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12 *Automotive of Urbana, LLC and J. Bertolet, Inc.*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

14 IN RE: VOLKSWAGEN ‘CLEAN DIESEL’
15 MARKETING, SALES PRACTICES, AND
16 PRODUCTS LIABILITY LITIGATION

MDL No. 02672-CRB (JSC)

16 This document relates to:

17 DEALER SETTLEMENT CLASS
18 COUNSEL’S STATEMENT OF
19 ADDITIONAL INFORMATION
REGARDING PROSPECTIVE REQUEST
FOR ATTORNEYS’ FEES AND COSTS

17 *Napleton Orlando Imports, LLC et al. v.*
18 *Volkswagen Group of America, Inc. et al.,*
19 *Case No. 3:16-cv-02086-CRB*

20 NAPLETON ORLANDO IMPORTS, LLC
21 d/b/a NAPLETON’S VOLKSWAGEN OF
22 ORLANDO, an Illinois limited liability company,
23 NAPLETON SANFORD IMPORTS, LLC d/b/a
24 NAPLETON’S VOLKSWAGEN OF SANFORD,
25 an Illinois limited liability company, and
26 NAPLETON AUTOMOTIVE OF URBANA,
27 LLC d/b/a NAPLETON VOLKSWAGEN OF
28 URBANA, a Florida limited liability company,
individually, and J. BERTOLET, INC. dba J.
BERTOLET VOLKSWAGEN, on behalf of itself
and all similarly situated persons and entities,

The Honorable Charles R. Breyer

Plaintiffs,

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v.

VOLKSWAGEN GROUP OF AMERICA, INC., a
New Jersey Corporation, VW CREDIT, INC., a
Delaware corporation, VOLKSWAGEN AG, a
German corporation, ROBERT BOSCH, LLC, a
Michigan limited liability company, and ROBERT
BOSCH GmbH, a German corporation.

Defendants.

1 Pursuant to the Court's Order on the Parties' stipulated request to defer briefing on
2 attorneys' fees and costs (*See* Dkt. No. 2172), Dealer Settlement Class Counsel respectfully submit
3 additional information concerning their forthcoming motion for approval of attorneys' fees and
4 costs.

5 On October 18, 2016, this Court granted preliminary approval to an historic settlement
6 between Volkswagen¹ and Plaintiff J. Bertolet, Inc., on behalf of a class of Volkswagen-branded
7 franchise dealers (the "Franchise Dealer Class"). The Volkswagen-Branded Franchise Dealer Class
8 Action Settlement and Release ("Franchise Dealer Settlement") has a cash component of up to
9 \$1.208 billion (assuming 100% participation of all 652 Franchise Dealer Class members), which
10 will provide an *average payout to the 652 Franchise Dealer Class members exceeding \$1.85*
11 *million each*. And there is no required claims process: every Franchise Dealer Class member who
12 does not opt-out of the settlement will automatically receive their settlement payment. Importantly,
13 attorneys' fees and expenses will be paid by Volkswagen *in addition to the Settlement benefits*, and
14 thus will not reduce the actual cash payments to Franchise Dealer Class members.

15 The Franchise Dealer Settlement also provides for the continuation of certain incentive
16 benefits to dealers, and a standstill on capital investment expenditures otherwise required in dealer
17 franchise and transactional agreements. Specifically: (1) "VIP" and "CSI" payments will continue
18 at their current level for 12 months following the end of the opt-out period for the Settlement;
19 (2) any capital investment requirements in current agreements with Volkswagen may be deferred
20 for two years at the Franchise Dealer Class member's option; and (3) for any future transfer of a
21 dealership proposed to Volkswagen within one year of the end of the opt-out period, Volkswagen
22 will not require a capital investment by the transferee as a condition to approving the transfer.

23 This recovery to the Franchise Dealer Class is outstanding, particularly given the immediate
24 need for cooperation among Volkswagen and its franchise dealers to effectuate the terms of the \$10
25 billion plus consumer class action settlement that has been approved by this Court.

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¹ "Volkswagen" refers to defendants Volkswagen AG, Volkswagen Group of America, Inc.,
28 and Volkswagen Credit, Inc.

1 Dealer Settlement Class Counsel have not filed an application for attorneys' fees. A Motion
2 for Attorneys' fees and costs will be filed after the settlement Fairness Hearing on January 18,
3 2017, pursuant to Rule 23(h). Dealer Settlement Class Counsel and Volkswagen counsel desire to
4 have discussions concerning attorneys' fees and costs, but have been unable to do so in light of
5 each party's extensive obligation and time commitments with respect to the Volkswagen consumer
6 settlement for the 2.0 liter vehicles, and the ongoing intensive negotiations concerning a possible
7 settlement for the 3.0 liter diesel vehicles. If Dealer Settlement Class Counsel and Volkswagen are
8 able to reach an agreement concerning attorneys' fees and costs, such agreement will be provided
9 to Court at the time of Dealer Class Counsel's motion for attorneys' fees and costs.

10 As noted by the PSC in its similar filing with respect to the attorneys' fees and costs award
11 in connection with the consumer settlement, various media reports, in guessing at the fee request,
12 have noted formulas used by courts in other large class settlements and speculated that Settlement
13 Class Counsel's fee request might be as high as \$3.5 billion in that settlement, given the prevailing
14 percentage fee methodology and judicially established benchmarks of 25% and higher. Applied to
15 this case, with a cash component of \$1.208 billion, and non-cash benefits conservatively valued in
16 excess of \$200 million, a benchmark 25% could be as high as \$350 million. But just as was noted
17 by the PSC in the consumer case, the franchise dealer Volkswagen litigation is also not an ordinary
18 case, the Franchise Dealer Settlement is not an ordinary settlement, and Dealer Settlement Class
19 Counsel will not make an ordinary fee request.

20 But there are substantial differences between the consumer case and this case, in terms of
21 risks, and in terms of the benefits that each class member will obtain. While the government played
22 a substantial role in the prosecution of the consumer case, and its settlement—including bringing
23 its substantial power over Volkswagen to bear—Dealer Settlement Class Counsel had no such
24 cooperation from any segment of the government. Further, while the consumer settlement is a
25 "claims-made" structure, meaning each class member must complete a claims process to
26 participate, the Franchise Dealer Settlement is "claims-paid", meaning every class member will get
27 its substantial financial award (\$1.85 million on average), even if it does absolutely nothing in
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1 response to the settlement notice. These differences mean that Dealer Settlement Class Counsel
2 may have assumed more risk than the PSC took in the consumer settlement; and provided a larger,
3 and broader recovery that included the *entire class* of affected Volkswagen franchise dealers.

4 While the risks undertaken, the benefits obtained, and the extensive history of benchmark
5 fees in the Ninth Circuit might suggest a fee request as high as \$340 million, Dealer Settlement
6 Class Counsel will seek no more than 3% of the cash component of the Franchise Dealer
7 Settlement, which is \$36.24 million, inclusive of costs.

8 This fee application will cover all work performed by the Dealer Settlement Class Counsel,
9 and all expenses incurred not only through January 18, 2016, the date of the Final Approval
10 Hearing, but also thereafter as may be needed to properly advise class members and fully resolve
11 this litigation. Unlike the consumer case, Dealer Settlement Class Counsel will not seek an ongoing
12 percentage of the benefits provided to the Class, but will instead resolve the entirety of the fee issue
13 now, assuming the significant risk of ongoing fees and costs associated with possible litigation well
14 after the Final Fairness Hearing.

15 Because the \$1.208 billion cash component of the Franchise Dealer Settlement is easily
16 quantified, as are the settlement payments to the Franchise Dealer Class members, the request for
17 attorneys' fees and costs will utilize the percentage methodology approved by the Ninth Circuit for
18 class action settlement fee awards, albeit at an amount that is just 1/8 of the 25% benchmark
19 established by the Ninth Circuit. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
20 (9th Cir. 2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).

1 DATED: November 9, 2016.

HAGENS BERMAN SOBOL SHAPIRO LLP

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3 By /s/ Steve W. Berman

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22 *Dealer Class*

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2016, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. The Clerk of the Court will transmit a Notice of Electronic Filing to all ECF registrants.

/s/ Steve W. Berman

STEVE W. BERMAN