel and the Court, as well as any other duties required under the Settlement Agreement.

13. The Departments of Motor Vehicles within the United States and its territories are ordered to provide approval to S&P Global, or any other company so retained by the parties and/or the Claim Administrator, to release the names and addresses of Settlement Class Members in the Action associated with the titles of the Vehicle Identification Numbers at issue in the Action for the purposes of disseminating the Settlement Class Notice to the Settlement Class Members. S&P Global, or any other company so retained, is ordered to license, pursuant to agreement between Defendant and S&P Global or such other company, and/or the Claim Administrator and S&P Global or such other company, the Settlement Class Members' contact information to the Claim Administrator and/or Defendant solely for the use of providing Settlement Class Notice in the Action and for no other purpose.

14. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than thirty (30) days after the Notice Date, a written request for exclusion ("Request for Exclusion") to each of the following: (a) the Claim Administrator at the address specified in the Class Notice; (b) Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645 on behalf of Settlement Class Counsel; and (c) Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defendant. To be effective, the Request for Exclusion must be timely and 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/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.

15. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion containing all of the above required information, and mailed to the proper addresses, shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

16. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Settlement Class Counsel Fees and Expenses and/or Settlement Class Representative service award.

- a. To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within thirty (30) days of the Notice Date; or (ii) mail, via first-class mail postmarked within thirty (30) days of the Notice Date, the objection, together with any supporting briefs and/or documents, to each of the following: (a) the Clerk's Office of the United States District Court, District of New Jersey, Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102; (b) Gary S. Graifman, Esq., Kantrowitz, Goldhamer & Graifman PC, 135 Chestnut Ridge Road, Suite 200, Montvale, NJ 07645 on behalf of Settlement Class Counsel; and (c) Michael B. Gallub, Esq., Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defendant.
- b. Any objecting Settlement Class Member must include the following with his/her/their/its objection: (i) the objector's full name, address, and telephone number; (ii) 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 or registration); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Fairness Hearing; and (vii) 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, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he/she/they/it shall affirmatively so state in the objection.

17. Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should be approved, or to speak regarding any objection that he/she/it had properly and timely filed with the Court. In order to appear, any Settlement Class Member must, no later than 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 Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of all witnesses that the Settlement Class Member (or the Settlement Class Member's counsel) intends to present to the Court in connection with the Final 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 Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

18. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement Agreement and/or its approval by appeal or otherwise.

19. In the event the Settlement is not granted final approval by the Court, or for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;
- b. All of the Parties' respective pre-Settlement claims, defenses and procedural rights will be preserved, and the parties will be restored to their positions *status quo ante*;
- c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant, the Released Parties, or the Plaintiff on any allegation, claim, defense, or point of fact or law in connection with this Action;
- d. Neither the Settlement terms, the existence of the Settlement itself, nor any publicly filed, available, or disseminated information regarding the Settlement, including, without limitation, the Settlement Agreement, the Class Notices, the Settlement Website, court filings, court orders, and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and
- e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

20. Pending the Final Fairness Hearing and the Court’s decision whether to grant final approval of the Settlement, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in, against Defendant and/or any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative or otherwise) asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. § 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court’s continuing jurisdiction and authority over the Action.

21. Pending the Final Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

22. Based on the foregoing, the Court sets forth the following schedule for the Final Fairness Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Settlement Class Members must check the Settlement Website regularly for updates and further details regarding this Settlement and any applicable deadlines and dates including any changes in the date, time and/or place of the Final Fairness Hearing:

Event	Deadline Pursuant to Settlement Agreement
Notice shall be mailed in accordance with the Notice Plan and this Order	_____ [100-days after issuance of Preliminary Approval Order]

Settlement Class Counsel’s Fee and Expense Application and request for service awards for the Plaintiff-Settlement Class Representative	_____ [115-days after issuance of Preliminary Approval Order]
Deadline for filing of any Objections to the Settlement, Settlement Class Counsel’s Fee and Expense Application, and/or the request for Settlement Class Representative service award	_____ [130 days after issuance of Preliminary Approval Order; 30-days after the Notice Date]
Deadline for Requests for Exclusion from the Settlement	_____ [130 days after issuance of Preliminary Approval Order; 30-days after the Notice Date]
Plaintiffs to file Motion for Final Approval of the Settlement	_____ [150-days after issuance of Preliminary Approval Order; 50-days after the Notice Date]
Claim Administrator shall submit a declaration to the Court (i) reporting the names of all persons and entities that submitted Requests for Exclusion; and (ii) attesting that Notice was disseminated in accordance with the Settlement Agreement and this Preliminary Approval Order.	_____ [150-days after issuance of Preliminary Approval Order; 50-days after the Notice Date]
Responses of Any Party to any Objections and/or Requests for Exclusion	_____ [165-days after issuance of Preliminary Approval Order; 65-days after the Notice Date]
Any submissions by Defendant concerning Final Approval of Settlement	_____ [165-days after issuance of Preliminary Approval Order; 65-days after the Notice Date]

Final Fairness Hearing will be held at Martin Luther King Building & U.S. Courthouse, 50 Walnut St., Newark, NJ 07102 or by video conference as determined by the Court	_____ [180-days after issuance of Preliminary Approval Order; 30-days after Plaintiffs' filing of Final Approval Motion]
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SO ORDERED:

Date: _____

Honorable Michael A. Hammer
United States Magistrate Judge

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• FLA. BAR
++ NJ CERTIFIED CIVIL TRIAL
ATTORNEY

February 28, 2025

Via ECF and Email

Magistrate Judge Michael A. Hammer
United States District Magistrate
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

**Re: *Kimball, et al. v. Volkswagen Group of America, Inc.*,
Civil Action No.: 2:22-cv-04163**

Dear Judge Hammer:

We are pleased to advise that Plaintiff is now filing, on the ECF docket, the Unopposed Motion for Preliminary Approval of the parties' class settlement, together with supporting papers and the parties' [Proposed] Order Granting Preliminary Approval of Class Action Settlement. The Proposed Order has been agreed by the parties, and since the motion is unopposed, there will be no response filed.

Thank you for your consideration, and the parties are happy to address any questions you may have.

Respectfully submitted,


Gary S. Graifman

GSG/lm

Cc: All Counsel of Record