

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

JENI RIEGER, ALOHA DAVIS, JODIE  
CHAPMAN, CARRIE VASSEL, KAREN  
BURNAUGH, TOM GARDEN, ADA  
AND ANGELI GOZON, HERNAN A.  
GONZALEZ, PATRICIA A. HENSLEY,  
CLYDIENE FRANCIS, PETER  
LOWEGARD, and GRANT BRADLEY  
individually and on behalf of a class of  
similarly situated individuals,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,  
INC., a New Jersey corporation, d/b/a  
AUDI OF AMERICA, INC.,

Defendant.

Case No. 1:21-cv-10546-ESK-EAP

**PLAINTIFFS' RESPONSE TO OBJECTIONS AND IN FURTHER  
SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER AND  
JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

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## I. INTRODUCTION

Plaintiffs<sup>1</sup> submit this Response in further support of their Motion for an Order and Judgment Granting Final Approval of Class Action Settlement pursuant to the schedule set forth in the Preliminary Approval Order (ECF 84), to address and rebut the 9 purported Objections<sup>2</sup> to the Settlement, two of which are invalidly asserted by individuals who are not Settlement Class Members (“Order”) ¶ 14a, ECF 84, PageID 1889. Specifically, the purported Objections include:

- Objection of Paul Nowyj, ECF 89
- Objection of Steven Joseph Samp, ECF 91
- Objection of Matthew C. Burrows, ECF 92
- Objection of John Milek, ECF 93
- Objection of Dawn Powell, ECF 94
- Objection of Mary Schmotzer, ECF 95
- Objection of Richard and Kim Ann Dominick, ECF 96, 98
- Objection of Elizabeth Lynch, ECF 97
- Objection of Todd Lawlor, ECF 99<sup>3</sup>

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<sup>1</sup> The named Plaintiffs who are Parties to the Settlement Agreement, individually and as representatives of the Settlement Class, are Plaintiffs Tom Garden, Carrie Vassel, Karen Burnaugh, Grant Bradley, Clydiene Francis, Ada Gozon and Angeli Gozon, Peter Lowegard, and Patricia Hensley (collectively, “Plaintiffs”). “Parties” is defined as Plaintiffs and Defendant Volkswagen Group of America, Inc (“Defendant” or “VWGoA”). Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement, ECF 90-3.

<sup>2</sup> In addition to the 9 purported Objections, a tenth submission that was potentially styled as an objection is actually a request for reimbursement, and was never filed with the Court as required for a valid objection. That submission by Roger and Kay Helbling is attached as Ex. A to the Declaration of Russell D. Paul (“Paul Decl.”).

<sup>3</sup> Mr. Lawlor has withdrawn his objection. *See* Paul Decl. ¶ 5.

For the reasons set forth in greater detail below, the Court should overrule the objections, strike or dismiss those objections submitted by individuals who are not part of the Settlement Class, and issue an order approving the Settlement.

## **II. ARGUMENT**

### **A. The Favorable Class Reaction Supports Final Approval**

A “small number of objections by Class Members to the Settlement weighs in favor of approval.” *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 103 (D.N.J. 2012) (citations omitted). The Settlement Administrator mailed the Court-approved Class Notice and Claim Form to 533,570 Settlement Class Members. ECF 101-4, ¶ 8. Following the exclusion and objection deadline of February 28, 2024, only 32 individuals excluded themselves from the Settlement. *Id.* at ¶ 18. This represents a mere 0.0058% of the 533,570 Settlement Class Members. There were only ten purported objections to the Settlement, a microscopic 0.0019% of the 533,570 Settlement Class Members. ECF 101-2, ¶ 23. The class response has been overwhelmingly supportive.

The reaction here compares favorably to other settlements of this type approved by courts in this district. *See Yaeger v. Subaru of America*, 2016 WL 4541861, at \*14 (D.N.J. Aug. 31, 2016) (finding favorable class reaction where 28 class members objected out of 665,730 class notices or 0.005% and 2,328 individuals (or 0.35%) opted out); *Skeen v. BMW of North America*, 2016 WL

4033969, at \*8 (D.N.J. July 26, 2016) (finding favorable class reaction when 123 out of 186,031 recipients of class notices opted out, and 23 submitted objections); *Henderson v. Volvo Cars of N. Am.*, 2013 WL 1192479, at \*6 (D.N.J. Mar. 22, 2013) (finding favorable class reaction where 47 out of 94,992 potential class notice recipients opted out and 12 objected).

The reaction also compares favorably to class member reactions to other automotive settlements approved by federal courts. *See, e.g., Eisen v. Porsche Cars N. Am.*, 2014 WL 439006, \*5 (C.D. Cal. Jan. 30, 2014) (“Although 235,152 class notices were sent, 243 class members have asked to be excluded, and only 53 have filed objections to the settlement.”); *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, 2012 WL 10277179, \*7-8 (N.D. Cal. Jan. 6, 2012) (finding favorable reaction where 364 individuals opted out [0.06%] and 67 filed objections [0.01%] following a mailing of 613,960 notices); *Browne v. Am. Honda Motor Co.*, 2010 WL 9499072 \*14 (C.D. Cal. July 29, 2010) (finding favorable class reaction where, following a mailing of 740,000 class notices, 480 (0.65%) opted out and 11.7 (0.16%) objected).

The reaction of Class Members supports final approval. *See In re Rite Aid Corp Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (“such a low level of objection is a ‘rare phenomenon’”).

**B. The Court Should Overrule Objections Made by Settlement Class Members**

Only 7 objections have been filed by Settlement Class Members, representing

0.0013% of the Settlement Class. We have been advised that one of those objections has been withdrawn, *see* Paul Decl. ¶ 5, leaving 6 objections by Settlement Class Members. These objections can be generally classified into three categories: (1) objections to the Settlement’s Warranty Extension and out-of-pocket reimbursements based on the applicable mileage and year specifications; (2) objections to the perceived lack of any available remedy under the Settlement to compensate for diminution in value caused by the alleged defects in the pistons; and (3) objections to the sufficiency of the out-of-pocket reimbursement or overall recovery. The rest of the objections are a hodgepodge of various contentions, including that the opt out/objection procedure is onerous, there was not enough time to respond, the Settlement limits legal options, and that the Settlement is not equitable with respect to new owners of the Settlement Class Vehicles.

Furthermore, the submission of Roger and Kay Helbling, attached as Ex. A to the Paul Decl., should be overruled for its failure to comply with the requirements of the Order, ¶ 14a, ECF 84. There is no evidence that the letter was filed with or mailed to the Clerk of Court, as required by the Order. Moreover, the Helblings’ letter does not include an objection to the Settlement at all. Though the letter is titled “Written Objection or Comment on the Settlement,” it does not object to any of the Settlement’s terms and instead is a letter to counsel, not the Court, seeking reimbursement. To the extent that the Helblings’ letter is substantively interpreted

as challenging the Settlement's purported deficiency in providing some form of relief to compensate for diminution of value or out-of-pocket costs, the Court should overrule their objections, *see supra* Section B.2 and 3.

For the reasons discussed in greater detail below, the Court should overrule all these objections to the Settlement.

**1. The Court Should Overrule the Objections to the 90,000 Mile or Nine-Year Specifications for the Warranty Extension and Out-of-Pocket Reimbursement Benefits**

The majority of objections are based on the length (in miles and year) of coverage for the Warranty Extension and the Settlement's eligibility requirements for out-of-pocket reimbursement of past covered repairs. These objections are based on the 90,000 mile or nine-year length for coverage or for reimbursement.<sup>4</sup> Objectors either complain about having *any* warranty expiration based on time or miles or would like some higher mileage for all older vehicles. For example, one objector simply contends there should be no mileage limitation, "I feel all owners should be entitled to repair reimbursement regardless of vehicle mileage." ECF 91. Another

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<sup>4</sup> *See* ECF 89 (Objection of Paul Nowyj); ECF 91 (Objection of Steven Joseph Samp); ECF 94 (Objection of Dawn Powell); ECF 95 (Objection of Mary Schmotzer); ECF 99 (Objection of Todd Lawler); ECF 96, 98 (Objection of Mr./Mrs. Richard Dominick). Although Richard Dominick is on the exclusion list submitted with the Declaration of Marcia A. Uhrig filed in support of final approval, ECF 101-4, the Dominick objection states that he does not want to be excluded and instead objects. ECF 98. Therefore, this Response addresses the Dominick objection as from a Settlement Class Member.

objector bemoans “what 10-to 13-year-old car has fewer than 90,000 miles on it?” (ECF 89; *see also* ECF 94 (complaining about the extended warranty and noting yearly milage use according to the Department of Transportation)). Several objectors complain that the Settlement, as a result, provides no recovery for older vehicles with high mileage, with respect to either the extended warranty or reimbursement. In short, they complain the Settlement excludes most Class Members from receiving benefits due to the 90,000 mile/nine-year limit for receiving benefits. However, “nothing persuasive at all has been put before the Court to show that the year and mileage restrictions negotiated here are in any way inadequate or unfair, or the result of anything other than good faith negotiation between counsel with expansive experience in this practice area.” *Oliver v. BMW of North America, LLC*, 2021 WL 870662, \*6 (D.N.J. March 8, 2021).

As a general matter, these objections amount to little more than second-guessing of the parties’ determination that a 9-year/90,000-mile warranty extension<sup>5</sup> or limitation for out-of-pocket repair reimbursement is fair in light of the risks of further litigation. This cannot serve as a basis for sustaining an objection, since

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<sup>5</sup> These objections also overlook that under the Settlement, if a Settlement Class Vehicle’s Warranty Extension time period (9 years from the In-Service Date) had already expired as of January 29, 2024 (the Notice Date), then for that Settlement Class Vehicle only, the Warranty Extension time and mileage limitations shall be for a period of up to seventy (70) days after the Notice Date (April 8, 2024) or ninety-thousand (90,000) miles from the Settlement Class Vehicle’s In-Service Date (whichever occurs first). S.A. § II.A.(2), ECF 82-3, PageID 1701.

objectors could simply have opted out if they were to fall outside of the coverage period. *See Alin v. Honda Motor Co.*, 2012 WL 8751045, \*15 (D.N.J. Apr. 13, 2012) (“It was reasonable to exclude older, more traveled vehicles from coverage, and these objectors are free to opt out of the settlement and pursue new litigation if they so desire.”).

There is nothing unusual about extending warranty coverage, or providing reimbursement, based on a reasonable length, as “[o]ther courts have upheld similar class action settlements which place age and mileage restrictions” for benefits. *Sadowska v. Volkswagen Grp. of Am., Inc.*, 2013 WL 9600948, \*6 (C.D. Cal. Sep. 25, 2013) (overruling objection that extended warranty benefit for CVT transmission offered by the settlement is insufficient). “That certain objectors would want additional miles or additional years does not mean that the resolution reached is unreasonable; instead, it is the product of negotiation.” *Oliver*, 2021 WL 870662, at \*6; *see In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at \*12 (S.D.N.Y. May 30, 2013) (“negotiating a cut-off at some point was necessary and is reasonable because settlement is the result of compromise.”). Indeed, an overarching principle is that settlement involves some line-drawing. *See Alin*, 2012 WL 8751045, at \*12 (“The largest category of objections comes from customers whose cars were too old, or had too many miles to be eligible for recovery according to the lines drawn in the agreement. But lines must be drawn somewhere.”). Further, “it is not

the role of the Court to determine where the cut-off should be and impose that line on the parties.” *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at \*12.

Without reasonable limitations, Defendant would need to insure, in perpetuity, parts that normally break down after years of use. *See Alin*, 2012 WL 8751045, at \*15 (“The parties weighed the obligation to cover those damages against the reality that Honda cannot act as a perpetual insurer for all compressor breakdowns, and they ultimately settled on a sliding scale that ends at eight years and 96,000 miles.... It was reasonable to exclude older, more traveled vehicles from coverage....”); *see Eisen*, 2014 WL 439006, at \*7 (noting that negotiations on issues such as these must by their nature include reasonably negotiated eligibility limitations).

Furthermore, given the age of the Settlement Class Vehicles, few Class Members are likely to have individual claims. Thus, the choice for most Class Members is between participating in this Settlement or opting out and having no ability to obtain relief. This Settlement, which offers the possibility that many Class Members will receive a benefit, should not be disapproved simply because others who cannot meet objective eligibility requirements for benefits also release their claims. *See Henderson*, 2013 WL 1192479 (releasing all class members’ claims regarding a transmission defect, even though the settlement only provides benefits

for vehicles that exhibited problems within 100,000 miles); *see also Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at \*11-12 (C.D. Cal. Apr. 29, 2014), (approving settlement releasing transmission-related claims of owners who may not qualify for any compensation).

In short, “time/mileage limitations are inherent to automotive settlements that are regularly approved by courts, and the limitations here represent a compromise that was negotiated at arms'-length through a venerated mediator by experienced counsel after extensive discovery and consultation with their experts.” *Seifi v. Mercedes-Benz USA, LLC*, 2015 WL 12964340, at \*2 (N.D. Cal. Aug. 18, 2015) (collecting cases approving settlements with time/mileage limitations). The mileage and year specifications provided by the Settlement are the product of intensive arms'-length negotiations and represent a reasonable compromise.

Considering the risks of further litigation to establish a defect and damages, Objectors' demand for unrestricted benefits should be overruled.

## **2. The Court Should Overrule the Objections Regarding Diminution in Value**

Although a few objectors have argued, without any evidentiary support, that the Settlement should provide some form of relief to compensate the Settlement Class for diminution of value owing to the alleged defect with the pistons,<sup>6</sup> Plaintiffs

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<sup>6</sup> *See, e.g.*, ECF 95 (Objection of Mary Schmotzer); ECF 97 (Objection of Elizabeth Lynch); ECF 98 (Objection of Mr. and Mrs. Richard Dominick); Declaration of

respectfully submit that these objections should be overruled. First, none of these objections include any support for their claim that they experienced any diminution in value as a result of the issues alleged in this action. In fact, they have provided no evidence that they experienced any excessive oil consumption, let alone that any subsequent purchaser was aware of the alleged issue and it impacted the sales price. A few Class Members' bare assertions that their failure to sell their vehicle at "fair market value" cannot be treated as evidence of diminution of value. Such assertions would not be accepted by courts in determining liability. *See In re Imprelis Herbicide Mktg.*, 296 F.R.D. 351, 368 (E.D. Pa. 2013) (rejecting former owners' objection that settlement failed to fairly compensate them vis-à-vis current owners because objectors have shown no damages "aside from speculating, i.e., with no supporting evidence, that they had suffered a loss in property value."). Indeed, "courts have rejected abstract claims for diminution-in-value damages allegations of actual or attempted sale at a diminished price." *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at \*14.

Furthermore, even casting any alleged oil consumption issues aside – and these objectors have not even demonstrated such issues in their vehicles - the value of any vehicle, let alone any purported diminution of such value, is based upon a myriad of highly individualized factors for each vehicle including its age, mileage,

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Russell D. Paul, Ex. A (Submission of Roger and Kay Helbling).

maintenance, physical condition, engine condition, gas mileage, aesthetics, the market for that vehicle in that specific condition at the time of sale, and many other aspects of the vehicle and of the particular sale negotiations that alleged occurred. Because diminution of value is difficult to prove, and is so highly individualized and fact-sensitive in nature, an overwhelming number of courts have rejected the contention that a settlement is unfair because it does not compensate for diminished value. *See Yaeger*, 2016 WL 4541861, at \*15 (overruling objection based on diminution of value and observing that “evidence of diminished value of a particular vehicle, given the multiple variables determining market value, may be difficult to obtain and to prove.”); *Eisen*, 2014 WL 439006, at \*8 (“These objectors have not taken into account the difficulties of establishing class-wide diminution in value damages[.]”); *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 749 (E.D. Tex. 2007) (“It does not make the settlement unfair or unreasonable that the class has to release speculative claims for diminution of value.”); *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at \*14 (finding that class counsel reasonably excluded diminution of value claims as they “present additional challenges because proving them requires individualized inquiry.”); *Milligan*, 2012 WL 10277179, \*7 (overruling objection and observing that “diminution in value cases face significant obstacles regarding proof.”); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160 (C.D. Cal. 2010) (no reimbursement for trade-ins and sales at

a loss).

As such, these objections are without merit and the objectors could have easily opted out of the Settlement if they believed they entitled to something other than the very substantial benefits that this Settlement provides.

### **3. The Court Should Overrule Objections to the Sufficiency of Reimbursement or Overall Recovery Under the Settlement**

Several objections contend that the Settlement does not provide sufficient relief, vaguely contending it does not hold Defendants accountable enough or does not cover all damages that could conceivably be correlated with oil consumption.<sup>7</sup> However, settlements are by definition the product of compromise, and

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<sup>7</sup> See, e.g., ECF 89 (Objection of Paul Nowyj); ECF 95 (Objection of Mary Schmotzer); ECF 97 (Objection of Elizabeth Lynch); ECF 98 (Objection of Mr. and Mrs. Richard Dominick); Declaration of Russell D. Paul, Ex. A (Submission of Roger and Kay Helbling). Objector Dominick also mentions a prior and separate settlement in a case against Defendants, criticizing the current Settlement as less favorable yet at the same time criticizing the prior settlement as not being sufficient as well. (ECF 98.) See *Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462 (C.D. Cal. May 29, 2015). Objector Nowyj similarly refers to the prior settlement and criticizes the current Settlement for, in his belief, allowing Defendants to avoid providing any compensation. (ECF 89.) First, that case involved different vehicles from the ones involved here. Second, criticizing a separate case that has already been approved is simply not a basis to deny approval of this distinct Settlement. Third, the criticisms based on this Settlement have merit. As discussed below in further detail, claims with respect to the sufficiency of the Settlement should be rejected, and even *Asghari* supports this since the Court there stated: “The possibility that the settlement does not provide for a payout to every conceivable class member who in some way may have been affected by the purported defect does not establish that the settlement is unfair or unreasonable.” *Asghari*, 2015 WL 1273262, at \*22 (overruling objection that the settlement should have provided benefits for incidental expenses or diminution of value) (internal brackets and quotation marks deleted).

“[c]omplaining that the settlement should be ‘better’ is not a valid objection.” *Henderson*, 2013 WL 1192479, at \*9 (citations omitted); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (The possibility “that a settlement could have been better ... does not mean the settlement presented was not fair, reasonable or adequate.”) Such objections to reimbursement amounts or the relief afforded here do not provide a sufficient basis for denial of the Settlement. “While each individual class member has a desire for greater relief, the Court’s inquiry turns on whether the terms of the settlement are fair, reasonable and adequate, [citation omitted], and not whether each class member gets everything he or she desires.” *Alin*, 2012 WL 8751045, at \*14.

Courts have regularly rejected challenges to a settlement’s reimbursement amounts or complaints that not all damages are reimbursed. *See Dickerson v. York Int’l Corp.*, 2017 WL 3601948, at \*9 (M.D. Pa. Aug. 22, 2017) (The argument that “the settlement is unreasonable for failure to reimburse [plaintiffs] 100 percent of their out-of-pocket costs. . . fundamentally misapprehends the bargained-for nature of the benefit provided: a settlement necessarily requires all parties to make calculated concessions. . . . These [negotiated] amounts were the result of intense and informed negotiations with the assistance of the mediator. In view of the risks of proving liability and causation, these awards are quite reasonable.”); *Henderson*, 2013 WL 1192479, at \*8-9 (“[S]everal objectors indicate their disappointment with

the agreed-upon reimbursement rates or relief. . . . The objections submitted by Class Members do not show that the Settlement is unreasonable or unfair. ‘This Court’s role is to determine whether the proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class. A settlement is, after all, not full relief but an acceptable compromise.’”) (citations omitted).

Moreover, “full compensation is not a prerequisite for a fair settlement.” *Alin*, 2012 WL 8751045, at \*14. An objection that seeks all damages and costs or expects total reimbursement does not take into account that “[s]ettlements are private contracts reflecting negotiated compromises,’ including the elimination of risk for both parties associated with litigation, and they need not be ‘the fairest possible resolution.’” *Skeen*, 2016 WL 4033969, at \*12 (quoting *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013)). As set forth in Plaintiffs’ brief supporting final approval (ECF 101-1, at 33-35), the risks of establishing liability and damages based on a defect that caused excessive oil consumption are quite substantial. Continued litigation may result in a battle of scientific experts that would be expected to provide complex damage testimony, as establishing damages on a class-wide basis would prove difficult. The expense, and uncertainty, attendant with such complex matters counsel in favor of compromise. Despite these challenges, Plaintiffs, through this Settlement, secured class wide relief that directly addresses the harm alleged. Thus, those objections that demand “better” relief—should be

overruled.

To be sure, the Court cannot impose a “better settlement,” as the court “does not have the power to alter the terms of the proposed settlement.” *Yaeger*, 2016 4541861, at \*17. The Court’s duty is to “approve the settlement, taking all relevant facts and circumstances into account” or “reject the proposed settlement and put the case back on the litigation track.” *Id.* Plaintiffs respectfully submit that the proposed Settlement should be finally approved, as the terms are clearly fair, reasonable, and adequate, and this is especially so in light of both the significant risks of further litigation and the low number of objections and opt-outs.

#### **4. The Remaining Objections Should Be Overruled**

There are a few further miscellaneous, generalized objections, which include a complaint that the opt out and objection procedure is “onerous” or “arduous,” that there was not enough response time, and that the Settlement limits the legal options of owners.<sup>8</sup> Another objection is that the Settlement is not equitable in its treatment of new owners.<sup>9</sup> Each objection should be rejected in kind.

First, the objections to the opt out and objection procedures are baseless. These procedures, which were approved by this Court (ECF 85, ¶14) and described in detail in the Class Notice (ECF 82-5, at 8-10), are reasonable and routinely

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<sup>8</sup> ECF 89 (Objection of Paul Nowyj).

<sup>9</sup> ECF 94 (Objection of Dawn Powell); ECF 95 (Objection of Mary Schmotzer).

ordered by Courts in this district and others throughout the country. *See, e.g., Granillo v. FCA US LLC*, No. 3:16-cv-00153-FLW (D.N.J. Apr. 15, 2019), ECF 143; In addition, these persons chose to object rather than opt out, and they fail to demonstrate that anything relating to the procedures for doing so prevented them from filing their objections.

As a preliminary matter, the Court-approved Notice program meets the standard for a class action settlement notice under Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e) by including: “(1) direct notice of the Settlement Agreement; (2) full description of their rights and obligations under the Settlement Agreement; and (3) resources to ask questions and, to the extent necessary, receive assistance in submitting Claim Forms.” *Saini v. BMW of N. Am., LLC*, 2015 WL 2448846, \*13 (D.N.J. May 21, 2015). Here, the Notice of the Settlement’s material terms was mailed directly to Class Members on January 29, 2024 (ECF 101-4, ¶ 8), and the Notice provided a full description of Class Members’ rights and obligations under the Settlement Agreement. *See* ECF 82-5 (Class Notice), at 7-10 (Questions 5-17). At the bottom of each page of the Class Notice is the Claim Administrator’s toll-free number and the URL of the settlement website, which contains Frequently Asked Questions, the claim form, counsel’s contact information, and important case documents, such as the Settlement Agreement and the motions filed in support of the Settlement. *Id.*

Objector Nowyj contends that “the process to opt-out of this settlement is arduous” and “designed to discourage affected owners from rejecting the settlement outright.” ECF 89. He also complains of the “onerous amount [of] paperwork demanded to object to this settlement.” *Id.* But neither complaint is availing. The Class Notice details the Court-Ordered requirements for exclusion, which includes sending a written request by mail clearly stating the desire to be excluded, along with providing a full name, address, telephone number, the model, model year and VIN of the Settlement Class Vehicle, and a statement that the Settlement Class Member is a present or former owner or lessee of a Settlement Class Vehicle. ECF 82-5, at 8; ECF 84. These are reasonable requirements that aid the Parties and the Claim Administrator to verify Settlement Class Member status. Settlements approved in this district have typically required similar information. *See, e.g., Oliver v. BMW of N. Am., LLC*, No. 2:17-cv-12979-CCC-MF (D.N.J. Jan. 25, 2021), ECF 71-4 (Settlement Agreement), at 22 (requirements for exclusion); *Yaeger v. Subaru of Am., Inc.*, No. 14-04490-JBS (D.N.J. Jan. 4, 2016), ECF 49-2 (Settlement Agreement), at 28-29 (requirements for exclusion).

With respect to the submission of objections, the Class Notice clearly provides that Class Members can file their written objection with the Court *or* mail their written objection to the Court and counsel for the Parties. ECF 82-5 at 9. There is no requirement that a Class Member do both, notwithstanding Objector Nowyj’s

complaint about having written “to the Courts, Class Counsel, and Defense Counsel.” ECF 89. He also complains of potential travel costs for objectors “just to have their voices heard,” but there is also no requirement that an objector appear at the final approval hearing, ECF 82-5, at 10 (Question 19), and Nowyj has not even stated a desire to appear even remotely or by telephone. The Class Notice describes the information required for objectors, which includes a clear statement that they object, full name, current address and telephone number, the model, model year and VIN of the Settlement Class Vehicle along with proof that they own(ed) or lease(d) it, a written statement of factual and legal grounds for objecting, copies of pertinent papers/briefs/documents, the name/address/telephone number of any counsel representing the objector, and detailed list of prior class action settlement objections for the previous five years. ECF 82-5 at 9-10. This is common and generally has been approved for settlements in this district. *See, e.g., Oliver v. BMW of N. Am., LLC*, No. 2:17-cv-12979-CCC-MF (D.N.J. Jan. 25, 2021), ECF 71-4 (Settlement Agreement), at 23-24 (objectors must provide full name, current address/telephone number, model year and model of his/her Class Vehicle and VIN, dates of purchase or lease, whether the objection applies to the objecting Class Member, a specific subset of the Class or the entire Class, a statement of position with factual and legal grounds, copies of relevant repair history or other proof of ownership/lease, any other supportive documents, a detailed statement of each objections asserted with

grounds, and “detailed statement” of any class action settlement objections in previous five years); *Yaeger v. Subaru of Am., Inc.*, No. 14-04490-JBS (D.N.J. Jan. 4, 2016), ECF 49-2 (Settlement Agreement), at 26-27 (requiring the objector to file with the court or mail to the court and counsel the objection with full name, current address, and telephone number, the model, model year, date of acquisition and vehicle identification number, along with proof that the objector has owned or leased the vehicle, state all grounds for objections with legal support, copies of pertinent papers/documents, and provide information regarding previous objections within the last five years); *Saini v. BMW of N. Am., LLC*, No.12-06105-CCC (D.N.J. June 13, 2014), ECF 22-2 (Settlement Agreement), at 22-23 (requiring the objector to file a written objection and provide his/her/its full name, and current address, the model and model year of his/her/its Vehicle(s), as well as the VIN of his/her/its Vehicle(s) and the date(s) of purchase, factual and legal grounds for the objector’s position, copies of any other documents in support, as well as a “detailed list of any other objections” in the previous five years information regarding prior class action settlement objections).

These settlements require similar information, and *Oliver* and *Yaeger* even contain an additional requirement that objecting class members subject themselves to deposition which is not required here. *Oliver*, ECF 71-4 at 24; *Yaeger*, ECF 49-2 at 28. *Yaeger* also includes the requirement that objectors provide a statement that

they have reviewed the Settlement Class definition and understand in good faith they are a member and state whether they complained to the defendants/dealer about oil consumption or had related repairs and provide evidence of any such complaint or repairs – which are likewise not required here. *Yaeger*, ECF 49-2 at 27. The objection here is therefore groundless.

Second, the objection regarding response time is also meritless. The Order Granting Preliminary Approval provides for a 30-day response to the Class Notice to object or opt out of the Settlement, from the January 29, 2024 mailing date to the February 28, 2024 response deadline. ECF 84 at 11. Objector Nowyj complains about having only 20 days to respond based on the date he *received* his Class Notice, but he does not explain how this impacted his ability to respond accordingly, which he clearly was able to do in a timely manner. Further, the Claim Administrator attested to the timely mailing of notices. *Id.*

Third, the objection regarding the Settlement “impacting the legal options of owners like [Objector Nowyj]” is also meritless. ECF 89. Any Settlement Class Member who wished to preserve “legal options” could have opted out of the Settlement and requested an exclusion. The Class Notice informed Class Members of this option and stated that with a timely request for exclusion “[y]ou will not be legally bound by anything that happens in this Lawsuit.” ECF 82-5, at 8 (Question 10); *see also id.* at 7 (Question 9) (describing how Settlement Class Members would

be bound by the release of claims and the Court's orders/judgments "[u]nless you exclude yourself."). The Class Notice also explained how a request for an exclusion differed from an objection. ECF 82-5, at 10 (Question 17.) Had Objector Nowyj chosen to opt out, he would not have been a part of the Settlement and would have not been legally bound. He had every right to opt out of the Settlement Class to preserve any right or "legal option" as did every other Settlement Class Member. He chose to object and stay in the Settlement rather than exclude himself, which would have preserved such rights. He cannot complain about an option he simply chose not to exercise through a request for exclusion instead.

Fourth, the last miscellaneous basis for objection raised by Ms. Powell and Ms. Schmotzer generally contends that new owners of the Settlement Class Vehicles do not benefit from the Settlement and there is some sort of unequal benefit, it is "not at all equitable to current vehicle owners." ECF 95; *see also* ECF 94. Underlying these contentions generally is the lament that the subject vehicle, for which the objector may be a new, current owner, is already over 90,000 miles and thus no future repairs are covered. *See id.* However, as explained above, the 90,000 limit for benefits under the Settlement represents a fair and reasonable compromise, the result of vigorous arms-length negotiations of highly disputed claims that lasted several months, including mediation conducted by an experienced neutral mediator, between the Parties. *See Oliver*, 2021 WL 870662, at \*6 (refusing to find that the

year and mileage restrictions negotiated were in any way inadequate or unfair, and recognizing that although certain objectors want “additional miles or additional years,” this does not mean the Settlement is unreasonable, as it is the product of negotiation). There is no discrimination amongst any Settlement Class Members because they are all subject to the same objective criteria with respect to the 90,000 miles/nine-year specifications under the Settlement. Some may have had the good fortune of having driven a vehicle failure-free beyond the Warranty Extension period’s mileage or time limitations. But there is no conflict as all Settlement Class Members are subject to the same Settlement terms and benefits. Factual differences in mileage affecting recovery under a settlement is typical in all car defect settlements of this kind. *See id.* (referencing case law noting that “[t]ime/mileage limitations are inherent to automotive settlements that are regularly approved by courts.”). Accordingly, this last spurious basis for objection should be rejected.

**C. The Court Should Dismiss or Strike the Objections Made by Individuals Who Are Not Members of the Settlement Class**

Two of the purported objectors are not Settlement Class Members. This includes Matthew Burrows (ECF 92) and John Milek (ECF 93). First, it should be noted that Burrows and Milek have both withdrawn their purported objections. *See* Paul Decl. ¶ 5. Second, Burrows acknowledges that he is not a Settlement Class Member and admits, “I make no attempt to assert personal standing to enter this Objection.” (*See* ECF 92 at 1-2 (“My vehicle has been excluded from the Settlement

Class ....”) Milek’s vehicle, on the face of his Objection, is not a Settlement Class Vehicle as the stated VIN invalidly contains 15 instead of 17 digits. *See* ECF 93. It is well settled that those individuals who are not Settlement Class Members lack standing to object to the Settlement. *See* Fed. R. Civ. P. 23(e)(5)(A) (“Any *class member* may object to the proposal if it requires court approval under this subdivision (e)”) (emphasis added); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 2015 WL 2383358, \*2 (D.N.J. May 18, 2015), *aff’d*, 639 Fed. Appx. 880 (3d Cir. 2016) (finding that “the Objectors lack standing to object because they are not members of the class”). Significantly, “[a]s Rule 23 confers the right to object upon class members, the Rule itself does not confer standing upon nonclass members.” 4 Newberg & Rubenstein, *Newberg on Class Action* § 13:22 (6th ed., Nov. 2023 Update) (collecting cases). Thus, “[c]ourts regularly find that nonclass members have no standing to object to a proposed settlement or the notice thereof.” *Id.* Unlike all Settlement Class Members, these objectors are not releasing any valuable claims because they are not members of the Class and are not legally bound. Therefore, the Settlement and concomitant approval orders and judgment would not strip them of any legal claim or cause of action—there is no plain legal prejudice. They remain outside the binding effect of the Settlement. Their legal rights remain fully preserved and they may not challenge an order approving an agreement resolving the legal rights of others. As a result, these purported objections should be

stricken or dismissed outright.

In an attempt to subvert this settled law, Objector Burrows casually asks that his letter be treated as a request to intervene in this action. ECF 92, at 3. The Court should not entertain such an unfounded and inappropriate request. It must be denied. Moreover, there is absolutely no support for this baseless request. Objector Burrows fails to even mention, much less demonstrate, how he satisfies the requirements for intervention under Federal Rules of Civil Procedure, Rule 24, for which he does not meet the criteria. He maintains no interest in this matter because he is not a Settlement Class Member and not bound by any terms of the Settlement, nor is he harmed by approval of a Settlement that does encompass him or his vehicle. Approval of this Settlement and disposing of the action does not in any manner preclude him from asserting any claims. It does not “impair or impede” his ability to protect this non-existent interest. Fed. R. Civ. Proc. 24(a)(2). The Settlement’s terms simply do not include him, and he fails to make any showing to support intervention. There has been absolutely no showing of inadequacy of representation that is required for intervention. Further, any intervention would “unduly delay or prejudice the adjudication of the original parties’ rights.” (Fed. R. Civ. Proc. 24(b)(3)). The Parties have already achieved a Settlement and are in the middle of the final approval phase. Such an untimely intervention would derail the action and the Parties’ settlement, after the Class Notice has already been sent and the

Settlement Class overwhelmingly has responded favorably to this Settlement.

Tacitly recognizing his unsupported positions, Burrows piggybacks on the objection of Paul Nowyj. ECF 89. Objector Nowyj primarily objects based on the 90,000 mile/nine-year limitations of the Settlement. As already discussed above, these contentions should be rejected. Burrows states that this primary objection based on mileage does not apply to him as his vehicle is under 90,000, so he proceeds to simply make a general complaint that the Settlement is not sufficient, even if it was properly drafted and properly inclusive. ECF 92, at 11. This objection of insufficiency is also a general objection already discussed above, and it must be rejected.

In sum, the objections of individuals who are not members of the Settlement Class should be dismissed or stricken outright, and the groundless claims within not entertained.

### **III. CONCLUSION**

For the foregoing reasons, the Court should overrule the objections and strike those objections made by individuals who are not Settlement Class Members and enter the proposed Order Granting Final Approval of the Class Action Settlement.

Dated: April 3, 2024

Respectfully submitted,

/s/ Russell D. Paul  
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Amey J. Park (NJ Bar. No. 070422014)  
Abigail J. Gertner (NJ Bar. No. 019632003)  
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*Attorneys for Plaintiffs and the Proposed  
Class and Subclasses*

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

JENI RIEGER, ALOHA DAVIS, JODIE  
CHAPMAN, CARRIE VASSEL,  
KAREN BURNAUGH, TOM  
GARDEN, ADA AND ANGELI  
GOZON, HERNAN A. GONZALEZ,  
PATRICIA A. HENSLEY, CLYDIENE  
FRANCIS, PETER LOWEGARD, and  
GRANT BRADLEY individually and on  
behalf of a class of similarly situated  
individuals,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF  
AMERICA, INC., a New Jersey  
corporation, d/b/a AUDI OF AMERICA,  
INC.,

Defendant.

Case No. 1:21-cv-10546-ESK-EAP

**DECLARATION OF RUSSELL D. PAUL IN SUPPORT OF PLAINTIFFS'  
RESPONSE TO OBJECTIONS IN SUPPORT OF PLAINTIFFS' MOTION  
FOR AN ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

I, Russell Paul, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the Commonwealth of Pennsylvania, State of New York, State of New Jersey and State of Delaware as well as before the United States Court of Appeals for the Third, Seventh and Ninth Circuits, the United States District Courts of the Eastern District of Pennsylvania, District Court of Delaware, District Court of the Eastern District of

Michigan, District Court of New Jersey, District Court of the Southern District of New York and District Court of the Eastern District of New York.

2. I am a shareholder at Berger Montague PC (“Berger Montague”), one of the counsel of record ("Class Counsel") for Plaintiffs Carrie Vassel, Karen Burnaugh, Tom Garden, Ada and Angeli Gozen, Patricia Hensley, Clydiene Francis, Peter Lowegard, and Grant Bradley ("Plaintiffs").

3. I make this declaration in support of Plaintiffs’ Response to Objections in Support of Their Motion for an Order and Judgment Granting Final Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could competently testify thereto.

4. On or around March 5, 2024, I received correspondence from Roger and Kay Helbling, postmarked February 27, 2024, a true and correct copy of which is attached as Exhibit A.

5. I have been advised that Matthew C. Burrows, non-Settlement Class Member who filed a purported Objection at ECF 92; John Milek, non-Settlement Class Member who filed a purported Objection at ECF 93; and Todd Lawlor, who filed an Objection at ECF 99, have withdrawn their Objections.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Respectfully submitted,

/s/ Russell D. Paul

Russell D. Paul

Dated: April 3, 2024

# EXHIBIT A

Helbling  
2408 Saddle Ct.  
West Linn, OR 97018

741035557 0088

Russell D. Paul, Esq.  
Borger, Montague PC  
1818 Market St, Ste 3600  
Philadelphia PA 19103



Retail

RDC 99



19103

U.S. POSTAGE PAID  
FCM LETTER  
MESA, AZ 85209  
FEB 27, 2024

\$0.92

R2305E125770-25

Feb 25, 2024

In the matter of: Jeni Rieger, et al v. Volkswagen Group of America Inc et al –  
Written Objection or Comment on the Settlement

RE: Roger & Kay Helbling  
2408 Saddle Court  
West Linn, OR 97068  
503.964.4525  
[kadrmass@comcast.net](mailto:kadrmass@comcast.net)

2013 Audi A4 Premium + Quattro  
Vin #WAUFFAFL7DN046530

We started having trouble with oil consumption two years ago. To the point that we had to put a quart of oil in approximately every 250 miles. This oil was blowing through the engine – there was no oil dripping under the car.

On Sept 18, 2023, the car had to be towed to Audi (per their instructions) as there was no power upon acceleration. They put in a new spark plug to get it running again but advised us there was really no repairs that could be made that could keep it running for any period of time. The only fix was a new engine, which Audi Wilsonville estimated at \$15,000 – they only install factory new engines.

Due to the cost, we decided to get three other opinions (Grimm's Service, Lance's Auto Service and European Motor Werks). All came back with the same recommendations as Audi Wilsonville. At that point, we decided we'd have to replace the car as the cost for the replacement engine (\$4,950 quote for engine only from Sharper Edge Engines plus \$5,000 installation estimate from Grimms, Lance's and European Motor Werks) would exceed the trade in value.

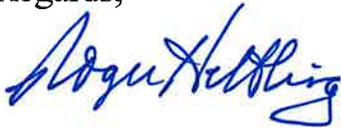
Upon trade in, we received \$3,187 from Tonkin Toyota. The value of the car without the engine problem was \$6,202 (good condition, 122,000 miles, average of Kelley Blue Book and Edmunds).

Our claim is for the following costs:

Approximate cost of replacement oil:	\$384
Cost for towing (Fox Towing on Sept 18, 2023):	\$234
Cost to get it running again – short term fix (Audi Wilsonville Sept 19, 2023):	\$630.45
Cost for diagnosis to get second opinion (Lance’s Dec 5, 2023):	\$383.50
Loss of trade in value to the car:	<u>\$3,015</u>
Trade in value with good engine \$6,202 less trade in value with damaged engine \$3,187	
<b>Total cost that are owed by Audi (Volkswagen Group of America) due to defective pistons and/or piston rings and excessive oil consumption that are being claimed:</b>	<b><u>\$4,647.95</u></b>

Thank you for your consideration. Please call me if you have any questions.

Regards,



Roger Helbling  
2408 Saddle Court  
West Linn, OR 97068  
Phone 503.964.4525  
Email [kadrmass@comcast.net](mailto:kadrmass@comcast.net)

# Key Advantage MM Checking | KeyBank Account Details

Date  
September 18, 2023  
Description  
pos mac fox towing tualatin or  
Type  
Debit Card  
Transaction Total  
\$235.00



*tow to Audi  
Wilsonville, OR*

Posted Date  
September 18, 2023

# Audi Wilsonville



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**Main:** (503) 254-AUDI **Sales:** (503) 261-4881  
**Parts:** (503) 261-4882 **Service:** (503) 261-4883  
 www.audiwilsonville.com

CELL: 503-964-41

CUSTOMER NO. <b>13415</b>	ADVISOR <b>CLINT PHILLIPS</b>	4000872	TAG NO. <b>3467</b>	INVOICE DATE <b>09/19/23</b>	INVOICE NO. <b>AUCS177623</b>
<b>ROGER LEE HELBLING</b> 2408 SADDLE CT WEST LINN, OR 97068  kdrmas2comcast.net	LABOR RATE	LICENSE NO. <b>LTSRLL</b>	MILEAGE <b>119,149</b>	COLOR <b>OC/MONSOONG</b>	STOCK NO.
	YEAR / MAKE / MODEL <b>13/AUDI/A4/4DR SDN QTR 2.0T AT</b>	DELIVERY DATE <b>06/11/13</b>		DELIVERY MILES	
	VEHICLE I.D. NO. <b>WAUFAFL7DN046530</b>	SELLING DEALER NO.		PRODUCTION DATE <b>04/10/13</b>	
	F.T.E. NO.	P.O. NO.	R.O. DATE <b>09/18/23</b>		
RESIDENCE PHONE <b>503-656-1440</b>	BUSINESS PHONE <b>503-718-6700</b>	COMMENTS			<b>MO: 11914</b>

**JOB# 1 CHARGES**

LABOR-----  
**J# 1 12AUZ ENGINE MAJOR GROUP TECH(S):4001002 408.50**  
 CUSTOMER STATES THE EPC LIGHT IS ON. VEHICLE WAS TOWED IN.  
 CHECK AND ADVISE check engine light  
 found check engine light connected battery charger and scan  
 vehicle found fault for misfire in cylinder 3 remove and  
 spark plug 3 and found spark plug missing parts removed  
 spark plug 3 to spark plug 4 and moved coil 3 to cylinder 1  
 once recheck faults and found spark plugs are bad when  
 inspecting the wall of the cylinders found damage marks  
 threw the walls for fast solution would be replacing the  
 spark plugs but in the future you will need a new engine  
 replaced spark plugs

PARTS-----QTY---FP-NUMBER-----DESCRIPTION-----UNIT PRICE-	
4 06H-905-601-A SPARK PLUG TS 9/19	17.99 71.96
<b>TOTAL - PARTS 71.96</b>	
<b>JOB# 1 TOTALS-----</b>	
	<b>LABOR 408.50</b>
	<b>PARTS 71.96</b>
<b>JOB# 1 JOURNAL PREFIX AUCS JOB# 1 TOTAL 480.46</b>	

**JOB# 2 CHARGES**

LABOR-----  
**J# 2+00AUZ02 SYNTHETIC OIL CHANGE TECH(S):4001002 95.28**  
 Added Operation (12CLINTP @ 09/19/2023 08:59)  
 GUEST REQUESTS: PERFORM SYNTHETIC ENGINE OIL & FILTER CHANGE  
 TOP OFF OTHER UNDERHOOD FLUID LEVELS, SET TIRE PRESSURES  
 RESET SERVICE REMINDER WHEN REQUESTED.  
 PERFORMED SYNTHETIC ENGINE OIL & FILTER CHANGE  
 TOP OFF OTHER UNDERHOOD FLUID LEVELS, SET TIRE PRESSURES  
 RESET SERVICE REMINDER

PARTS-----QTY---FP-NUMBER-----DESCRIPTION-----UNIT PRICE-	
1 06J-115-403-Q OIL FILTER TS 9/19	16.04 16.04
1 N-013-815-7 WASHER TS 9/19	0.99 0.99
1 N-911-679-01 PLUG TS 9/19	3.38 3.38
49 G-052-167-S0 ENGINE OIL TS 9/19	0.70 34.30
<b>TOTAL - PARTS 54.71</b>	
<b>JOB# 2 TOTALS-----</b>	
	<b>LABOR 95.28</b>
	<b>PARTS 54.71</b>
<b>JOB# 2 JOURNAL PREFIX AUCS JOB# 2 TOTAL 149.99</b>	

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\_\_\_\_\_(customer initials)  
 Buyer shall not be entitled to recover from Dealer any consequential or incidental damages damages to property, damages for loss of use loss of time, loss of profit or income or any other incidental damages.  
 \_\_\_\_\_(customer initials)

I hereby authorize the repair work along with the necessary materials by my signature on the reverse side of this repair order. I agree tha Dealer will not be responsible for loss o damages to vehicles or articles left in vehicle in case of fire or theft or any other cause beyond it control or for any delays caused by unavailability of parts or delays in part shipment by the supplier or transporter. I hereby grant you and/or employees permission to operate the vehicle herein described on th streets, highways, or elsewhere for the purpos of testing and/or inspection.

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Mon. - Fri. 7:30 am - 6:00 pm  
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X \_\_\_\_\_

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CELL: 503-964-41

CUSTOMER NO. <b>13415</b>	ADVISOR <b>CLINT PHILLIPS</b>	4000872	TAG NO. <b>3467</b>	INVOICE DATE <b>09/19/23</b>	INVOICE NO. <b>AUCS177623</b>
<b>ROGER LEE HELBLING</b> 2408 SADDLE CT WEST LINN, OR 97068  kdrmas2comcast.net	LABOR RATE	LICENSE NO. <b>LTSRLL</b>	MILEAGE <b>119,149</b>	COLOR <b>OC/MONSOONG</b>	STOCK NO.
	YEAR / MAKE / MODEL <b>13/AUDI/A4/4DR SDN QTR 2.0T AT</b>	DELIVERY DATE <b>06/11/13</b>		DELIVERY MILES	
	VEHICLE I.D. NO. <b>W A U F F A F L 7 D N O 4 6 5 3 0</b>	SELLING DEALER NO.		PRODUCTION DATE <b>04/10/13</b>	
	F.T.E. NO.	P.O. NO.	R.O. DATE <b>09/18/23</b>		
RESIDENCE PHONE <b>503-656-1440</b>	BUSINESS PHONE <b>503-718-6700</b>	COMMENTS			<b>MO: 11914</b>

ESTIMATE-----  
 CUSTOMER HEREBY ACKNOWLEDGES RECEIVING  
 ORIGINAL ESTIMATE OF \$204.25 (+TAX)  
 APPROVED ADDITIONAL COST OF \$484.55 FOR TOTAL ESTIMATE OF \$688.80 (+TAX) ON 09/19/23 AT 08:58am  
 BY ROGER HELBLING COMMENTS

\*\*\*\*\*  
 \* [ ] CASH [ ] CHECK CK NO. [ ] \*  
 \* [ ] VISA [ ] MASTERCARD [ ] DISCOVER \*  
 \* [ ] AMER XPRESS [ ] OTHER [ ] CHARGE \*  
 \*\*\*\*\*

TOTAL LABOR... 503.78  
 TOTAL PARTS... 126.67  
 TOTAL SUBLET... 0.00  
 TOTAL G.O.G... 0.00  
 TOTAL MISC CHG. 0.00  
 TOTAL MISC DISC 0.00  
 TOTAL TAX..... 0.00  
**TOTAL INVOICE \$ 630.45**

THANK YOU FOR YOUR BUSINESS!!

CUSTOMER SIGNATURE

AS-IS: The only warranties applying to parts are those which may be offered by the manufacturer. Dealer hereby expressly disclaims all warranties, either expressed or implied including the IMPLIED WARRANTIES OF MERCHANTABILITY or FITNESS FOR PARTICULAR PURPOSE and neither assumes nor authorizes any other persons to assume for any liability in connection with the sale of part and or service.

Buyer shall not be entitled to recover from Dealer any consequential or incidental damages to property, damages for loss of use, loss of time, loss of profit or income or any other incidental damages.

I hereby authorize the repair work along with the necessary materials by my signature on the reverse side of this repair order. I agree the Dealer will not be responsible for loss or damages to vehicles or articles left in vehicle in case of fire or theft or any other cause beyond its control or for any delays caused by unavailability of parts or delays in part shipment by the supplier or transporter. I hereby grant you and/or employees permission to operate the vehicle herein described on the streets, highways, or elsewhere for the purpose of testing and/or inspection.

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**INVOICE**

**76546**

Org. Est. # 1368

**INVOICE**

Printed Date: 12/05/2023 Work Completed: 12/05/20:

Helbling, Roger

2013 Audi - A4 Premium Plus Quattro - 2L, In-Line4 (121CI) VI  
 Lic #: LTSRLL Odometer In : 1219:

Cellular 503-718-6700

VIN #: WAUFFAFL7 DN046530

Part Description	Qty	Sale	Ext	Labor Description	E
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Shop Supplies; & Materials

8.10

Inspect for oil consumption, check pcv system, scope cylinders etc... to pinpoint cause 270.0

Install a vacuum gauge on the dip stick tube to test the vacuum from the pcv/oil trap and gauge shows under 1inhg of vacuum and this is within specification

Remove the air tube from the turbo charger at the throttle body to inspect for excessive oil and can see a normal amount of oil at this time

Remove all four spark plugs to inspect and confirm the number three cylinder plug has burnt oil residue

Use the camera to look inside all four cylinders and confirm some scratch lines in the cylinder wall at number 3,4 and 2

Can see excessive oil and carbon build up in the chamber of the cylinders due to lack of intake cleaning

Ran a cylinder leak test and the gauge shows

Cyl. 1 under 10% leak

Cyl. 2 80% leak and can hear pressure out the crankcase

Cyl. 3 60% leak from the crankcase also

Cyl. 4 under 10% leak

After cylinder leak ran a compression test to confirm and the gauge shows

Cyl. 1 90,120,150 psi

Cyl. 2 30,60,80 psi

Cyl. 3 30,60,90 psi

Cyl. 4 90,120,150 psi

This tests confirm low compression and large leak from the cylinder 2 and 3 due to carbon build up and suspect faulty oil control piston rings allowing excessive pressure in the crankcase and too much oil in the cylinder chamber to be burned

Due to these two issues it may be best to replace the engine as just a head cleaning job would not fix the cylinder wall scratches and oil bypassing the oil ring

Enviro. & Haz. Mat. Fees

5.4

*They think it will pass DCA - keep driving & pushing oil thru but could give out at any time*

*oil blowing by valves (top end) & pistons (bottom end)*



*\$8-9K for new rebilt engine to do cylinder heads but doesnt address cylinder scoring*

*\$2500-3k w/ Carlos value to replace value cover wh incl some fall. i very stop gap*

*very temp very costly*

**Lance's Superior Auto Service**

30775-D Boones Ferry Rd  
 Wilsonville, OR. 97070  
 Phone: 503-682-8522 Fax: 503-682-1844  
 Serving Wilsonville for over 30 years

**INVOICE**

**76546**

Org. Est. # 13681

**INVOICE**

Printed Date: 12/05/2023 Work Completed: 12/05/2023

Helbling, Roger

2013 Audi - A4 Premium Plus Quattro - 2L, In-Line4 (121CI) V16  
 Lic # : LTSRLL Odometer In : 12193

Cellular 503-718-6700

VIN # : WAUFFAFL7 DN046530

Part Description	Qty	Sale	Ext	Labor Description	Ex
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Org. Estimate 283.50 Revisions 0.00 Current Estimate 283.50

Labor:	270.00
Parts:	8.10
HazMat:	5.40
<b>SubTotal:</b>	<b>283.50</b>
Tax:	0.00
<b>Total:</b>	<b>283.50</b>
<b>Bal Due:</b>	<b>\$283.50</b>

[ Payments - ]

Vehicle Received: 12/5/2023

Customer Number : 1267

Customer agrees to pick up car within 3 days of diagnosis of issue if they choose not to repair with us, or after repair is completed, or a \$25.00 storage fee per day will be charged, or lien process will be started. Not responsible for loss or damage to cars or articles left in cars in case of fire, theft, or any other cause. Customer authorizes this repair and acknowledges that the estimate can be up to 10% different due to extra parts and or labor. Warranty 24months/24000 miles. Not be responsible for loss or damage to vehicle or to articles left in the vehicle in case of fire, theft, accident or any other cause beyond control.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Visit us on the web: [www.lancessuperiorauto.com](http://www.lancessuperiorauto.com)

Email Address: [service@lancessuperiorauto.com](mailto:service@lancessuperiorauto.com)

Service Advisor : Griffin, Lance, Tech : Alvarez, Carlos

**RON TONKIN TOYOTA**

750 SE 122ND AVE  
PORTLAND, OR OR 97233

**RETAIL PURCHASE AGREEMENT**

CUST# 574757

Deal Number: 304873

Purchaser's Name(s): **ROGER LEE HELBLING**

Date: 12/18/2023

Address: **2408 SADDLE CT WEST LINN OR 97068**

County:

Telephone (1): **503-964-4525**

Telephone (2):

DOB: 06/24/1953

E-mail: **ROGER@OREGONSLA.ORG**

D.L./State I.D.#: **3009255**

Issuing State: **OR**

Exp. Date: **06/24/2025**

The above information has been requested so that we may verify your identity. By signing below, you represent that you are at least 18 years of age and have authority to enter into this Agreement. The Odometer Reading for the Vehicle you are purchasing is accurate unless indicated otherwise. Please refer to the Odometer Disclosure Statement for full disclosure.

YEAR <b>2020</b>	MAKE <b>ACURA</b>	MODEL <b>MDX</b>	COLOR <b>WHITE</b>	STOCK NO. <b>PTR1119</b>
VIN/SERIAL NO. <b>5J8YD4H32LL047287</b>		ODOMETER READING <input type="checkbox"/> Not Accurate <b>31045</b>		DEALER NO./SALESPERSON: <b>ADRIAN ALVAREZ</b>

THE VEHICLE IS: <input type="checkbox"/> NEW <input checked="" type="checkbox"/> USED	PRIOR USE DISCLOSURE: <input type="checkbox"/> DEMONSTRATOR <input type="checkbox"/> PRIOR LEASE <input type="checkbox"/> RENTAL <input type="checkbox"/> PREVIOUSLY SPOT DELIVERED <input type="checkbox"/> OTHER N/A
--	---

WARRANTY STATEMENT		CASH PRICE OF VEHICLE
Unless the box beside "Used Vehicle Limited Warranty Applies" is marked below or we enter into a service contract with you at the time of, or within 90 days of, the date of this transaction, we are selling this Vehicle to you AS-IS. We expressly disclaim all warranties, express and implied, including any implied warranties of merchantability and fitness for a particular purpose. The entire risk as to the quality and performance of the Vehicle is with you. If the Vehicle proves defective after purchase, you will be responsible for the entire cost of all servicing and repair. Any warranties by a manufacturer or supplier other than our Dealership are theirs, not ours, and only such manufacturer or supplier shall be liable for performance under such warranties. We neither assume nor authorize any other person to assume for us any liability in connection with the sale of the Vehicle and the related goods and services.		N/A
<b>CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY)</b> The information you see on the window form for this Vehicle is part of this Contract. Information on the window form overrides any contrary provisions in the contract of sale. Traducción española: Vea el dorso.		N/A
<input type="checkbox"/> USED VEHICLE LIMITED WARRANTY APPLIES. Please see the attached Used Vehicle Limited Warranty. Any implied warranties apply for the duration of the Limited Warranty.		N/A
DEALER TITLE AND REGISTRATION DOCUMENT PREPARATION SERVICE FEE*		115.00

TRADE-IN VEHICLE INFORMATION				TOTAL SELLING PRICE
Year: <b>2013</b>	Make: <b>AUDI</b>	Model: <b>A4 2.0T QUATTRO</b>	Color:	N/A
VIN/Serial No: <b>WAUFFAFL7DN046530</b>	Odometer Reading: <input type="checkbox"/> Not Accurate <b>12221</b>			N/A
Trade-In Allowance: <b>N/A</b>	Balance Owed & Lienholder: <b>N/A</b>	**Negative Equity: <b>N/A</b>	Registration/License <b>6.00</b>	
***The Deposit/Down Payment received from you is not refundable, except as set forth in this Retail Purchase Agreement. In the case of a Deposit, we will refrain from selling the Vehicle for <b>N/A</b> days.		**NEGATIVE EQUITY: You are aware that the Balance Owed on your Trade-In/Lease Turn-In Vehicle exceeds the Trade-In Allowance from us and, as a result, you have requested that the Amount to be Financed be increased by the difference (known as the "Negative Equity" amount).		N/A
Dealership Title and Registration Document Preparation Service Fee: This fee is not required by law. It is a negotiable fee charged by our Dealership for preparing or processing title and registration documents and collecting DMV fees on your behalf. If the Vehicle is paid for in full and there are no liens to be recorded or released in connection with the Vehicle or your Trade-In Vehicle, you also have the right to take your paperwork to the DMV and to not be charged any Service Fee. By signing below, you are agreeing to pay this Service Fee.		X <b>N/A</b>		N/A
Optional Electronic Filing Fee: For an additional fee of \$ <b>35.00</b> , our Dealership can electronically file your DMV documents. This is an optional fee; it is not required by law. Your registration and ownership documents will be processed more quickly.		Accept <b>RLH</b> (Initial) Decline <b>N/A</b> (Initial)		N/A

SUBTOTAL		
EVR Fee		35.00
Title Fee		106.00
TOTAL DUE		
DEPOSIT/DOWN PAYMENT***		N/A
NET TRADE		3187.00
LESS CASH DUE AT DELIVERY		N/A
AMOUNT TO BE FINANCED (See Paragraphs 12 and 16)		

**OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS**

IF BOX IS MARKED, PLEASE SEE THE DELIVERY CONFIRMATION  
 IF BOX IS MARKED, PLEASE SEE THE CONDITIONAL (SPOT) DELIVERY AGREEMENT

This Agreement and any documents which are part of this transaction or incorporated herein comprise the entire agreement affecting this Retail Purchase Agreement and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read all of the terms and conditions of this Agreement, and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. This Agreement shall not become binding until signed and accepted by an Authorized Dealership Representative.

*Roger Helbling*  
Purchaser **12/18/2023**

*Adrian Alvarez*  
Accepted by Authorized Dealership Representative **12/18/2023**

DEAL# 304873  
CUST# 574757

**RON TONKIN TOYOTA**  
750 SE 122ND AVE  
PORTLAND, OR, OR 97233  
503-255-0177

**TRADE-IN VEHICLE AFFIDAVIT**

Customer Name(s): ROGER LEE HELBLING Date: 12/18/2023

Home Telephone: 503-964-4525 Work Telephone: \_\_\_\_\_

Trade-In Vehicle: 2013 AUDI A4 2.0T QUATTRO WAUFFAFL7DN046530  
Year Make Model Vehicle Identification Number (VIN)

SD N/A  
Body Type License No. Sticker No. State Year

The undersigned Customer(s) (hereinafter collectively "Customer") have entered into an agreement with the Dealership for the purchase or lease of a vehicle and, as part of that transaction, have traded in the Trade-In Vehicle described above. Customer acknowledges that the Dealership has not had the opportunity to examine the current or former Certificate(s) of Title to the Trade-In Vehicle and that the Dealership is relying upon the information provided by Customer regarding the Trade-In Vehicle's condition, prior use, title history, prior damage and lienholders in accepting the Trade-In Vehicle.

In consideration of the Dealership accepting the Trade-In Vehicle at this time, Customer represents and warrants as follows:

1. I have the right to sell or otherwise convey the Trade-In Vehicle and the Trade-In Vehicle (a) is properly titled to me; (b) is free and clear of liens or encumbrances, except as may be noted on the Retail Purchase/Lease Agreement and/or the Authorization to Release Payoff Information; and (c) no other individual or entity is listed as an owner on the title.
2. I will provide a Certificate of Title or documents sufficient to enable the Dealership to obtain a Certificate of Title to the Trade-In Vehicle in accordance with applicable state law. I acknowledge that I have given the Dealership a power of attorney to transfer my Trade-In Vehicle. I agree to deliver the original or a duplicate title to my Trade-In Vehicle to the Dealership within three (3) business days of today, except in cases involving a payoff. I agree to pay on demand any and all costs incurred by the Dealership for the issuance of a duplicate title to my Trade-In Vehicle should I fail to deliver the original or a duplicate title within the three (3) business day period.
3. Unless I have disclosed otherwise on the Retail Purchase/Lease Agreement, the Trade-In Vehicle (a) has never been titled as or declared a salvage, junk, reconstructed, rebuilt, flood, or lemon buyback vehicle; (b) has never been involved in an accident and has never incurred damage as a result of an accident, flood, fire or hail; (c) has never incurred any frame damage; (d) is equipped with all necessary emission control equipment and such equipment has not been modified and is in satisfactory working order; (e) has the same equipment as it did at the time of the Dealership's appraisal; and (f) all airbags are of original equipment and have never been deployed.
4. Unless I have disclosed otherwise on the Retail Purchase/Lease Agreement, the odometer is functional and accurate and has not been repaired, replaced, or disconnected, and the odometer reading is accurate.

as follows:  
R.L.H.  
K.H.  
Initial  
R.L.H.  
K.H.  
Initial  
R.L.H.  
K.H.  
Initial  
R.L.H.  
K.H.  
Initial

Customer understands that if any of the representations and warranties made in this written Trade-In Vehicle Affidavit (or any other documents wherein information is requested/provided about the Trade-In Vehicle), is false or inaccurate in any way, the Dealership may elect at its sole discretion: (1) To reappraise or return the Trade-In Vehicle to Customer. If the Dealership elects to reappraise the Trade-In Vehicle, Customer agrees to pay to the Dealership the difference between the agreed upon Trade-In Allowance and the reappraised value of the Trade-In Vehicle (which shall be determined based upon the condition of the Trade-In Vehicle prior to any repairs, preparation or reconditioning performed by the Dealership in preparation for resale). If the Dealership elects to return the Trade-In Vehicle to Customer, Customer agrees to pay to the Dealership the original Trade-In Allowance, plus any reasonable repair costs and expenses incurred by the Dealership in connection with preparing or reconditioning the Trade-In Vehicle for resale and the amount of any Balance Owed that has been paid to a Lienholder; OR (2) If the Trade-In Vehicle has already been sold by the Dealership, Customer agrees to pay any actual, consequential or incidental damages and costs (including reasonable attorneys' fees) incurred by the Dealership.

**Please read this Trade-In Vehicle Affidavit very carefully. By signing below, you are agreeing that the representations and warranties made by you regarding your Trade-In Vehicle are complete, truthful and accurate.**

Roger Helbling 12/18/2023 \_\_\_\_\_ 12/18/2023  
Customer Date Authorized Dealership Representative Date  
Roger Helbling 12-18-23  
Customer/Co-Signer Date \*53046\*1\*RTTOY-FI