UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

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 Motion Date: April 22, 2024

DEFENDANT'S MEMORANDUM OF LAW IN RESPONSE TO OBJECTIONS AND IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

Federal Cases

Federal Rules

I. INTRODUCTION

Pursuant to the Preliminary Approval Order (ECF 84), Defendant Volkswagen Group of America, Inc., respectfully submits this Memorandum of Law in response to the few objections to the proposed Class Settlement, and in support of final approval of the Settlement.

Significantly, of the 533,570 Settlement Class Members, only 9 have filed purported objections[1] to the proposed Settlement (0.0017% of the class)[2] – most of which are invalid and none have merit - and only 33 (0.0062%) have submitted requests for exclusion. The microscopic number of objections and requests for

[1] As discussed *infra*, only 9 purported objections were filed, but 2 of them (Burrows [ECF 92] and Milek [ECF 93]) were from persons who are not Settlement Class Members and, therefore, lack standing to object to this Settlement, and one has been withdrawn (subject to this Court's approval), so there are actually only 6 submitted objections which represent only 0.0011% of the Settlement Class. Furthermore, as also shown below, two of the objections (Burrows and Lawlor) have been withdrawn subject to this Court's approval. However, even if there were 9 objections, it would still only amount to a microscopic 0.0017% of the Settlement Class.

[2] In addition, two Settlement Class Members, Roger and Kay Helbling, sent a letter to counsel titled "Written Objection or Comment on the Settlement" (attached hereto as Exhibit A). However, that letter does not, in fact, object to any of the Settlement's terms. Instead, it purports to set forth issues that they had with their vehicle and a request, made solely to counsel (not to the Court) for reimbursement. Therefore, this is not, in fact, an objection. And in addition to not setting forth any objection to the Settlement, it does not contain any of the Court-ordered requirements for a valid objection and was sent only to counsel and not to the Court. Finally, even if the Helbling's letter is considered an objection, which it is not, the objections still only represent 0.0019% of the Settlement Class.

exclusion demonstrates unequivocally that the Settlement Class favors this preliminarily approved Class Settlement. The Settlement clearly meets the standards for final approval; it is fair, reasonable and adequate, and satisfies Fed. R. Civ. P. 23 ("Rule 23") in all respects. The sole nine purported objections do not, in substance or in number, provide any legitimate basis for not granting final approval.

In this Circuit, the evaluation of a proposed Class Settlement is governed by well-settled principles. First, courts recognize that "[s]ettlements…reflect[] negotiated compromises. The role of a district court is not to determine whether the settlement is the fairest possible resolution [but only whether] the compromises reflected in the settlement…are fair, reasonable and adequate when considered from the perspective of the class as a whole." *In re Baby Products Antitrust Litig.*, 708 F.3d 163, 173-74 (3d Cir. 2013) (citation omitted); *see also Skeen v. BMW of North America, LLC*, 2016 WL 4033969, at *7 (D.N.J. July 26, 2016). As the Third Circuit has reaffirmed, "an evaluating court must…guard against demanding too large a settlement since, after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 2018 WL 4232057, at *5 (3d Cir. Sept. 6, 2018) (internal quotation marks and citation omitted).

Second, there is a strong judicial policy in favor of resolution of litigation before trial, "particularly in class actions and other complex cases where substantial

judicial resources can be conserved by avoiding formal litigation." *In re GMC Pick-Up Fuel Tank Prods. Liab. Litig. ("GM Trucks")*, 55 F.3d 768 (3rd Cir. 1995). The benefits of class action settlements accrue to the parties as well as the courts:

> The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings.…Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts [and] the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.

Ehrheart v. Verizon Wireless, 609 F.3d 590, 594-95 (3d Cir. 2010).

Third, there is a presumption that class settlements are fair and reasonable when, as in this action, they are the product of arm's length negotiations of disputed claims conducted by counsel who are skilled and experienced in class action litigation. *See*, *e.g.*, *GM Trucks*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011) (*en banc*); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness"). This is especially so when, as here, the Settlement was negotiated with the assistance of an experienced neutral mediator. *Hall v. AT&T Mobility, LLC*, 2010 WL 4053547, *26 (D.N.J. Oct. 13, 2010) ("the participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length…") (quoting *Bert v. AK Steel Corp.*,

2008 WL 4683747 (S.D. Ohio Oct. 23, 2008)); *In re National Football League Players' Concussion Injury Litigation*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (same).

And fourth, a class action settlement should be approved if the district court finds "that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Third Circuit has identified nine factors—known as the *Girsh* factors—that bear upon this analysis: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *GM Trucks*, 55 F.3d at 785-86 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

As shown below and in Class Counsel's Unopposed Motion for Final Approval (ECF 82), the proposed Class Settlement clearly meets these factors and, accordingly, should be granted final approval.

II. THIS SETTLEMENT SATISFIES ALL OF THE *GIRSH* FACTORS

Factor 1 – The Complexity and Duration of the Litigation

This factor clearly supports final approval of the Settlement. As addressed during the preliminary approval process, and reiterated in Plaintiffs' Unopposed Motion for Final Approval (ECF 101-1), this putative class action involves very

complex automotive issues relating to complex vehicle components in many putative class vehicles. The factual and legal claims are highly disputed, and litigation of this action through full discovery, summary judgment motions, a class certification motion, other pre-trial proceedings, *in limine* motions, a potential trial, and potential appeals, would undoubtedly be complex, expensive, and lengthy in duration, with the result uncertain. *See Careccio v. BMW of North America LLC*, 2010 WL 1752347, *4 (D.N.J. Apr. 29, 2010); *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 571 (9th Cir. 2019).

Factor 2 – The Reaction of the Class to the Settlement

The Class' reaction to the Settlement has been resoundingly positive and favors final approval. As discussed *supra*, of the 533,570 Settlement Class Members, there have only been a minuscule number of objections (representing at most 0.0019% of the Class) and 33 opt-outs (0.0062% of the Class). Such an overwhelmingly positive response from the Class strongly favors final approval. *See, e.g.*, *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 "strongly favors settlement"); *Varacallo, supra,* 226 F.R.D. at 237 (exclusions amounting to about .06% of the class, and objections amounting to about .003% of the class constituted "extremely low" numbers that "weighed in favor of approving" the proposed settlement); *In re Mercedes Benz Emissions Litigation*, 2021 WL 7833183, *10 (D.N.J. Aug. 2, 2021)

(18 objections out of 438,290 members indicates that "the Class as a whole …favors approval"); *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 643 (D.N.J. 2004) ("Courts [have] construe[d] class member's failure to object to proposed settlement terms as evidence that the settlement is fair and reasonable."); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (100 objections out of 30,000 class members weighs in favor of final approval of the class settlement); *Myers v. Medquist, Inc.*, 2009 WL 900787, *12 (D.N.J. Mar. 31, 2009) (noting that based on the low number of objectors and opt-outs, the court was "justified in assuming more than 98% of the Class Members" approved the settlement).

In addition, "CAFA" notice of the Settlement was timely sent to the U.S. Attorney General and the applicable State Attorneys General (Settlement Agreement § IV.A; Declaration of Marcia. A. Uhrig dated March 19, 2024 (ECF 101-4) at ¶ 3), and none have objected to or raised any concern about this Settlement.

Factor 3 – The Stage of the Proceedings

As this Court found in its Preliminary Approval Order, "[t]he 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 positions, strength, 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." (ECF 84, ¶8; *see also* Plaintiffs' Unopposed Motion for Final Approval (ECF 101-1, pp. 32-33)). Nothing has changed since the settlement was preliminarily approved that would contradict this prior finding and, as such, this factor is satisfied.

Factors 4 and 5 – The Risks of Establishing Liability and Damages

As this Court stated in the Preliminary Approval Order, this Settlement "is appropriate when balanced against the risks and delays of further litigation" (ECF 84 ¶8). Nothing has changed since that time to warrant a different conclusion. Indeed, this action involves highly disputed claims regarding the design, manufacture, marketing, sale, and warranting of complex vehicles and components. Defendant maintains that the subject 2.0-liter turbocharged engines in the Settlement Class Vehicles were properly designed, manufactured, marketed, and distributed, and are not defective, that there was no breach of any express or implied warranty, and that no applicable statutes or legal obligations were violated.

Moreover, the overwhelming majority of Settlement Class Members have never experienced, and will likely not experience, any problem with their vehicles' engines consuming excessive oil, and any particular vehicle's rate of oil consumption is affected materially by many different factors including the quality and extent of the vehicle's maintenance (especially oil maintenance), the manner in which the vehicle has been driven, roadway and environmental factors, and whether

the engine has sustained any damage from an outside source. Clearly, any purported issues that a given Settlement Class Member may have experienced with oil consumption (and very few have) are likely the result of poor or insufficient maintenance or any myriad of other causes unrelated to any purported alleged "defect."

In addition, Defendant has numerous significant defenses to this action which could bar completely, if not substantially reduce, all or many Settlement Class Members' potential recoveries under the various applicable states' laws. These defenses include statutes of limitation, lack of standing, lack of manifestation of the alleged issue, lack of privity with Defendants, absence of a duty to disclose under applicable states' laws, absence of pre-sale knowledge of any alleged defect, lack of reliance or causation, "economic loss rule" bars to recovery, other statutory and common law bars to recovery, lack of recoverable damages and/or "ascertainable loss," and many other common law and statutory defenses applicable to particular Settlement Class Members' claims. The significant risks to Plaintiffs of further litigation clearly favor final approval of the Settlement.

Factor 6 – The Risks of Maintaining a Class Action

This factor also favors final approval. From Defendant's perspective, in the absence of a class settlement there would be significant risks to Plaintiffs of not obtaining class certification and/or not maintaining it through trial or appeal.

In this case, numerous individualized factual and legal issues would likely predominate and adversely affect the ability to certify a class in the litigation context. They include the different conditions of each Settlement Class Vehicle; the manner in which each vehicle was driven, the manner in which each vehicle was maintained and particularly, whether each owner had proper oil maintenance performed for his/her vehicle (use of the correct oil for the vehicle at the required time and mileage intervals for oil maintenance); accidents, events, damage to the vehicle, and environmental factors which can affect each vehicle's condition, performance, and oil consumption; individual facts and circumstances of each Settlement Class Member's purchase or leasing of, and decision-making concerning, his/her vehicle; what, if anything, each Settlement Class Member may have seen, heard or relied upon prior to purchase or lease; whether the Settlement Class Vehicle was used when obtained by any Settlement Class Member and if so, its prior use and maintenance; whether and to what extent any Settlement Class Member ever experienced any oil consumption issue with his/her vehicle and if so, the circumstances and root causes; whether, when and under what circumstances a Settlement Class Member ever presented any alleged oil consumption problem to an Audi dealership for repair within the vehicle's warranty period; whether or to what extent any Settlement Class Member can establish any entitlement to damages or other relief; and myriad other issues individual to each Settlement Class Member.

In addition, material differences among the laws of the various 50 states could preclude certification of a "nationwide" class in a litigation context.

In contrast, these issues do not preclude class certification for settlement purposes, since the Court will not be faced with the significant manageability problems of a trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Sullivan*, 667 F.3d at 302-03 ("the concern for manageability that is a central tenet in the certification of a litigation class is removed from the equation" in the case of a settlement class); *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)) (manageability concerns that arise in litigation classes are not present in settlement classes); *O'Brien v. Brain Research Labs, LLC*, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) ("because certification is sought for purposes of settlement and is not contested, the concerns about divergent proofs at trial that underlie the predominance requirement are not present here"); *Beneli v. BCA Financial Services, Inc.*, 324 F.R.D. 89, 96 (D.N.J. 2018) (same). Thus, this Settlement provides very significant benefits which would likely not be available to the Settlement Class outside the context of a class settlement.

Factor 7 – Defendant's Ability to Withstand a Greater Judgment

Courts routinely find that the seventh factor is only relevant when the Parties use the defendant's inability to pay to justify a reduced settlement. *In re NFL Players*

Concussion Injury Litig., 821 F.3d 410, 440 (3d Cir. 2016). This does not apply here, so this factor is neutral.

Factors 8 and 9 – The Range of Reasonableness of the Settlement in Light of the Best Recovery and Risks of Litigation

This Settlement provides very significant benefits to the Settlement Class consisting of a robust warranty extension and reimbursement for past paid repair expenses program extending to 9 years or 90,000 miles (whichever occurs first) from the Settlement Class Vehicle's In-Service Date. *See* Plaintiffs' Unopposed Motion for Final Approval (ECF 101-1), and the Settlement Agreement, Exh. A to the Declaration of Russell Paul in Support of Preliminary Approval (ECF 82-9). This more than doubles the original 4 year New Vehicle Limited Warranty ("NVLW") period, and almost doubles the original 50,000 mile limitation of the NVLW. This Court has preliminarily approved the Settlement as "fair, reasonable, and adequate under Rule 23" (ECF 84), and nothing has changed since that time that would contradict the Court's finding. The settlement clearly meets the requirements of Rule 23, especially when considering the appreciable risks of non-certification in the litigation context, non-recovery, or at the very least, a substantially reduced or delayed recovery in the absence of this Settlement.

III. THE FEW OBJECTIONS TO THE SETTLEMENT SHOULD BE OVERRULED

In view of the substantial benefits afforded to the Settlement Class, it is not surprising that a miniscule 7 of the 533,570 Settlement Class Members have filed purported objections. As discussed *supra* [fn.1], 2 additional individuals purported to file objections (Matthew Burrows (ECF 92) and John Milek (ECF 93)), but they are not members of the Settlement Class and therefore lack standing to object to the Settlement, and one letter received by counsel and not filed with the Court (Roger and Kay Helbling) is not an objection. Moreover, most of the purported objections are invalid because they fail to comply with the requirements for a valid objection that are set forth in the Preliminary Approval Order as well as the Class Notice. And finally, none of the purported objections have merit, including those of the two non-Settlement Class individuals that lack standing. The objections should be overruled and the Court should grant final approval of the Settlement.

For the Court's easy reference, the following chart lists the purported objectors and the basic fundamental reasons why the objections should be overruled, dismissed or stricken. The specific reasons are discussed in more detail in Sections III. A- C below:

Objector	**Reasons objection should be overruled**
Paul Nowyj (ECF 89)	- Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit

Steven Joseph Samp (ECF 91)	- Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Dawn Powell (ECF 94)	- Lacks substantive merit
Mary Schmotzer (ECF 95)	- Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Richard and Kim Dominick (ECF 96 and 98)	- Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Elizabeth Lynch (ECF 97)	- Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Todd Lawlor (ECF 99)	- Objection withdrawn (subject to Court approval) - Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Matthew Burrows (ECF 92)	- Objection withdrawn (subject to Court approval) - Not a Settlement Class Member and lacks standing to object - Lacks substantive merit
John Milek (ECF 93)	- Objection withdrawn (subject to Court approval) - Not a Settlement Class Member and lacks standing to object - Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit
Roger and Kay Helbling (Exh. A to this Brief)	- Not an objection, but merely a request made to counsel for reimbursement - Does not object to any term of the Settlement - Was not sent to or filed with the Court - Fails to comply with the Court-Ordered requirements for a valid objection - Lacks substantive merit

A. Request for Approval of Resolved Objections

Three of the filings, including the objection of Todd Lawlor (ECF 99) and the purported objections of non-settlement class members Matthew Burrows (ECF 92) and John Milek (ECF 93) who lack standing, reflect specific individual circumstances (described below) which, subject to the Court's approval, have been resolved by VWGoA on a customer relations basis pursuant to agreements, and these customers have agreed to withdraw their objections (See Lawlor letter withdrawing objection, Exh. B; Burrows letter withdrawing objection, Exh. C; Milek letter withdrawing objection, Exh. D). Mr. Lawlor's complaints about his vehicle (water cooler and timing chain replacements) are not related to the claims in this action. Mr. Burrows' and Mr. Milek's vehicles are not covered by the Settlement and they lacks standing. These three complaints were amicably resolved by VWGoA for good customer relations and to promote customer satisfaction. The Parties respectfully request that the Court approve these resolutions and withdrawal of these objections pursuant to FRCP 23(e)(5)(B).[3]

[3] The individual settlement agreements with these customers are available should the Court wish to review them.

B. Matthew Burrows and John Milek Lack Standing to Object to the Settlement

Both Matthew Burrows (ECF 92) and John Milek (ECF 93) (both objections have been withdrawn, subject to Court approval), acknowledge that their vehicles are not Settlement Class Vehicles, and they are therefore not in the Settlement Class. As such, they lack standing to object to the Settlement.[4] *Rowe v. E.I. DuPont de Nemours and Co.*, 2011 WL 3837106, *10 (D.N.J. Aug. 26, 2011) (citing *In re Sunrise Sec.*, 131 F.R.D. 450, 459 (E.D. Pa. 1990)) (only settlement class members have standing to object to a proposed class settlement). As such, their objections would have to be overruled, stricken and/or dismissed for lack of standing.

Despite his lack of standing, Burrows argues that the Court should nevertheless consider his arguments "as if made in a properly-briefed Rule 24 intervention" and that it was "not economically viable for [him] to self-finance a Rule 24 intervention." This is improper, since the filing of a formal motion to intervene was required, and Burrows failed to do so. *In re Pantopaque Products Liability Litigation*, 938 F. Supp. 266, 273-74 (D.N.J. 1996) (non-party's failure to file a formal Rule 24 motion to intervene was fatal to his attempt to intervene in the litigation); *AV Design Services, LLC v. Durant*, 2020 WL 13580612, at *3 (D.N.J.

[4] The VIN provided by Milek is not a valid VIN since it does not contain 17 characters, which is another deficiency with his objection. In any event, Milek concedes that his vehicle is not a Settlement Class Vehicle.

June 6, 2020) (a non-party seeking intervention must comply with the "basic requirement" of filing "a pleading that sets out the claim or defense for which intervention is sought", which "is designed to enable the Court to assess the intervener's claims, to inform existing parties, and allow the Court to properly frame the issues") (internal quotation omitted); *Waudby v. Verizon Wireless Services, LLC*, 248 F.R.D. 173, 175 (D.N.J. 2008) ("[a] proposed intervenor must comply with the requirements of Rule 24(c)", which requires them to "serve a motion…that shall state the grounds therefor and be accompanied by a pleading setting forth the claim or defense for which intervention is sought"); *Township of South Fayette v. Allegheny County Housing Authority*, 183 F.R.D. 451, 453 (W.D. Pa. 1998) (failure to include an independent pleading setting forth the claims upon which intervention is sought in accordance with Rule 24(c) barred non-parties from intervening).

The basic requirements of Rule 24(c) cannot be ignored simply because someone chooses not to comply for their own purported "economic" reasons.[5] Nor would there be any legitimate basis to intervene in any event, since the Settlement does not apply to him and does not prejudice him in any way. *Sorace v. Wells Fargo Bank, N.A.*, 2023 WL 5806998, at *1 (E.D. Pa. Sept. 7, 2023) (denying motion to

[5] One is also hard-pressed to ascertain why the simple filing of a motion would not be "economically viable," and Burrows has not even attempted to demonstrate any financial hardship whatsoever.

intervene because proposed intervenors "cannot show significant interest in the litigation because they are not members of the proposed settlement class" and thus their rights would not be directly affected by the proposed settlement agreement); *Brennan v. Cmty. Bank, N.A.*, 314 F.R.D. 541, 546 (M.D. Pa. 2016) ("[t]he Third Circuit has clearly stated that dissatisfaction with a settlement cannot provide the basis for granting intervention as of right").

C. Most of the Purported Objections Fail to Comply with the Court's Requirements and should be Overruled

The requirements for a valid objection are clearly set forth in the Preliminary Approval Order (ECF 84, ¶14) and the Class Notice (ECF 82, Exh. 2). To be valid, any objection was required to include all of the following: the objector's full name and address; the model, model year and VIN of the vehicle, along with proof that the objector owned or leased the vehicle; a written statement of all grounds for the objection; copies of any documents upon which the objection is based; the name, address and telephone number of any counsel for the objector(s); a statement of whether the objector intends to appear at the Final Fairness Hearing; and a list of all other objections that the objector or counsel has made within the last 5 years, or a statement that the objector and/or counsel have made no objections to a class settlement within the last five years (ECF 84 at ¶14; ECF 82, Exh. 2).

Most of the purported objections here fail to adhere to these requirements:

- Dawn Powell's purported objection (ECF 94) fails to provide (i) the required proof that she is a current or former owner or lessee of a Settlement Class Vehicle and (ii) the required statement of whether she intends to appear at the Final Fairness Hearing;
- Mary Schmotzer's purported objection (ECF 95) fails to provide (i) the required proof that she is a current or former owner or lessee of a Settlement Class Vehicle, and (ii) the required statement of whether she intends to appear at the Final Fairness Hearing;
- John Milek's purported objection (ECF 93) fails to provide (i) the required proof that he is a current or former owner or lessee of a Settlement Class Vehicle, and (ii) the required disclosure of whether he has objected to any class settlements in the past five years, as was also required;
- The purported objections of Steven Joseph Samp (ECF 91), Richard and Kim Dominick (ECF 96 and 98), and Elizabeth Lynch (ECF 97), also fail to set forth the required information as to (i) whether they have objected to any class action settlement in the last five years, and (ii) whether they intend to appear at the Final Fairness Hearing;
- Paul Nowyj's purported objection (ECF 89) fails to indicate whether or not he intends to appear at the Final Fairness Hearing; and

- As discussed *supra*, Roger and Kay Helbling's letter (Exh. A hereto) is not an objection, did not object to any term of the Settlement, was not mailed to or filed with the Court, and even if it were an objection it failed to: (i) state the grounds for the objection, (ii) indicate whether they intend to appear at the Final Fairness Hearing, and (iii) indicate whether they have objected to any class action settlement in the last five years.

Accordingly, these purported objections should be overruled, stricken and/or dismissed.

D. <u>All of the Purported Objections Lack Merit</u>

Most of the objectors (Paul Nowyj (ECF 89), Steven Joseph Samp (ECF 91), Dawn Powell (ECF 94), Marcy Schmotzer (ECF 95), and Todd Lawlor (ECF 99)) purport to unilaterally complain that their alleged individual circumstances do not fall within the very substantial and generous time and mileage limitations of the Settlement's warranty extension and past-reimbursement program, or that the Settlement should have additional benefits (Elizabeth Lynch (ECF 97), Richard Dominick (ECF 96 and 98). These objections lack merit because the law does not require class action settlements to be absolutely perfect or to fit every class member's individual desires, circumstances or subjective beliefs.

As demonstrated *supra*, the law is well-settled that settlements are compromises and "the possibility 'that a settlement could have been better…does

not mean the settlement presented was not fair, reasonable or adequate.'" *Gray v. BMW of North America, LLC*, 2017 WL 3638771, *3 (D.N.J. Aug. 24, 2017) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)); *see also Oliver v. BMW of North America, LLC*, 2021 WL 870662, at *6 (D.N.J. Mar. 8, 2021) ("[t]hat 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"); *Henderson v. Volvo Cars of North America, LLC*, 2013 WL 1192479, *9 (D.N.J. March 22, 2013) (citing *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005)) (the court's role is to determine if "proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class"); *Carrecio v. BMW of N. Am. LLC*, 2010 WL 1752347, *6 (D.N.J. Apr. 29, 2010) ("the test of adequacy of settlement terms is whether they are 'fair and reasonable'… and not whether every member of the class is fully compensated"); *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) ("As our precedents have made clear, the question whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the reviewing court"); *Hendrick v. Starkist Co.*, 2016 WL 692739, at *6 (C.D. Cal. Sept. 29, 2016) (objections seeking a "more favorable result" denied in light of the overall fair and reasonable nature of the settlement). *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.

As these decisions make clear, the law does not require class action settlements to be "perfect" or to fit every class member's individual desires, circumstances or subjective beliefs.

Moreover, time and mileage periods such as those provided here, and even substantially lesser periods, are common and routinely approved by courts in automotive class action settlements. *Oliver*, 2021 WL 870662, at *6 ("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"), citing *Selfi v. Mercedes-Benz USA, LLC*, 2015 WL 12964340, at *204 (N.D.Cal. Aug. 18, 2015); *Zakskorn v. Am. Honda Motor Co., Inc.*, 2015 WL 3622990, at *5 (E.D. Cal. June 9, 2015) (finding reimbursement limited to 3 years/36,000 miles sufficient); *Herremans v. BMW of N.A., LLC*, CV 14-2363-GW(PJWX), (C.D. Cal. November 28, 2016) (warranty extension from 4 years/50,000 miles to 7 years/84,000 miles found to be fair, reasonable and adequate); *Keegan v. Am. Honda Motor Co*, 2014

WL 12551213, at *14 (C.D. Cal. Jan, 21, 2014) (finding that a settlement providing "a sliding reimbursement scale depending on the age of the vehicle and the miles it had been driven [is] reasonable" where the warranty period was 3 years/36,000 miles).

Finally, the purported objectors had ample opportunity to opt-out of the Settlement if they truly believed that they had valid claims to pursue. *See* Preliminary Approval Order (ECF 84, ¶12); Class Notice (ECF 82-5); *Henderson*, 2013 WL 1192479, at *9; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prod. Liab. Litig.*, 2013 WL12327929, at *4 (C.D. Cal. July 24, 2013).

The Purported Nowyj (ECF 89) Objection is Without Merit

In addition to not complying with the Court's requirements, Mr. Nowyj's objection that the Settlement "provides zero compensation for [him] or the millions of owners affected" is entirely without merit. The Settlement clearly provides very substantial benefits to the Settlement Class, and as discussed *supra*, the law is clear that the mere fact that Mr. Nowyj's alleged personal circumstance does not fall within the very lengthy, robust, and generous warranty extension and reimbursement program, provides no legitimate basis for not granting final approval to this excellent class settlement in which 99.9983% of the Class have not objected. Mr. Nowyj's bombastic personal belief that no Settlement Class Member will receive any benefit

from this very substantial class settlement has no basis in fact, is entirely incorrect and unsupported, and should be rejected out of hand.

There is, likewise, no merit to Mr. Nowyj's argument - which lacks any support whatsoever - that the Settlement should not be approved because Defendant was purportedly aware of oil consumption issues by virtue of a prior class settlement of another case which (i) involved different vehicles than this action, (ii) is entirely unrelated to this action, and (iii) has nothing to do with the clearly demonstrated fairness, reasonableness, and adequacy of this Settlement.

Finally, Mr. Nowjy's argument that the opt-out and objection deadlines and requirements are onerous requires little discussion, since this Court has found otherwise (ECF 84 at ¶12), as have many other Judges in this district who routinely set forth such basic requirements. *See, e,g, Zhao v. Volkswagen Group of America, Inc.,* 2:21-cv-11251-MCA-JRA (D.N.J. Oct. 19, 2022); *Granillo v. FCA US LLC*, 3:16-cv-00153-FLW-DEA (D.N.J. Apr. 15, 2019). Finally, Mr. Nowyj could have readily opted out of the settlement if it did not meet his personal individual circumstances.

Accordingly, the purported Nowyj objection should be overruled.

The Purported Objection of Steven Joseph Samp (ECF 91) is Without Merit

While likewise failing to comply with the Court's requirements for a valid objection, Mr. Samp's sole argument - that all Settlement Class Members "should

be entitled reimbursement, regardless vehicle mileage" – is entirely without merit and, as discussed *supra*, ignores both the well-settled law regarding class settlements and the fact that similar and even considerably lesser mileage limitations on reimbursement and warranty extensions are common and routinely approved by courts in automotive settlements. Finally, Mr. Samp could have readily opted out of the settlement if it did not meet his personal individual circumstances. Mr. Samp's objection should thus be overruled.

The Purported Objection of Dawn Powell (ECF 94) is Without Merit

Ms. Powell incorrectly states that owners of model year 2012 through 2014 Settlement Class Vehicles will be "automatically excluded from eligibility… based on the year of the vehicle." However, this ignores (i) the fact that the Settlement's very generous warranty extension also extends the coverage time period for such "timed out" vehicles for 90 days after the Notice Date, (ii) even if a vehicle has "timed out" of the warranty extension, there could still be reimbursement for the paid cost of a past covered repair that occurred prior to the Notice Date and within 9 years or 90,000 miles (whichever occurred first) from the vehicle's In-service Date.

Likewise, Powell's purely speculative and subjective belief that many Settlement Class Members with older vehicles would have exceeded the mileage

limitation [6] has no legitimate basis in fact and ignores the very substantial reimbursement benefit for any Settlement Class Member that has incurred out-of-pocket expenses for a covered repair prior to the Notice Date and within a very substantial 90,000 miles from the In-Service Date (almost doubling, for past reimbursement purposes, the 50,000 mile limitation of the vehicle's original NVLW!). As discussed above, (i) these and considerably lesser time and mileage limitations have repeatedly been approved by courts in automotive class settlements, (ii) the mere fact that Ms. Powell's individual circumstances do not fit within these generous settlement parameters is no basis for not approving the Settlement, and (iii) she could readily have opted out of the Settlement if her vehicle did not qualify for its very substantial benefits.

Powell's vague and utterly speculative belief that "recent purchasers" would not receive any benefit from the settlement is incorrect, without merit for the reasons stated above, and Ms. Powell could readily have opted out of the settlement if it did not meet her individual personal circumstances. Her objection should be overruled.

[6] While she purports to base this assumption on a U.S. DOT study that indicates average annual usage ranges, she provides no specific data, the study merely reflects averages in general, and 99.9983% of the Class have no problem with the robust 90,000 mile limitation of this Settlement.

The Purported Objection of Mary Schmotzer (ECF 95) is Without Merit

While this likewise fails to comply with the Court's requirements for a valid objection, it is substantively without merit. Ms. Schmotzer subjectively believes, without any support, that the Settlement is insufficient and should provide amorphous items like inconvenience, the cost of additional oil, and purported devaluation of the vehicle. None of this is supported, and as this Court preliminarily found, the Parties have negotiated a "fair, reasonable and adequate" Settlement Agreement that was the product of "intensive arm's length negotiations of disputed claims" (ECF 84, ¶¶ 8-9). As discussed above, the law clearly recognizes that such class settlements are compromises; they need not satisfy every single Class Member's personal subjective beliefs, and "the possibility 'that a settlement could have been better…does not mean the settlement presented was not fair, reasonable or adequate.'" *Gray v. BMW of North America, LLC*, *supra*. Ms. Schmotzer's objection should be overruled accordingly. Finally, Ms. Schmotzer could have readily opted out of the settlement if it did not meet her personal individual circumstances.

The Purported Dominick Objection (ECF 96 and 98) is Without Merit

The objection of Richard and Kim Dominick likewise fails to comply with the requirements for a valid objection and is substantively without merit. The Dominicks complain that the Settlement does not properly punish Defendant and argues that an

unrelated prior settlement involving different vehicles and different claims provided better relief. Neither of these is a valid basis for rejecting this highly favorable and preliminarily approved class settlement that was reached after extensive arm's length negotiations by experienced class action counsel. The Settlement is eminently fair, reasonable, and adequate for the reasons discussed above, and the Dominicks could readily have opted out if they truly believed they had a valid claim for different benefits.

The objection is also misguided, as it purports to be premised upon various issues they claim to have experienced - including a water pump leak and timing chain replacement - which have nothing to do with this case, and they have put forth no evidence to demonstrate otherwise.

While the Domincks enclose several invoices related to their claimed diagnosis of excessive oil consumption, the first invoice dated November 12, 2018, from an authorized Audi dealer, confirms that their vehicle's issue had nothing to do with the case but, instead, was caused by a leak in the rear main seal which is completely unrelated. Rather than take the advice of the authorized Audi dealer, the Dominicks took their vehicle to two other repair shops, both of which provided handwritten notes simply indicating that the car is experiencing excessive oil consumption without any evidence or indication whatsoever regarding its cause, or even that either shop actually performed an oil consumption test on their vehicle.

Furthermore, the Dominicks claim they contacted a lemon law lawyer who advised them that they did not have a case. Finally, the Dominicks could have readily opted out of the settlement if it did not meet their personal individual circumstances. Their objection should be overruled.

The Purported Objection of Elizabeth Lynch (ECF 97) is Without Merit

While likewise failing to comply with the Court's requirements for a valid objection, the Lynch objection also lacks merit. Ms. Lynch subjectively and without any proof maintains that she purportedly sold her vehicle for a lower price due to an oil consumption issue, and that the Settlement should compensate her for it. Ms. Lynch is the only objector who has made such a claim, and her objection should be overruled for the clear factual and legal reasons discussed above. Moreover, Ms. Lynch provides no documentation or other evidence that her vehicle even experienced excessive oil consumption, let alone that any such experience resulted in any reduction in her vehicle's sale price. Ms. Lynch's subjective individual circumstances and unsupported beliefs provide no legitimate basis for not approving this Settlement, and she could readily have opted out if she believed she had a valid claim to pursue. Her objection should be overruled accordingly.

The Purported Objection of Todd Lawlor (ECF 99) - Which has Been Withdrawn (Subject to the Court's approval) - is Nevertheless Without Merit

Mr. Lawlor essentially objects because the Settlement does not fit his individual circumstance, which actually had nothing to do with the issues in this case. He claims that after he had already driven his vehicle for 97,000 miles, he allegedly experienced certain issues with a leaking coolant pump and the timing chains - none of which relate to this case. He further claims his vehicle had an oil consumption test; however, the records he provides actually show that he only had the first part of the test performed and the technician determined that his vehicle's issue was the result of an oil leak which is completely unrelated and was repaired. Mr. Lawlor criticizes the Settlement's mileage limitation because it does not fit his particular circumstance, but as discussed *supra*, that is not a legitimate basis for not approving this very generous and substantial class settlement, and he could readily have opted out if he felt he had a legitimate claim to pursue. Finally, Mr. Lawlor could have readily opted out of the settlement if it did not meet his personal individual circumstances. His objection should be overruled.

The Purported Objections of Matthew Burrows (ECF 92) (Withdrawn Subject to the Court's approval), and John Milek (ECF 93) (Withdrawn Subject to the Court's approval) – Both of Whom Lack Standing – Are Without Merit

While, as shown above, these individuals lack standing to object because they are not Settlement Class Members and both objections have been withdrawn, subject

to the Court's approval, their purported objections are also without merit. Both complain that their vehicles are not included in the settlement class, and Borrows argues that there is insufficient information regarding how the Settlement Class Vehicles were selected. However, as this Court recognized, Class Counsel in this case had ample "opportunity to adequately assess the claims and defenses in the Action…and negotiate a Settlement Agreement that is fair, reasonable and adequate…" (ECF 84, ¶8). Moreover, there is no legal basis to require that their particular vehicles, or any other, be included in any settlement, *Etter v. Thetford Corporation*, 2016 WL 11745096, *12 (C.D. Cal. Oct. 24, 2016) (it was "fair and reasonable to define the settlement class using a bright line" even though it excluded some individuals because "class definitions are often modified for purposes of settlement" and "[t]hose excluded from this class definition…retain all their rights against Defendants") (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Action*, 148 F.3d 283, 326 (3d Cir. 1998)). Finally, neither Mr. Burrows nor Mr. Milek submit any evidence or arguments that would constitute a valid basis for an objection even if they had standing, and they are not prejudiced in any way since they are not bound by the Settlement's release of claims. Accordingly, their purported objections should be overruled for lack of standing and on the merits.

IV. CONCLUSION

For the foregoing reasons, this Court should overrule the objections and grant Plaintiffs' Unopposed Motion for an Order Granting Final Approval of Class Action Settlement; together with such other and further relief as the Court deems just and proper.

Dated: April 3, 2024

Respectfully submitted,

By: */s/ Homer B. Ramsey*

Homer B. Ramsey
hramsey@shb.com
Michael B. Gallub (*Pro Hac Vice*)
mgallub@shb.com
SHOOK, HARDY & BACON L.L.P.
101 Hudson Street, 21st Floor
Jersey City, New Jersey 07302
Telephone: (201) 660-9995

Attorneys for Defendant

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
kadrmas@comcast.net

2013 Audi A4 Premium + Quatro
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.

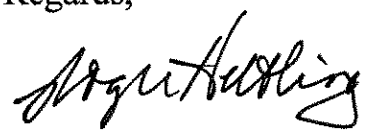
Upon trade in, we received $3,187 from Tonkin Toyota. The value of the car without the engine problem was $6,202 (good condition, 122,000 miles, average of Kelley Blue Book and Edmunds).

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: Trade in value with good engine $6,202 less trade in value with damaged engine $3,187	$3,015
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:	**$4,647.95**

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 kadrmas@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

[redacted]

Posted Date
September 18, 2023

tow to Audi
Wilsonville, OR

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	MAKE	MODEL	COLOR	STOCK NO.
2020	ACURA	MDX	WHITE	PTR1119

VIN/SERIAL NO.	ODOMETER READING	DEALER NO./SALESPERSON:
5J8YD4H32LL047287	☐ Not Accurate 31045	ADRIAN ALVAREZ

THE VEHICLE IS: ☐ NEW ☒ USED

PRIOR USE DISCLOSURE: ☐ DEMONSTRATOR ☐ PRIOR LEASE ☐ RENTAL ☐ PREVIOUSLY SPOT DELIVERED ☐ OTHER N/A

WARRANTY STATEMENT

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.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY) 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.

☐ **USED VEHICLE LIMITED WARRANTY APPLIES. Please see the attached Used Vehicle Limited Warranty. Any implied warranties apply for the duration of the Limited Warranty.**

TRADE-IN VEHICLE INFORMATION

Year:	Make:	Model:	Color:
2013	AUDI	A4 2.0T QUATTRO	

VIN/Serial No: WAUFFAFL7DN046530

Odometer Reading: ☐ Not Accurate 122221

Trade-In Allowance:	Balance Owed & Lienholder:	**Negative Equity:
N/A 3187.00	N/A	N/A 3187.00

***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 N/A days.

X Roger Helbling

****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).

X

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 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 Roger Helbling X N/A

Optional Electronic Filing Fee: For an additional fee of $ 35.00, 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 RH (Initial) Decline N/A (Initial)

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

CASH PRICE OF VEHICLE	[redacted]
N/A EST. C.A. TAX	N/A 135.00
N/A	N/A
N/A	N/A
N/A	N/A
N/A	N/A
N/A	N/A
N/A	000
DEALER TITLE AND REGISTRATION DOCUMENT PREPARATION SERVICE FEE*	115.00
TOTAL SELLING PRICE	[redacted]
N/A	N/A
N/A	N/A
Registration/License	6.00
N/A	N/A
SUBTOTAL	[redacted]
EVR Fee	35.00
N/A	N/A
N/A	N/A
N/A	N/A
Title Fee	106.00
TOTAL DUE	[redacted]
DEPOSIT/DOWN PAYMENT***	N/A
N/A	N/A
NET TRADE	3187.00
LESS CASH DUE AT DELIVERY	N/A
AMOUNT TO BE FINANCED (See Paragraphs 12 and 16)	[redacted]

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 12/18/2023
Purchaser

N/A

12/18/2023
Accepted by Authorized Dealership Representative

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

DEAL# 304873
CUST# 574757

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 (Year) AUDI (Make) A4 2.0T QUATTRO (Model) WAUFFAFL7DN046530 (Vehicle Identification Number (VIN))

SD (Body Type) N/A (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. RCH KH Initial
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. RCH KH Initial
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. RCH KH Initial
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. RCH KH 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.

X Roger Helbling — 12/18/2023
Customer — Date

12/18/2023
Authorized Dealership Representative — Date

N/A — 12-18-23
Customer/Co-Signer — Date

53046*1*RTTOY-FI

Helbling
2408 Saddle Ct
West Linn, OR 97068

ETO **Retail**

UNITED STATES POSTAL SERVICE

10020

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

$0.92

RDC 99

R2305E125770-25

Michael B. Gallub, Esq
Shook, Hardy & Bacon LLC
1 Rockefeller Plaza, Ste 2801
New York, NY 10020

10020$2003 C013

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. # 1368

INVOICE

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

Helbling, Roger
Cellular 503-718-6700

2013 Audi - A4 Premium Plus Quattro - 2L, In-Line4 (121CI) VI
Lic # : LTSRLL Odometer In : 1219
VIN # : WAUFFAFL7 **DN046530**

Part Description	Qty	Sale	Ext
Shop Supplies, & Materials			8.10

They think it will pass DEQ – keep driving & pushing oil thru but could give out at any time

oil blowing by values (top end) & pistons (bottom end)

Labor Description	E
Inspect for oil consumption, check pcv system, scope cylinders etc... to pinpoint cause	270.(

Install a vacuum gauge on the dip stick tube to test the vacuum fron 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 thre 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 oi 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.

$8-9K for new rebuilt engine | $2500-3K to do cylinder heads but doesn't address cylinder scoring | w/ Carlos $800-900 to replace valve covers wh... incl some poll... very stop gap

very temp, very cosmetic

Visit us on the web: www.lancessuperiorauto.com
Email Address: *service@lancessuperiorauto.com*

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

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: 12/05/202**

Helbling, Roger

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

Cellular 503-718-6700

VIN # : WAUFFAFL7 **DN046530**

Part Description	Qty	Sale	Ext	Labor Description	Ex

Org. Estimate 283.50 Revisions 0.00 Current Estimate 283.50

Labor:	**270.0**
Parts:	**8.1**
HazMat:	**5.4**
SubTotal:	**283.5**
Tax:	**0.0**
Total:	**283.5**
Bal Due:	**$283.5**

[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

Email Address: ***service@lancessuperiorauto.com***

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

Audi Wilsonville

26600 SW 95th Ave, Wilsonville, OR 97070
Main: (503) 254-AUDI **Sales:** (503) 261-4881
Parts: (503) 261-4882 **Service:** (503) 261-4883
www.audiwilsonville.com

CELL: 503-964-4

CUSTOMER NO.	ADVISOR	TAG NO.	INVOICE DATE	INVOICE NO.
13415	CLINT PHILLIPS 4000872	3467	09/19/23	AUCS177623

LABOR RATE	LICENSE NO.	MILEAGE	COLOR	STOCK NO.
	LTSRLL	119,149	OC/MONSOONG	

YEAR / MAKE / MODEL	DELIVERY DATE	DELIVERY MILES
13/AUDI/A4/4DR SDN QTR 2.0T AT	06/11/13	

VEHICLE I.D. NO.	SELLING DEALER NO.	PRODUCTION DATE
WAUFFAFL7DN046530		04/10/13

F. T. E. NO.	P.O. NO.	R. O. DATE
		09/18/23

ROGER LEE HELBLING
2408 SADDLE CT
WEST LINN, OR 97068

kadrmas2comcast.net

RESIDENCE PHONE	BUSINESS PHONE	COMMENTS
503-656-1440	503-718-6700	MO: 11914

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 TS 9/19	SPARK PLUG	17.99	71.96
			TOTAL - PARTS		71.96

JOB# 1 TOTALS

LABOR	408.50
PARTS	71.96
JOB# 1 JOURNAL PREFIX AUCS JOB# 1 TOTAL	480.46

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 TS 9/19	OIL FILTER	16.04	16.04
	1	N-013-815-7 TS 9/19	WASHER	0.99	0.99
	1	N-911-679-01 TS 9/19	PLUG	3.38	3.38
	49	G-052-167-S0 TS 9/19	ENGINE OIL	0.70	34.30
			TOTAL - PARTS		54.71

JOB# 2 TOTALS

LABOR	95.28
PARTS	54.71
JOB# 2 JOURNAL PREFIX AUCS JOB# 2 TOTAL	149.99

AS-IS: The only warranties applying to parts ar those which may be offered by the manu facturer. Dealer hereby expressly disclaims al warranties, either expressed or implie including the IMPLIED WARRANTIES O MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE and neither assume nor authorizes any other persons to assume for i any liability in connection with the sale of part and or service.

_____ (customer initials)

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

_____ (customer initials)

I hereby authorize the repair work along wit the necessary materials by my signature on th 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 i case of fire or theft or any other cause beyond it control or for any delays caused b unavailability of parts or delays in part shipment by the supplier or transporter. I hereb grant you and/or employees permission t operate the vehicle herein described on th streets, highways, or elsewhere for the purpos of testing and/or inspection.

Service Hours
Mon. - Fri. 7:30 am - 6:00 pm
Sat. 8:30 am - 5:00 pm

X _____

Make Your Next Service Appointment With Us At:

www.audiwilsonville.com

Thank You!
We Sincerely Appreciate Your Business!

Audi Wilsonville

26600 SW 95th Ave, Wilsonville, OR 97070
Main: (503) 254-AUDI **Sales:** (503) 261-4881
Parts: (503) 261-4882 **Service:** (503) 261-4883
www.audiwilsonville.com

CELL: 503-964-4

CUSTOMER NO. 13415	ADVISOR CLINT PHILLIPS 4000872	TAG NO. 3467	INVOICE DATE 09/19/23	INVOICE NO. AUCS177623
ROGER LEE HELBLING 2408 SADDLE CT WEST LINN, OR 97068 kadrmas2comcast.net	LABOR RATE / LICENSE NO. LTSRLL / MILEAGE 119,149		COLOR OC/MONSOONG	STOCK NO.
	YEAR / MAKE / MODEL 13/AUDI/A4/4DR SDN QTR 2.0T AT		DELIVERY DATE 06/11/13	DELIVERY MILES
	VEHICLE I.D. NO. W A U F F A F L 7 D N 0 4 6 5 3 0		SELLING DEALER NO.	PRODUCTION DATE 04/10/13
	F.T.E. NO. / P.O. NO.		R.O. DATE 09/18/23	
RESIDENCE PHONE 503-656-1440 / BUSINESS PHONE 503-718-6700	COMMENTS			MO: 11914

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
TOTALS---

[ ] 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 ar those which may be offered by the manu facturer. Dealer hereby expressly disclaims al warranties, either expressed or implied including the IMPLIED WARRANTIES O MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE and neither assume nor authorizes any other persons to assume for i any liability in connection with the sale of part and or service.

__________(customer initials)

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

__________(customer initials)

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Sat. 8:30 am - 5:00 pm

X ____________________

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www.audiwilsonville.com

Thank You!
We Sincerely Appreciate Your Business!

Clerk of the Court
United States District Court for the District of New Jersey
4th & Cooper Streets, Room 1050
Camden, NJ 08101

Re: Jeni Rieger, et al. v. Volkswagen Group of America, Inc., et al.
Civil Action No. 1:21-CV-10546-ESK

To whom it may concern:

I hereby withdraw my objection to the proposed Class Action Settlement in this action.

Respectfully submitted,

Todd Lawlor
305 Broadway
Dobbs Ferry, NY 10522
Todd.Lawlor@gmail.com
Vehicle: 2013 Audi Allroad; VIN: WA19FAFL4DA225920

Matthew Burrows
2850 New Providence Ct
Falls Church VA 22042
burrows.matthew@gmail.com
Vehicle: 2014 Audi A4; VIN: WAUFFAFL2EN029068

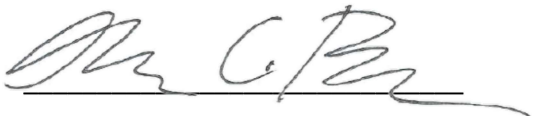
Clerk of the Court
United States District Court for the District of New Jersey
4th & Cooper Streets, Room 1050
Camden, NJ 08101

Re: Jeni Rieger, et al. v. Volkswagen Group of America, Inc., et al.
Civil Action No. 1:21-CV-10546-ESK

To whom it may concern:

I hereby withdraw my objection to, and request to intervene in, the proposed Class Action Settlement in this action.

Respectfully submitted,



Matthew Burrows

Clerk of the Court
United States District Court for the District of New Jersey
4th & Cooper Streets, Room 1050
Camden, NJ 08101

Re: Jeni Rieger, et al. v. Volkswagen Group of America, Inc., et al.
Civil Action No. 1:21-CV-10546-ESK

To whom it may concern:

I hereby withdraw my objection to the proposed Class Action Settlement in this action.

Respectfully submitted,

DocuSigned by:
JOHN MILEK
E9568A8DFEBA4EB...

8330 South Warhawk Road
Conifer CO 80433
303 579-6409
Vehicle: 2014 Audi A4; VIN: WAUBFADL080736