

Pages 1 - 77

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

In re: Volkswagen "Clean Diesel")
Marketing, Sales Practices, and)
Products Liability Litigation,)
)
) NO. C 15-md-02672 CRB
)
_____)

San Francisco, California
Tuesday, July 26, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

LIEFF, CABRASER, HEIMANN & BERNSTEIN
275 Battery Street, 29th Floor
San Francisco, California 94111
BY: **ELIZABETH J. CABRASER, ATTORNEY AT LAW**

UNITED STATES DEPARTMENT OF JUSTICE
Environment and Natural Resources Div.
P.O. Box 7611
Washington, DC 20004
BY: **JOSHUA H. VAN EATON, ATTORNEY AT LAW**
BETHANY ENGEL, ATTORNEY AT LAW
NIGEL B. COONEY, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Kelly L. Shainline, CSR No. 13476, RPR, CRR
Court Reporter Pro Tem

1 **APPEARANCES:** (CONTINUED)

2 For Plaintiffs:

3 OFFICE OF THE ATTORNEY GENERAL
4 State of California
5 455 Golden Gate Avenue, Room 11000
6 San Francisco, California 94102
7 BY: **NICKLAS A. AKERS, ATTORNEY AT LAW**

8 FEDERAL TRADE COMMISSION
9 Bureau of Consumer Protection
10 600 Pennsylvania Avenue, N.W.
11 Mailstop CC-9528
12 Washington, DC 20580
13 BY: **JONATHAN COHEN, ATTORNEY AT LAW**
14 **MEGAN BARTLEY, ATTORNEY AT LAW**

15 FINKELSTEIN THOMPSON LLP
16 One California Street - Suite 900
17 San Francisco, California 94111
18 BY: **ROSEMARY M. RIVAS, ATTORNEY AT LAW**

19 MOTLEY RICE LLC
20 28 Bridgeside Boulevard
21 Mt. Pleasant, South Carolina 29464
22 BY: **JOSEPH F. RICE, ATTORNEY AT LAW**

23 KELLER ROHRBACK LLP
24 1201 Third Avenue, Suite 3200
25 Seattle, Washington 98101
BY: **LYNN LINCOLN SARKO, ATTORNEY AT LAW**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

1 **APPEARANCES:** (CONTINUED)

2 For Plaintiffs:

3 WEITZ & LUXENBERG PC
4 700 Broadway
5 New York, New York 10003
6 BY: **ROBIN L. GREENWALD, ATTORNEY AT LAW**

7 ROBBINS GELLER RUDMAN & DOWD LLP
8 120 East Palmetto Park Road, Suite 500
9 Boca Raton, Florida 33432
10 BY: **PAUL J. GELLER, ATTORNEY AT LAW**

11 HAGENS, BERMAN, SOBOL, SHAPIRO LLP
12 1918 8th Avenue - Suite 3300
13 Seattle, Washington 98101
14 BY: **STEVE W. BERMAN, ATTORNEY AT LAW**

15 SEEGER WEISS LLP
16 77 Water Street
17 New York, New York 10005
18 BY: **CHRISTOPHER A. SEEGER, ATTORNEY AT LAW**

19 For Defendants Volkswagen:

20 SULLIVAN & CROMWELL LLP
21 125 Broad Street
22 New York, New York 10004
23 BY: **ROBERT J. GIUFFRA, JR., ATTORNEY AT LAW**
24 **SHARON L. NELLES, ATTORNEY AT LAW**
25 **WILLIAM B. MONAHAN, ATTORNEY AT LAW**

HERZFELD & RUBIN PC
125 Broad Street
New York, New York 10004
BY: **JEFFREY L. CHASE, ATTORNEY AT LAW**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

1 **APPEARANCES:** (CONTINUED)

2 For Defendant Porsche Cars North America:

3 ALSTON & BIRD LLP
4 1201 Peachtree Street
5 Atlanta, Georgia 30309
6 BY: **CARI K. DAWSON, ATTORNEY AT LAW**

7 For Defendants Robert Bosch GmbH and Robert Bosch LLP:

8 CLEARY GOTTlieb STEEN & HAMILTON LLP
9 2000 Pennsylvania Avenue, NW
10 Washington, DC 20006
11 BY: **MATTHEW D. SLATER, ATTORNEY AT LAW**

12 Also Present: Magistrate Judge Jacqueline Scott Corley
13 Robert Mueller, III, Settlement Master

14 Multiple other counsel also present, both in person and via
15 telephone through CourtConnect, as reflected in the minutes.
16
17
18
19
20
21
22
23
24
25

1 Tuesday - July 26, 2016

8:00 a.m.

2 **THE CLERK:** Calling Case 15-md-02672, In Re:
3 Volkswagen "Clean Diesel" Marketing, Sales Practices, and
4 Products Liability Litigation.

5 Appearances, counsel.

6 **MS. CABRASER:** Good morning, Judge Breyer and
7 Magistrate Judge Corley. Elizabeth Cabraser on behalf of the
8 Plaintiff Steering Committee for plaintiffs.

9 **MR. VAN EATON:** Good morning.

10 **THE CLERK:** Would you please approach the podium.

11 **THE COURT:** Yeah.

12 **MR. VAN EATON:** Good morning, Your Honor. Josh
13 Van Eaton, Department of Justice for the United States. Here
14 today with my colleague Beth Engel and Nigel Cooney. Thank
15 you.

16 **THE COURT:** Good morning.

17 **MR. AKERS:** Good morning, Your Honor. Nick Akers for
18 the People of the State of California.

19 **THE COURT:** Good morning, Mr. Akers.

20 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen
21 for the Federal Trade Commission. With me this morning is my
22 cocounsel, Megan Bartley.

23 **THE COURT:** Good morning.

24 **MR. GIUFFRA:** Good morning, Your Honor.
25 Robert Giuffra from Sullivan Cromwell for Volkswagen.

1 With me today is my partner Sharon Nelles who will speak
2 to some of the issues we'll talk about, and also Bill Monahan.

3 And also with us Jeff Chase from Herzfeld and Rubin. Our
4 coliaison counsel on the defense side.

5 **THE COURT:** Good morning.

6 **MS. DAWSON:** Good morning, Your Honor. Cari Dawson,
7 Alston & Bird, for the Porsche defendants.

8 **THE COURT:** Good morning.

9 **MR. SLATER:** Good morning, Your Honor. Matthew Slater
10 from Cleary Gottlieb on behalf of Robert Bosch GmbH and Robert
11 Bosch LLC.

12 **THE COURT:** Good morning.

13 Well, of course, good morning, ladies and gentlemen.

14 This is the time that the motion for preliminary approval
15 of the settlement will be considered by the Court.

16 Let me remind the parties that we are on Court Call, which
17 means that a number of individuals -- I think we had about 120
18 at the last appearance call in, and they then are able to
19 listen to the proceedings. So it is important when you speak
20 that you speak into the microphone so that they are able to
21 hear.

22 Before I listen to a presentation with respect to the
23 proposed settlement, I'd like to get an update, if I might, on
24 the status of the litigation with respect to the three-liter
25 car. So proposed settlement is the settlement of the two-liter

1 vehicles. But there are approximately 85,000 three-liter cars
2 that are not included within this proposed settlement.

3 So perhaps I can turn to you, Mr. Van Eaton, representing
4 the governmental entities and you could give me an update.
5 Thank you.

6 **MR. VAN EATON:** Happy to, Your Honor. Thank you.

7 **THE COURT:** Thank you.

8 **MR. VAN EATON:** Since the last hearing we had before
9 Your Honor, you instructed us to educate Director Mueller on
10 the technical aspects of the three-liters. I'm pleased to
11 report that we have done that. My understanding is that not
12 only have the EPA and car folks done a joint presentation, but
13 also the defendants have done a technical presentation. So
14 we've accomplished that.

15 In addition to bringing the Director up to speed, there
16 have been a couple of technical meetings on the 14th and 19th
17 of July that the regulators hosted the defendants. My
18 understanding is the next such meeting is scheduled to occur
19 next week on the 2nd of August.

20 All the while, testing is ongoing by both the defendants
21 and the regulators on the three-liter vehicles and the proposed
22 fixes for the three-liter vehicles to see if they can be made
23 fully compliant.

24 My understanding is that the regulators expect to receive
25 an additional proposal from the defendants sometime in the

1 middle of August. And as Your Honor instructed at the last
2 hearing, we'd be prepared at the August 25th status conference
3 to provide the Court with additional information.

4 **THE COURT:** I appreciate that.

5 So if I understand this correctly, the testing is testing
6 which takes some period of time in order to satisfy the
7 governmental entities that a proposed fix is a fix, is a fix in
8 the sense that not only does it address the pollution
9 requirements or emission standards, I guess would be a better
10 word. It's not required to pollute. But it's important for
11 the governmental entities to be satisfied that any proposed fix
12 works over time, that is, if it has some lasting effect on
13 the -- with respect to the length of the anticipated -- or the
14 anticipated length of the car.

15 **MR. VAN EATON:** Absolutely right, Your Honor. The
16 term of art they use is "durability."

17 **THE COURT:** Durability. Okay.

18 **MR. VAN EATON:** Yes. To make sure that whatever
19 proposed modification would be durable enough to last as long
20 as it would need to for whoever was driving the vehicle.

21 **THE COURT:** And that takes some period of time; is
22 that correct?

23 **MR. VAN EATON:** There's testing that occurs by the
24 defendants before they submit the plan because they want to
25 submit a robust plan. And then, of course, there's

1 confirmatory testing that the regulators must do. And, yes, it
2 does take a fair amount of time.

3 **THE COURT:** And the testing that the regulators employ
4 is testing designed to determine whether or not they can
5 confirm, by empirical evidence, the statements or the
6 representations made by the manufacturer.

7 **MR. VAN EATON:** That's correct, Your Honor.

8 **THE COURT:** Okay. Great. Well, thank you. I
9 anticipate then that on August 25th we can have a more detailed
10 presentation of exactly where we are with respect to the
11 three-liter because I would believe that those people who are
12 owners of three-liter cars are concerned about the effect that
13 the driving of their vehicle has on the environment as well as
14 what's going to happen to their vehicle over time.

15 **MR. VAN EATON:** Yes, Your Honor. And the EPA and the
16 Air Resources Board share those concerns.

17 **THE COURT:** Great. Well, I appreciate that. Thank
18 you, Mr. Van Eaton.

19 **MR. VAN EATON:** Thank you.

20 **THE COURT:** So let me now turn to the preliminary
21 approval hearing. And I think maybe by way of explanation, I
22 should point out that in the preliminary hearing stage, it's
23 the Court's responsibility to determine, based upon the
24 presentation of the proponents of the settlement, whether it
25 appears to the Court that this is a fair and reasonable

1 settlement at this stage.

2 It is, of course, with the understanding that the Court
3 has yet to consider objections, if there are objections, to the
4 settlement. But the first step has to simply be is the Court
5 satisfied preliminarily that this appears to be an appropriate
6 settlement as the standards are set forth by the appellate
7 courts.

8 So let me turn to you, Ms. Cabraser, and ask you to begin
9 your presentation.

10 **MS. CABRASER:** Thank you very much, Your Honor.
11 Elizabeth Cabraser on behalf of plaintiffs and on behalf of the
12 Plaintiffs' Steering Committee.

13 We are here today to present and submit our motion for
14 preliminary approval of the proposed two-liter settlement,
15 preliminary certification of the two-liter settlement class for
16 purposes of the settlement approval process, designation of
17 settlement class representatives, and appointment of the
18 members of the PSC as settlement class counsel.

19 In one sense, this is the first step of the formal process
20 of class action settlement approval under Rule 23(e). In
21 another sense, we are almost at the midpoint of a process that
22 has seen much publicity and transparency, both with respect to
23 the intensity and the course of the settlement negotiations
24 and, of course, with respect to the set of related proposed
25 resolutions that together make up an agreed plan to comply with

1 this Court's directive and goal to address the immediate and
2 ongoing environmental harm by fixing these cars or getting them
3 off the road.

4 We have been, as the Court is aware, in the process of
5 discussing and negotiating on a very intensive schedule the
6 best and most realistic and most practical ways to try to
7 accomplish that in the real world. And we are very proud and
8 very excited that the settlements that were announced by filing
9 with this Court have been placed on the Court's website and
10 have been exposed to public reaction, media reaction, and class
11 member reaction for approximately the last month have met with
12 such a good reception.

13 The standard we must meet at this point in the Rule 23
14 process is to demonstrate to you, Your Honor, that the proposed
15 settlement is the product of serious, informed, non-collusive
16 negotiations, has no obvious deficiencies, does not improperly
17 grant preferential treatment to class representatives or to
18 segments of the class, and falls within the range of ultimate
19 final approval such that the Court can make an independent
20 determination that the settlement merits notice being given to
21 the class so that every member of the class can decide for
22 himself or herself whether they wish to participate in this
23 resolution.

24 This is not a two-dimensional or conceptual settlement
25 whereby money changes hands. The settlement does involve a

1 great deal of that. It is, we are told, the largest settlement
2 of its type, if not the largest consumer settlement of any type
3 in monetary terms.

4 But the money is the means to an end. And it is the means
5 to an end that cannot be achieved unless a number of parties
6 work together, as they have throughout the course of
7 negotiations, to accomplish a plan that works in the real
8 world.

9 Even trials take place in two dimensions, in a courtroom,
10 and at the end of the day there's a verdict or a decree or a
11 judgment which then must be enforced, usually against a
12 recalcitrant, aggrieved losing party. And that is the ticket
13 to the Courts of Appeals, and that can be a very long journey.

14 We knew because we were told by this Court and by our
15 clients that we could not simply embark on such a journey
16 without exploring the possibility of a speedier, more practical
17 alternative to stop and reverse environmental harm and to
18 compensate consumers.

19 And so we have designed a settlement in conjunction with
20 government parties that places the consumers, the owners and
21 lessees of these vehicles, in a central decisive role to serve
22 themselves as vehicles of this environmental mission because
23 the settlement gives them choices, choices for a buyback of
24 their vehicle, choices to get an emissions modification of
25 their vehicle if and when approved by EPA and CARB so that

1 either through the buyback or either through what we sometimes
2 call "the fix," polluting vehicles can be remediated or removed
3 from service and environmental harm.

4 So this is a consumer settlement. It is much more than
5 that. You'll hear about that today.

6 Before I turn this over to fellow members of the PSC to
7 talk about some of the considerations that went into the
8 settlement and the factors for preliminary approval, I think it
9 is both necessary and appropriate to acknowledge our
10 appreciation for the dedicated efforts far outside the norm of
11 those who represented the Department of Justice, the
12 Environmental Protection Agency, the Federal Trade Commission,
13 the California Air Resources Board, the California Attorney
14 General, and other Attorneys General, because under the
15 direction of aptly titled Director Mueller, your
16 court-appointed settlement master, each of these
17 representatives on behalf of their agencies went above and
18 beyond the call of their usually dedicated duty to work outside
19 of their comfort zones, to work with people they don't normally
20 work together with, to try to bring their own perspectives and
21 goals and objectives into a point of convergence with other
22 different, yet complementary objectives and goals, to come up
23 with a set of settlements that can be enforced by one court and
24 that can work together in the real world, in the world of
25 consumers and dealerships and cars and repairs and the

1 environment, to accomplish the very profound fundamental goals
2 of the litigation.

3 I would also like to say that we are here to answer any
4 questions the Court has about the details and terms of the
5 settlements, to present a summary of those terms and processes
6 for the benefit not only of the Court, but if you will indulge
7 us, Your Honor, for the benefit of the consumers and class
8 members who are interested not only in how and when the
9 settlement will be approved, but how it works for them and how
10 to go through the claims process in anticipation of ultimate
11 final approval by the Court.

12 Our agenda is a brief one, we hope. We're happy to
13 shorten or lengthen it as the Court desires.

14 Chris Seeger will talk about the public interest
15 environmental and consumer groups' reaction to the proposed
16 settlements.

17 Joe Rice will walk us through a summary of the settlement
18 terms and benefits for consumers and the claims process.

19 Lynn Sarko will talk about the vehicle information that
20 was available to the negotiators of the settlement and the
21 expert methodologies that we used.

22 Robin Greenwald will discuss the environmental benefits
23 that the coordinated settlements provide and that reflect the
24 interest and concerns of the class members as well.

25 Paul Geller will discuss the criteria and demonstrate that

1 the proposed two-liter settlement class meets the criteria for
2 preliminary settlement purposes class certification.

3 Steve Berman will summarize the initial comments,
4 questions, and reactions from class members in the month since
5 the settlement was announced.

6 Rosemary Rivas will summarize the class notice program, a
7 cutting-edge, state-of-the-art program to keep consumers
8 informed about the settlement and to facilitate their
9 participation.

10 We also have in the courtroom with us today the notice
11 program experts, Kathy Kinsella and Shannon Wheatman, who
12 worked with the parties on the notice program who have done
13 many of the most complex class action settlement and consumer
14 notice programs in the federal courts and who have worked every
15 step of the way with us on this program.

16 At that point, Your Honor, we're happy to answer your
17 questions, and I will ask you to consider under Rule 23(g) the
18 appointment of the members of the Plaintiffs Jury Committee as
19 settlement class counsel.

20 So with that, I'll turn it over to Mr. Seeger.

21 **THE COURT:** Thank you.

22 **MR. SEEGER:** Good morning, Your Honor.

23 **THE COURT:** Good morning, Mr. Seeger.

24 **MR. SEEGER:** Judge Corley, Director Mueller.

25 So I think I have the fun part here because I get to share

1 with the Court some of the feedback that we've experienced.
2 I've selectively pulled out some quotes of certain groups that
3 have studied the deal, at least to the extent they can, and
4 also these are very consistent with my role as state/federal
5 liaison where I am constantly interacting with attorneys who
6 are not necessarily before this Court but other courts and have
7 looked at the deal.

8 One of the first quotes I'd like to share is the
9 commentary by the *New York Times* Editorial Board where they
10 note:

11 "The federal government's \$14.7 billion settlement with
12 Volkswagen over the company's emissions cheating scandal is one
13 of the largest consumer class-action payouts in American
14 history and a significant hit for the company. It should also
15 act as a deterrent for bad behavior by companies that
16 deliberately violate rules aimed at protecting consumers and
17 the environment."

18 An important part which I believe is a sentiment that's
19 been shared and very consistent with the feedback I've received
20 is:

21 "The settlement appears to provide fair compensation to
22 consumers, many of whom bought their diesel cars because they
23 believed Volkswagen's clean diesel marketing campaign." They
24 believed in the campaign.

25 Here's one from *Carbuzz* which is sort of an industry

1 magazine, it's an online magazine:

2 "I think Volkswagen being forced to pay up and buy back
3 affected cars is one of the greatest things to ever happen to
4 consumers. Why? Because unlike most recalls, this one didn't
5 directly harm anyone."

6 I think they mean in terms of personal injury.

7 "The arrogance the heads of the company showed and their
8 utter contempt for the environment and laws of the U.S. and
9 countries around the world is deplorable. They should have had
10 the book thrown at them."

11 We'll go through that one quickly.

12 "But when it comes to consumers, my eyes are dry. Each
13 one of them is guaranteed to get \$5,100 as a 'sorry.' ...That
14 sounds like a great deal to me and it's one I bet most
15 Americans would take if given the chance, scandal or not."

16 The reporter for Extreme Tech, which is one of those tech
17 magazines that deals with like computer hardware and software
18 type things:

19 "Annoyance factor aside, you're a winner. As we predicted
20 last fall, anyone who owns a VW diesel may find VW settlement
21 turns out to be a good deal...No matter whether you bought or
22 leased or disposed of your VW, in the wake of Dieselpgate, the
23 settlement is likely to make you money."

24 Which goes to the richness and the cash compensation
25 portion of the deal, I believe, Your Honor.

1 *Consumers and Dealers*, Jeff Nash, who is an owner of a
2 Jetta SportWagen TDI and managing editor at CNBC, published an
3 op-ed where he comments:

4 "My Volkswagen is suddenly worth so much more than I
5 expected. I love my VW, but I'm taking the cash and ditching
6 the car...Given the company's two options, a fix or a buyback,
7 we'd be crazy to keep it."

8 And Mr. Berman is going to address some of the feedback
9 from the particular consumers and class members. Again, as my
10 role as liaison, this is very consistent with state court
11 attorneys who have given me feedback about their read of the
12 deal and what their clients are saying about it.

13 Here's from a general manager of a Volkswagen dealership:

14 "The settlement is extraordinary...Nothing's ever been
15 done like this in the car business before...The great news for
16 consumers is the settlement really takes care of them... I have
17 over 1,000 of our guests and customers that have diesels and we
18 never thought they'd be compensated to this level for cars they
19 already love."

20 Environmental Advocates from the U.S. Public Research
21 Interest Group, in their official statement, it says:

22 "Nine months after news of Volkswagen's emissions scandal
23 broke, we're glad to see a settlement that compensates
24 consumers, cleans up the environment, and deters future
25 wrongdoing."

1 Sierra Club:

2 "Volkswagen" --

3 And, you know, there's some inflammatory stuff in here,
4 Your Honor. I'm not trying to pick another fight with
5 Volkswagen, but I'm just reporting the news:

6 "Volkswagen has chosen to poison our families with
7 dangerous pollution just to pad their pocketbooks. This
8 settlement, by removing or fixing 85 percent of the vehicles on
9 the road by fall of 2019, compensating affected consumers and
10 creating an environmental mitigation fund, is a strong step
11 towards cleaning up Volkswagen's dirty deceit."

12 And here is from Mike Litt who's part of U.S. Public
13 Interest Group published in the Northern California Record:

14 "The fact that they're getting the buyback at the value
15 before the scandal broke" -- which is an important aspect of
16 the deal -- "plus additional compensation is still a win for
17 consumers."

18 And importantly, I think that this is a very important
19 statement and I was happy to see it published.

20 "You have the state attorneys general, you have different
21 government regulators, you have consumer and environmental
22 advocacy groups, and you have the class action lawsuit. All of
23 these working in tandem is what's ensuring as much
24 accountability as possible."

25 And then from Kelley Blue Book, Your Honor, which is a

1 guide for car values. Karl Brauer, who's a senior analyst at
2 Kelley Blue Book, commented that:

3 "At nearly tenfold the cost of recent payouts by GM and
4 Toyota, this one should hold the record for the most expensive
5 automotive settlement for quite some time. While undoubtedly a
6 painful pill for VW's accountants and stockholders to swallow,
7 it's also the most comprehensive and customer-friendly
8 resolution I've ever seen."

9 And then I'm getting to the end, Your Honor.

10 Vice President, data science, at Autolist:

11 "At its core, the premium is very significant."

12 And, again, I just wanted to emphasize that I think that
13 these -- and there were many, many quotes I could have
14 selected. I think these accurately represent what's being said
15 about the settlement.

16 **THE COURT:** Mr. Seeger, let me ask you a couple of
17 observations.

18 Number one, you've shown me and, of course, people who are
19 not in the courtroom can't see a series of slides of these
20 quotes. And it's the Court's intention to post these slides on
21 the Court's website so that any individual who's not in court
22 today can get the benefit of the full presentation.

23 As liaison between the states and the federal action, you
24 received telephone calls or inquiries or e-mails from counsel,
25 is that right, in related state actions or in other state

1 actions?

2 **MR. SEEGER:** I would say it is not an overstatement to
3 say that I have handled dozens and dozens of phone calls with
4 individual attorneys, groups of attorneys from various states,
5 New Jersey, Texas, Oregon, California. I've received e-mails
6 and communications from consumers as well.

7 **THE COURT:** And in those communications, have you
8 emphasized to them that information about the settlement, that
9 information about the progress of the federal litigation is
10 available on the Court's website and other websites?

11 **MR. SEEGER:** The call begins and ends with that
12 usually, Your Honor.

13 **THE COURT:** So I think it's extremely important that
14 consumers and lawyers representing consumers in other actions,
15 not just this action, but in other actions, understand and are
16 privy to and are fully informed as to all the details of what's
17 happening in this action. And I think it's important for two
18 reasons that I can think of off the top of my head. One is if
19 they have concerns about any aspect of this proposed
20 settlement, I want them to voice their concerns, and I want
21 them to voice their concerns, they can come to you, they can
22 address the Court, they can file statements, any concern that
23 they may have. Any question that they may have, I want those
24 questions answered.

25 And also -- so that's one aspect of it.

1 The second aspect is that decisions have to be made.
2 That's the way life is and litigation is. Fortunately in this
3 case, decisions seem to be made sooner rather than later.
4 That's been emphasized and that's good. That's great for a
5 variety of reasons.

6 But I want these decisions to be fully informed. And so I
7 want people to have the opportunity in every state in this
8 country to take a look at this settlement, to ask questions
9 about it, and then to make up their own minds as to whether or
10 not they think that this settlement, if I do give tentative
11 approval, is appropriate. And the only way they're going to be
12 able to do it is to be fully informed. The only way they're
13 really going to be able to do it is to judge for themselves
14 based upon the merits of the proposed settlement. And those
15 merits have to be explained in great detail.

16 It's not a simple settlement. I've never seen so many
17 pages. But it has to be. I mean, you can't just simply just
18 say, okay, well, we have a handshake deal. It doesn't work
19 like that. And it doesn't give consumers the comfort that they
20 are entitled to have, given these circumstances, that the
21 representations made by the various parties involved will be
22 honored, will be enforced. And in order for them to have that
23 level of comfort, it's essential that they have the details.

24 So Mr. Seeger, I want to thank you for serving in that
25 capacity. It's not the easiest thing to be head of the

1 complaint desk. And, you know, I mean you probably don't get
2 all those -- I mean, people who are satisfied probably don't
3 phone you and just say, "Oh, Chris, that's just great." And
4 though it may be. But there has to be a person who is sitting
5 out there who's accessible to the public and to consumers in
6 particular that will be responsive.

7 And so if I do give tentative approval, your task is
8 really just starting. Or maybe you don't think it's just
9 starting, but I think by some measure, you'll begin to
10 appreciate the breadth of this problem.

11 So thank you very much. Thank you.

12 **MR. SEEGER:** Thank you for those comments, Your Honor.
13 I appreciate it.

14 **THE COURT:** Okay. Mr. Rice.

15 **MR. RICE:** Good morning, Your Honor. Joe Rice.

16 Your Honor, I'm standing here on behalf of the PSC to
17 present full preliminary approval of the class action
18 settlement. That's the result of a very difficult yet a very
19 cooperative effort that brought this work of the DOJ, the FTC,
20 the DPA, CARB together, those groups contributing to one
21 another's efforts, worked, cooperated together, spent a lot of
22 time together, had very open, transparent discussions together,
23 and resolved it in this settlement as well as the government
24 consent decrees that Your Honor will be considering at a later
25 date.

1 These settlements and consent decrees complement one
2 another. And they had to be coordinated and they had to
3 complement one another to accomplish all of the goals of the
4 parties.

5 I want to also point out we would not be here today with
6 this settlement accomplished in this period of time without
7 that cooperative effort and without the leadership and
8 encouragement of the Director who spoke sternly to us on many
9 occasions. I'll leave it at that.

10 So we are presenting this work product of a joint effort.
11 I first want to bring to the Court's attention what we believe
12 are some of the summary of benefits of the settlement. And we
13 will have this PowerPoint available to the Court and put on the
14 Court web's page at the Court's desire. And anytime during my
15 presentation, Your Honor, if you want to interrupt and ask a
16 question, please, as I go through this.

17 So here this settlement gives the consumer options. And
18 we thought that was very important. All parties felt the
19 consumer had to have the option to buy back the car, get rid of
20 the car if they wanted to. But there are a significant number
21 of consumers that love these cars and they want to keep them if
22 they can. So we had to have the options. But that option also
23 requires an approved emissions modification which is part of
24 the plan.

25 We also felt the September 15 pre-disclosure value of the

1 car had to be frozen because this is going to take time from a
2 reality point of view to get this process done with this many
3 owners and amount of cars involved.

4 The settlement provides that the condition of the car is
5 generally irrelevant to the value of the car. We're not going
6 to be fighting about dents, scratches, upholstery stains,
7 chewing gum, or anything of that nature. If you can drive the
8 car in, if the car is operable under its own power, the car is
9 eligible for the program, for the full buyback program.

10 Because it is going to take time, an individual consumer
11 may continue to drive their car with no reduction in the face
12 value of the car. So the September 2015 value is a frozen
13 value.

14 There is an assumption that the average mileage of about
15 12,500 miles a year will be given, but there could be a mileage
16 adjustment if there's a significant less mileage or greater
17 mileage driven. But the 12,500 is accounted for within the
18 settlement.

19 **THE COURT:** Is that a recognized industry standard
20 with respect to vehicle --

21 **MR. RICE:** The best information we could get working
22 with our experts is that was an acceptable standard. It's
23 about a 1,042 miles a month.

24 **THE COURT:** Thank you.

25 **MR. RICE:** The settlement provides restitution for the

1 consumers. It has a minimum of \$5,100 to any owner of the car,
2 eligible owner, and a maximum of 10,000 for the eligible owner
3 in possession. It's not a maximum by design. It's just the
4 way the numbers came out. The minimum was by design.
5 Fifty percent of that if the vehicle was purchased after the
6 disclosure. You get the same payment for the restitution
7 whether you choose to keep the car or choose to go through the
8 buyback session.

9 The lessees will get an average payment of \$3,500. But
10 they also get the opportunity to void their contracts without
11 any penalties and without any costs.

12 There's a loan forgiveness because similar to the mortgage
13 subprime time period, there are people that were maybe
14 convinced of getting these cars that were maybe a little more
15 expensive than they should have bought because they wanted this
16 clean diesel car. So there is a loan forgiveness of up to
17 30 percent of the vehicle value and restitution if the car
18 secures the debt as of June 28th, '16 that was greater than
19 that combined value.

20 We have the approved modification, emissions modification.
21 In doing that, Your Honor, the government documents that are
22 filed lay out in extreme detail what the modification has to
23 address and the information that will be made available to the
24 consumer so that the consumer will understand how their car is
25 going to be impacted by that modification. There's an extended

1 warranty from the emission modification work. And then there
2 is created a subsequent lemon law-type remedy that arises from
3 the modification work.

4 We have a statute of limitations protection while the
5 process is occurring. And we have a very simple claims
6 process, but we have independent oversight and obviously the
7 Court's continuing jurisdiction.

8 There's \$2.7 billion to be invested in this country
9 through the states and their agencies to address the excess
10 pollution. The environment doesn't necessarily know where the
11 pollution comes from so these projects could be wide-variety,
12 wide-scale projects.

13 And then there's a \$2 billion commitment from Volkswagen
14 to make progress in our desire for energy-free electronic cars,
15 no-pollution cars.

16 We also made sure, all parties, that no car can be resold
17 in the United States or removed from the United States unless
18 and until an approved emissions modification is applied. And
19 the cars that are not fixed will be rendered inoperable and
20 they'll be branded. And if the cars are fixed, they will still
21 have a title indication or certification indication that they
22 were a part of this problem.

23 Volkswagen is responsible for all the Court-approved fees
24 and costs. And the process will start -- if Your Honor
25 provides final approval of the settlement, the process will

1 start at that time with no further delay.

2 So if the Court accepts the schedule that the parties have
3 proposed, we should be having these cars in a buyback mode or
4 hopefully a modification mode in the fourth quarter of this
5 year.

6 **THE COURT:** And as to that, let me just make sure. As
7 I understand the settlement, it is that payments will start
8 upon the final approval of the settlement, but that the process
9 in terms of identification, in terms of some determination as
10 to what a consumer will get, and maybe in other aspects of it
11 can begin once the Court gives preliminary approval; is that
12 correct?

13 **MR. RICE:** Yes, sir. And we are going to point out
14 how that occurs.

15 **THE COURT:** Okay, thank you.

16 **MR. RICE:** First, we want to talk about class members
17 because this class is all citizens and residents of the
18 United States who, on September 18th, were a registered owners
19 or lessees of a Volkswagen or Audi two-liter TDI eligible
20 vehicle, or after September 18th but before December 30, 2018,
21 becomes a registered owner of an eligible vehicle.

22 Now like in most class actions, there are some people that
23 are expressly excluded. And here we have owners who acquired
24 after the disclosure of the issue and no longer have possession
25 of the vehicle; lessees of eligible vehicles that were leased

1 from a third-party lessor because those have contractual
2 relationships that we could not interfere with; we have owners
3 who sell eligible vehicles after June 28th, after the
4 settlement was announced; and owners of inoperable vehicles or
5 vehicles with branded title, usually branded junk or totaled.

6 We want to make it clear that if a consumer purchased one
7 of these vehicles prior to September 18th, 2015, and sold it
8 prior to that time, that they are not in this class.

9 Your Honor, the funding pool is a total of
10 \$10,033,000,000. This does not include the 2.7 or the
11 2 billion that I referenced. This is just the consumer buyback
12 program and restitution program.

13 And you'll see within that, there is \$42,670,000 for the
14 loan forgiveness program, based on the data that was available
15 to the parties, and the 26 million future lease payment fund,
16 all totaling up to the 10-33.

17 Now, as Your Honor mentioned, there is a claims program
18 process. And the center of it is that from a practical point
19 of view, the only entity that could be the claims process to
20 manage and take possession of these cars, to manage the
21 scheduling of the repairs, had to be Volkswagen. So Volkswagen
22 is in charge of the claims process.

23 However, all parties wanted to be sure that there was a
24 supervisor or an oversight. So the parties have recommended
25 that a claim supervisor, and we have recommended Ankara

1 Consulting Group, be appointed by the Court to monitor the
2 implementation and the compliance by Volkswagen with the
3 settlement agreement. They will be responsible for reporting
4 to the Court and to the parties and for keeping the data
5 available and to respond to questions from the Court.

6 However, there could be issues that arise, and therefore
7 we've also asked the Court to appoint a claims review
8 committee. And that committee would be made up of a
9 representative of Volkswagen, a representative of class
10 counsel, and a neutral appointed by the Court that would be the
11 dispute resolution group if there were a dispute arising about
12 the eligibility or the amount of compensation or something
13 about the implementation of the settlement.

14 So, Your Honor, yes, hopefully as soon as Your Honor rules
15 on preliminary approval, if the Court decides to grant
16 preliminary approval, the parties are prepared to go live with
17 a website that will allow an individual consumer to go home and
18 put in some basic information, generally the identification of
19 the car, and it will guide them through a process that will
20 allow them to look at the potential recovery among their
21 options in the settlement. And I'm going to walk through that
22 in a minute.

23 What the consumer would have to do is they have to provide
24 their VIN number, their contact information, and some
25 additional vehicle information. And then they can, at an

1 appropriate time, upload their documents so that the process
2 can be done in a more electronic fashion. But they will be
3 able to review their options.

4 So while these slides I'm showing you now are examples of
5 what will be on the website, it's not a specific car. These
6 are sort of a hypothetical. But you'll be able to go in and
7 put in your VIN if you go for the vehicle buyback, and it will
8 indicate to you exactly what your vehicle return amount would
9 be, your additional restitution.

10 If you've given them information about the financing, it
11 will do the calculation about whether or not you're entitled to
12 the loan forgiveness program and will give you what you would
13 receive as the owner of that car from the buyback.

14 Likewise, if you want to see what would happen in the
15 emissions modification, you can check that selection. Or if
16 you are a lease termination, you've got an option to go to that
17 section and it will give you the information. If you are an
18 eligible seller entitled to restitution, you'll be able to go
19 to that section and it walks you through it the same for the
20 total lease restitution.

21 So what happens then? Upon your final approval, all of
22 the information that people have inputted during the process,
23 which hopefully will start upon preliminary approval, will
24 already be in the web, in the database. So they will be able
25 to go back in and actually submit their claim.

1 Once they submit their claim, they can elect their
2 remedies. And there's five principal remedies. You can have
3 the buyback with your restitution. If you're an eligible
4 seller, you can just accept the restitution. You have the
5 lessee restitution for former lessees. Terminating the lease
6 if you wish to do so. Or you can participate in the approved
7 emissions modification and restitution if it's available then
8 or you can delay that decision.

9 And when I talk about delay the decision or delay making
10 that decision, one does not have to decide whether to take the
11 buyback or the modification until they know what the
12 modification is going to be. If they want to wait and see what
13 the modification is going to be, they always have the
14 opportunity to go back and select the buyback.

15 In addition, if one is waiting the modification and if the
16 modification is not finally approved, then at that time the
17 individual can withdraw from the settlement.

18 **THE COURT:** And by "modification being approved," you
19 are talking about the regulatory authorities giving the
20 approval?

21 **MR. RICE:** Yes.

22 **THE COURT:** So it's not that -- that's the approval
23 we're talking about.

24 **MR. RICE:** The emissions approval, modification
25 approval.

1 **THE COURT:** And my understanding is that if there is
2 no such approval, then class members or people who are
3 provisionally in the class can opt out over some period of
4 time.

5 **MR. RICE:** If that happens, and it's based on each
6 model of car --

7 **THE COURT:** Right.

8 **MR. RICE:** -- then they will have the opportunity
9 between May 1st, 2018 and June 1st, 2018 to withdraw from the
10 settlement. Their statute of limitations is protected. And
11 they'll be able to proceed under whatever theory they wish to
12 proceed.

13 Or having driven the car for two years, they can then sell
14 it back for the September 2015 value. And if they have not
15 exceeded the average mileage, they would have no adjustment.
16 And if they have driven less mileage, they could in fact have a
17 higher number if it's a significant change.

18 **THE COURT:** So they can wait for some period of time
19 and the value of their buyback won't be diminished.

20 **MR. RICE:** That is correct.

21 **THE COURT:** And they'll also get use of their vehicle.

22 **MR. RICE:** That is also correct.

23 **THE COURT:** Okay.

24 **MR. RICE:** And if they decide then to accept the
25 modification, the process is simple. They go back and they

1 pick that option. Volkswagen responds with an offer. And they
2 schedule the modification where they will receive their
3 payment.

4 Now let's go back and say an individual makes a decision
5 now they want to go back and take the buyback now. So upon
6 final approval, they'll be able to make that selection.
7 Volkswagen has 10 days, 10 business days, to identify the
8 claim, look at the documentation, and accept it, or if there is
9 a problem, they have to specifically identify to the consumer
10 what the problem is and how it's to be cured. Once the claim
11 is cured, Volkswagen has 10 business days to make an offer.

12 Once that offer is made, then the buyback is scheduled,
13 and then that scheduled buyback has to occur within 90 days.

14 **THE COURT:** When you say about the offer, you're
15 saying that the offer would have to be consistent with the
16 terms that have already been negotiated.

17 **MR. RICE:** That's correct. It just verifies what you
18 learned on the web with the current information.

19 **THE COURT:** So it's not really how Volkswagen feels on
20 any particular day or looks at what the market is or makes some
21 other determination. The terms of the offer are essentially
22 fixed at this point -- or fixed at the time that the settlement
23 receives final approval.

24 **MR. RICE:** Yes, Your Honor. And the only issue we
25 have to look at is to be sure the option selections and the

1 mileage are being considered, to make sure that's done
2 correctly.

3 **THE COURT:** All right. Thank you.

4 **MR. RICE:** Again, if the consumer chooses a lease
5 termination, then there's 45 days to have the lease terminated.
6 All they would do is turn the car back in and they would
7 receive their check on site at the time of the turn-in for the
8 mileage.

9 If the mileage is -- when the car shows up, if there's an
10 issue about the mileage, then the payment will be made within
11 three banking days thereafter because there may have to be a
12 separate check cut. Or you can choose to do electronic
13 transfer of funds, and that also takes three banking days.

14 So let's say the buyback is the choice. The consumer
15 would get the September 2015 NADA clean trade value of the car,
16 plus 20 percent of that value, plus a fixed payment of
17 \$2,986.73. That middle column is sometimes referred to in the
18 documents and in discussions as the variable component being
19 the 20 percent related to the NADA value and the fixed
20 component being the 2,983.

21 Or -- and -- excuse me, not or -- and if applicable, the
22 loan forgiveness would be available.

23 I think it's important for the consumer to understand they
24 have to look at this total payment as the total recovery and
25 not try to break it down and try to value their car versus

1 value their damages. It is a package. It was delivered as a
2 combined collective recovery for the consumer to consider.

3 So in an individual case, and this would be the type of
4 information they'd be able to find on the web, if you assume
5 that the value of the car, a NADA clean trade was \$9,500, then
6 you would add the variable component, 20 percent of that which
7 is the 1,900, plus the fixed component, and then the value of
8 the car. So the total recovery for that car and that owner
9 would be \$14,600 if it's an eligible owner with an eligible
10 vehicle.

11 If the individual had purchased after the disclosure date
12 and they're still in possession, then there would be an
13 adjustment on the owner restitution because you've also got
14 potential owner-seller -- eligible seller involved and they
15 would get half of the owner restitution of the fixed -- of the
16 restitution component, or they may get a little bit more
17 depending on what happens in the eligible seller process and
18 potential loan forgiveness. So, again, if that individual
19 purchased afterward that same \$9,500 car, their payment would
20 ultimately be the \$12,050.

21 Now, we also have situations where cars get wrecked, and
22 we do not feel it's appropriate -- once an individual chose to
23 stay in the settlement, it would not be appropriate for them to
24 be totally penalized if by some event their car was totaled.
25 So an owner of an eligible vehicle that is totaled after the

1 opt-out date would still be entitled to get their owner
2 restitution payment. Of course they would not get the vehicle
3 value. However, if they sold that car to an insurance company
4 or been paid for through some process, that would be separate
5 money the consumer would keep and would not affect their
6 restitution payment.

7 **THE COURT:** And the restitution amount is \$5,100.

8 **MR. RICE:** That would be the minimum amount.

9 **THE COURT:** Minimum.

10 **MR. RICE:** So, again, if you look at this example
11 where we have an individual that totaled their car but the car
12 had a value of \$16,000, then their compensation would be 6,186
13 because of the value of the car, and the variable component
14 would change.

15 And as I pointed out earlier, the compensation is the
16 same -- the restitution portion is the same whether the lessee
17 chooses a lease termination or the approved modification or no
18 longer has an active lease. And that is 10 percent or half of
19 the vehicle portion of the restitution plus the fixed
20 component.

21 So, again, if you assume the value of the lease car is
22 \$20,000 with no adjustment for mileage, you would have the
23 variable component which is the 10 percent portion, plus the
24 fixed component. So that lessee, after turning the car in,
25 would still get \$3,529 of this particular car.

1 Now, we have consumers that sold their car after
2 disclosure of the problem but before the announcement of the
3 settlement. And those individuals fall into the category
4 referred to as the eligible seller. So those people may have
5 been forced to sell their car or just felt like for their own
6 personal reasons they did not want to drive their car anymore.

7 Those individuals are entitled to register, but they do
8 have a shorter claim process, which is very important for the
9 consumer to understand and this will be presented prominently
10 in the notice and on the web, that the deadline for these
11 individuals to file a claim is September 16th, 2016.

12 And the basis for that, Your Honor, is that we need to
13 know of their existence and their volume and the vehicles
14 involved in order to start the buyback process because there is
15 a payment related to both the seller and the purchaser in that
16 situation. So it's very important for those people to file
17 their claims early and get those in by September 16th of 2016.
18 Under that scenario, again, there's a calculation as to what
19 would happen to that. Again, that's a hypothetical car.

20 So now we talked about the loan forgiveness which was a
21 very key component because we understood from the data that we
22 were able to generate that there are some people that have
23 so-called negative equity in their car.

24 So if you have a loan that's secured by the eligible
25 vehicle, and the total recovery, the vehicle value and the

1 owner restitution, is less than the debt, current debt, then
2 you're eligible to be considered for the loan forgiveness. And
3 that could be an amount of an additional 30 percent of the
4 total sum of the vehicle value and owner restitution payment.
5 That would be paid from a designated loan forgiveness fund that
6 we discussed earlier.

7 But it's important to understand that that does not open
8 the gate for people to go delinquent on their debts now or to
9 go out and borrow money on their car now. So those situations
10 are expressly not to be considered for loan forgiveness.

11 So to give you an example of how the loan forgiveness
12 would work. If you had a vehicle value of \$15,000 and then you
13 had an owner restitution of 5,986 and you had an existing debt
14 of 24,000, you see that your debt -- your value that you're
15 receiving is less than your debt so you'd be eligible for the
16 loan forgiveness on the left-hand side.

17 On the right-hand side, if you take the same facts but you
18 increase the amount of debt, then you see that the debt is
19 greater than the 30-percent variant so you would receive up to
20 the 30 percent, but it is capped at that. So the consumer
21 could still have some obligation on the debt if they were very,
22 very much in debt on the car.

23 Now, I mentioned the delay. We've been through this
24 slide. It's just very important for us to be sure the consumer
25 understands completely that this is not a rush-to-decision

1 situation, they can wait and see what the modification, they
2 need to look at the government documents about what's going to
3 be disclosed to be sure they're gong to have enough
4 information. They can keep driving these cars and they don't
5 reduce the value of the car. And they are protected if
6 unfortunately they were to total the car after the opt-out
7 period.

8 The approved modification -- emissions modification
9 compensation, as I said, is the same amount as you would get
10 under the buyback program. So if you decide to take the
11 modification, you'd follow the same variable and fixed
12 component calculation, which again the website will guide you
13 through that.

14 And just for the Court's understanding, there is a very
15 strict schedule that has been presented to the Court, and
16 Volkswagen has agreed to with the regulator agencies, about how
17 this modification is going to be considered. And there are
18 deadlines. And it's very important for the consumer, and this
19 will be prominent again in the notice and on the web page, to
20 understand that September of 2018 is the end of the claim
21 filing deadline. Everything -- if you're going to file a
22 claim, you have to do it by then, whether it's buyback or ask
23 for the approved modification under the class settlement and
24 receive the restitution. Then Volkswagen has till the end of
25 the year to get it accomplished.

1 It is important also to understand that while this
2 modification schedule is the schedule that's set now, it's
3 possible that through some further discussions with the
4 regulators there would be a modification that might come up at
5 some later time that's even better that would be adopted. But
6 that wouldn't be outside the class settlement and might be
7 available but would not carry the restitution payment with it.

8 Your Honor, I went through that fast. I'll be glad to
9 answer any questions you have. And Elizabeth held us all to a
10 pretty tight schedule, as she has.

11 **JUDGE CORLEY:** Can I just ask one question?

12 **THE COURT:** Please.

13 **JUDGE CORLEY:** For the seller --

14 **MR. RICE:** Eligible seller?

15 **JUDGE CORLEY:** -- eligible seller, do they have to
16 make a claim by September 2016 or just identify themselves?

17 **MR. RICE:** They need to submit their claim.

18 **JUDGE CORLEY:** Okay. They have to make a claim.

19 Thanks.

20 **THE COURT:** Great. Thank you very much, Mr. Rice. I
21 appreciate it.

22 **MR. RICE:** Thanks.

23 **MR. SARKO:** Good morning, Your Honor. Lynn Sarko on
24 behalf of the PSC.

25 Your Honor, I have the honor of talking about vehicle

1 information and the experts, but I am going to be brief. As my
2 father said, I'm most persuasive when I'm brief.

3 **THE COURT:** My father said that I'm most persuasive if
4 I say nothing.

5 (Laughter.)

6 **MR. SARKO:** I'm glad my father didn't meet your
7 father.

8 In trying to reach a settlement, I think it's important
9 that we have adequate expertise, adequate access to information
10 and data, and adequate analysis. I can assure you in this case
11 we have all three.

12 The process was such, and it's unique, that in this
13 particular case we weren't dealing with hypothetical cars.
14 Every single car has a VIN number which, when we started, I
15 knew not much about cars. Now, if you want to buy a car, bring
16 me along, I can help you.

17 That VIN number is 17 digits long. It's a digital
18 fingerprint of every car. Every car in this class we knew
19 make, model, options, everything including when it came off the
20 assembly line. That information is unique for this class and
21 allowed us to properly analyze all of that data.

22 In addition, we also had access to real world data. We
23 ended up landing on the National Automobile Association data.
24 We also looked at Kelley Blue Book. We looked at all the
25 available data we could find. And we were able to -- that is,

1 our experts were able to in essence match that real world
2 pricing data with the real digital fingerprints of the cars to
3 come up with accurate data across the whole field.

4 Now in the case for the expertise of the experts, we
5 relied on a group called Fontana Group, and a person leading in
6 this case, Ted Stockton, who was the expert there. In fact,
7 you've probably heard of *Car Talk*. We coined the phrase "Ted
8 Talk" because he helped us, he was at a lot of the settlement
9 meetings, and it turned out that he knew and had worked against
10 and with the lead expert for Volkswagen. And I must say we had
11 a very collaborative, at times not always friendly, but we
12 ended up agreeing on most of the things.

13 There were presentations that were done by both of them.
14 The parties were able to test each other's data. And in this
15 case, not only did we have economists, Volkswagen had
16 economists, but we had all of the government agencies, many of
17 them had economists. It was like a convention of economists.

18 We knew more about these cars and the data than you will
19 believe. And I am shortchanging it, but this was weeks and
20 months, and there could be complaints about how to look at the
21 data, but in the end, we wrestled every issue down for every
22 single car to come to agreement as to what the data would mean
23 for those vehicles that were in this class.

24 I would say in addition, the PSC, we had all of the
25 information from their clients. There are thousands of clients

1 that PSC members had. We had that information that we could
2 fold into this discussion. In addition, the PSC members, many
3 of them have economics backgrounds, accounting backgrounds,
4 finance backgrounds, had worked on automotive cases in the
5 past. That expertise together, I would say, was useful and
6 allowed us to come up with what I think is a totally robust and
7 accurate settlement.

8 We looked at data. And Volkswagen was very good about
9 sharing data. We looked at public and private leasing
10 information, financing information, available cars, what are
11 the different models that people would choose that were
12 shopping for over time, and all of that mileage information.
13 All of that information was fed into the hopper, argued about,
14 debated, and I would say that this is in all the cases I've
15 been in, the one that has the most real world accurate data
16 that we had to analyze.

17 In sum, I would say the settlement negotiations were very
18 fair, intensive, very data driven, and we tried to consider all
19 possible scenarios using real world data and intensive expert
20 analysis and review.

21 And I would like to submit to the Court that we met all of
22 the standards that are required for a settlement on a class
23 basis.

24 **THE COURT:** Thank you Mr. Sarko.

25 **MR. SARKO:** Thank you, Your Honor.

1 **THE COURT:** Ms. Greenwald.

2 **MS. GREENWALD:** Good morning, Judge Corley,
3 Judge Breyer.

4 So I have the privilege of talking about how the
5 settlements provide environmental benefits both for the public
6 as a whole and for class members.

7 So as we know, class members who purchased these vehicles
8 overwhelmingly shared and continue to share a concern for the
9 environment. That's why a lot of people bought these cars.
10 And it is such class members, through the settlement, have as
11 one of their goals ensuring that the Volkswagen two-liter,
12 which we're here about today, do not generate continued excess
13 nitrogen oxides into the environment. And the settlement
14 agreement accomplishes these environmental goals in several
15 ways.

16 So some of this is repetitive of what Mr. Rice said, but
17 I'm going to put them all in one bundle for the next couple of
18 minutes.

19 So as Your Honor has heard, the settlement agreement
20 ensures that the polluting vehicles no longer emit nitrogen
21 oxides as of a certain point in time through the buyback or the
22 modification program. So these cars will no longer be in the
23 current condition they're in today and continue to emit into
24 the air dangerous air pollution.

25 The settlement agreement also ensures that the vehicles

1 that VW repurchases are not resold either domestically or in
2 the foreign markets until and unless they have received the
3 modification. So in other words, the settlement agreement
4 recognized that there's a global environment, Your Honor, and
5 that the vehicles subject to this settlement agreement cannot
6 pollute anywhere in the world.

7 **THE COURT:** By the way, I think that's one of the most
8 important aspects of the program because it appears to me that
9 it is not responsible to resolve a nationwide class action by
10 virtue of taking those cars and giving them to some other
11 country where they could potentially damage the environment of
12 that country and, as you point out, of the world; that we have
13 a special responsibility that, in resolving pollution issues
14 here nationwide, we don't create them internationally.

15 Because that's, at least in the Court's view, that would
16 not be a responsible resolution of the problem. So I was
17 particularly pleased to see that there was agreement by the
18 parties on this issue.

19 **MS. GREENWALD:** Thank you for recognizing that. I
20 couldn't agree more. And I know our entire team feels the same
21 way.

22 And as we also know, the emissions from these cars impact
23 air quality which in turn can result in adverse health impacts,
24 particularly respiratory issues. And in this settlement, class
25 members do not release in any way personal injury claims in the

1 future.

2 And fourth, and perhaps one of the most special aspects of
3 this case, is the settlement agreement is part of a coordinated
4 effort with the Plaintiffs' Steering Committee, the
5 United States, and the State of California. We have all worked
6 incredibly well together. And as part of that collaboration,
7 the overall settlements also provide for two environmentally
8 focused funds, as Mr. Rice briefly talked about, totaling
9 \$4.7 billion. That's an ample figure to address the past,
10 present, and future environmental impacts from these vehicles.

11 One of the funds, the one that's in the amount of
12 \$2 billion, is for the increased investment by Volkswagen for
13 the zero emission vehicle technology. And this amount is
14 importantly over and above what VW had already previously
15 designated for such technologies. So it's an additional
16 \$2 billion for the type of technological research. The other
17 \$2.7 billion is for the environmental litigation trust, a trust
18 designed to reduce nitrogen oxide emissions throughout the
19 United States.

20 So I'd like to end by talking of these funds, which are
21 set forth in detail in the Department of Justice consent
22 decree, play a critical role in the significant environmental
23 benefits of these settlements, Your Honor. And we endorse and
24 support them as part of an essential component of all of the
25 coordinated and related settlements in this action.

1 So if you have any questions, I'm happy to help answer.

2 **THE COURT:** Thank you very much.

3 **MS. GREENWALD:** Thank you very much.

4 **MR. GELLER:** Good morning, Your Honor, Judge Corley,
5 Director Mueller.

6 The courts in this district have recognized the pivotal
7 role and ensuing consequences of the class certification
8 decision. And it's because of that role and those consequences
9 that the Supreme Court teaches that even in the settlement
10 context, maybe especially in the settlement context, the
11 requirements of Rule 23 require what they call undiluted, even
12 heightened attention.

13 So what I'm going to do, Your Honor, is try briefly to go
14 through the requirements of Rule 23. Because we're seeking a
15 nationwide class under Rule 23(b)(3), I'd like to mention just
16 for a moment the Court's jurisdiction. This case falls within
17 the Class Action Fairness Act, or CAFA, because each of the
18 requirements of CAFA are met.

19 In addition, we have claims under RICO. And as the Court
20 knows, RICO provides -- expressly provides jurisdiction to the
21 Court. We have a Magnuson-Moss Act, a federal claim, as well
22 as state court claims which, again, because of CAFA, the Court
23 has original jurisdiction. Even without that, the Court has
24 supplemental jurisdiction under the Supplemental Jurisdiction
25 statute 28 USC 1367. So from a federal subject matter

1 jurisdiction standpoint, the Court is wearing both a belt and
2 suspenders.

3 Going through Rule 23, we start with 23(a) which has four
4 requirements: Numerosity, commonality, typicality, and
5 adequacy. The numerosity requirement is easily met here.
6 We're talking about 475,745 vehicles. And as Mr. Sarko said,
7 we know everything about those vehicles. We know who bought
8 them, who leased them.

9 So while I said 23(a) has four express requirements,
10 there's also, as Your Honor knows I think as well as any judge
11 in the country, this sort of fifth implied requirement of
12 ascertainability. And in this case, ascertainability, I don't
13 know of another case where a class is more ascertainable than
14 this. Everything in *ConAgra*, this is the opposite. *ConAgra*,
15 of course, being a case where it was difficult to know who
16 bought these small products. There was no trustworthy method.
17 Here we know precisely who bought these big ticket items. So
18 we have numerosity and ascertainability.

19 The commonality requirement is a minimal and permissive
20 requirement, so says *Hanlon v. Chrysler* in the Ninth Circuit.
21 And here this entire case is premised on a common course of
22 conduct that's answered by common evidence. And so commonality
23 is easily met.

24 Typicality as well. The typicality requirement under
25 23(a) requires that all class members or the class

1 representatives' claims are typical of all class members.

2 Judge Illston, in the *Flat Panel Antitrust* case, said that
3 even if you purchase different models of the product at issue,
4 that doesn't effect typicality. So here typicality again
5 easily overcome.

6 The fourth requirement is adequacy. It looks at both the
7 adequacy of the class representatives and the adequacy of
8 counsel. We have 174 class representatives who have done
9 everything that a class representative should do. They're
10 fully informed. They understand their role, their
11 responsibilities. They've participated in discovery. They've
12 completed detailed plaintiffs' fact sheets.

13 More cases that focus on adequacy look at counsel. And so
14 I get a moment to talk about the Steering Committee and the
15 leadership of Elizabeth Cabraser.

16 The rule uses the word "adequate" as the bar, the
17 standard. Were we adequate? And I think to say that we were
18 adequate sounds inadequate because whatever the bar would be,
19 whether you call it excellence or superior, this committee has
20 met that standard. I'm very proud to be a part of it.

21 Once we go through the 23(a) requirements, we get to
22 23(b). We have to assure the Court that we fit with one of the
23 categories of 23(b). And I'll just mention for a moment,
24 there's two types of cases, (b)(2) and a (b)(3) class
25 action, that come to mind when you look at what happened here.

1 Judge Posner in the Seventh Circuit, in a case called
2 *Randall v. Rolls-Royce*, said that class action lawyers like to
3 shoehorn cases into (b)(2) classes. And he said that defense
4 lawyers like them as well because it doesn't provide the
5 procedural safeguards of a (b)(3) class.

6 And when you talk about a settlement that boils down to a
7 buyback or a fix, the defendants being forced to do something,
8 one can conceive of an argument where it would be a (b)(2)
9 class. But consistent with the theme that we've held
10 throughout, which is consumers first and to honor consumer
11 choice, none of us, including defense counsel, considered this
12 as a (b)(2) class. This is -- we're seeking a (b)(3) class
13 because that's best for consumers and that provides consumers
14 additional choice in terms of getting detailed notice and the
15 opportunity to opt out, which are not -- those safeguards are
16 not available to a (b)(2) class.

17 So under (b)(3), there's two additional requirements that
18 we need to meet. And those are a predominance requirement and
19 superiority. Meaning common questions must predominate over
20 any individual questions, and the class action must be a
21 superior method of adjudication.

22 So looking at predominance, the cases look at two aspects.
23 Number one, there's a lot of cases that talk about state law
24 claims and do variations in state law defeat predominance. And
25 the law in the Ninth Circuit is very clear that the answer is

1 no. The Ninth Circuit follows the Third Circuit *Sullivan*
2 decision where Judge Rendell said that variations in state law
3 do not defeat the predominance requirement of 23(b)(3),
4 especially in the settlement context, but not only in the
5 settlement context. And there's a number of cases here in the
6 Northern District that follow that.

7 The other aspect of predominance that some cases look at
8 have to do with the calculation of damages post *Comcast*. And
9 again the law is clear in the Ninth Circuit that as long as we
10 have a model that can be applied classwide, and Mr. Rice, his
11 presentation showed exactly what that model is. So we're not
12 talking hypothetically about the ability to do it, we actually
13 have done it. And the fact that there are -- you know, one
14 individual may receive a different amount than another
15 individual clearly does not defeat predominance. And that's
16 been the law in the Ninth Circuit both before and after
17 *Comcast*.

18 The superiority requirement is the last requirement. And
19 that simply asks if a class action is the most efficient
20 method. And I would submit to you that it is. In the words of
21 Judge Hamilton in the *Dynamic Random* -- *DRAM* case, she said
22 that the only thing inefficient in that case would have been to
23 not certify the class and to look at the resources that would
24 be used by the courts and by the parties if there were
25 thousands of individual cases. Here we're talking about

1 hundreds of thousands.

2 So I would submit that a class action is superior to any
3 other method of adjudicating these claims and that we have now
4 met the requirements of a nationwide 23(b)(3) class action.

5 Thank you.

6 **THE COURT:** Thank you very much.

7 **MR. BERMAN:** Good morning, Your Honor, Director
8 Mueller.

9 I've been tasked with talking about consumers, and I'd
10 like to start, break that into two parts, Your Honor.

11 One is what information do we have from consumers when we
12 negotiate the settlement, and what has the reaction been since
13 the settlement was announced.

14 A lot of times we don't pay enough attention to our class
15 representatives. That's not this case. In this case, I
16 personally have 13,000 clients who have signed agreements with
17 my firm. So we have been in constant interaction with those
18 clients, as have other members of the PSC from the get-go.

19 And as we were negotiating the settlement and going
20 through various iterations, we would actually have firms do
21 surveys to test out the reaction of class members to the
22 various concepts we were developing. So when we were in that
23 room, we knew to a fair certainty what the class would like,
24 what they wanted. And I think that's pretty unusual.

25 So we were very informed when we were negotiating to a

1 level that I've never seen before.

2 Second, the reaction of the class, I'll give you an idea
3 of the topics that we're getting questions on. The first one
4 was -- in fact, the first thing that came up was what about
5 3.0. The 3.0 people are saying, "What about me?" And we've
6 assured those class members that Your Honor has a foot on the
7 pedal with respect to 3.0. It's going to get addressed.

8 We're getting a lot of calls. We've taken about 2,000
9 inquiries since the settlement was announced. People want
10 general information. That's easy to do and the website will
11 obviously give them that general information.

12 And then we're getting questions in the various areas that
13 Mr. Rice walked you through. We're getting questions from
14 leaseholders, and we're able to answer those questions, I
15 think, to their satisfaction. We're getting questions about
16 people who have loan balances, and as you've heard, we've
17 addressed that issue. So we're able to answer those questions,
18 I think, to their satisfaction.

19 We're getting questions from people who sold their cars
20 because they couldn't wait around for a fix. And we were able
21 to answer those questions. We're getting questions from people
22 whose cars were totaled, and we anticipated that issue. We're
23 able to answer those questions.

24 We're getting a lot of questions about valuation. And I
25 think once we sit down and explain to people both the law and

1 how we arrived at the valuation, they're happy with the
2 valuation. There will be some people that will not be happy
3 with the valuation. There are some people who are just so
4 angry with Volkswagen that I suspect they will choose to
5 litigate and go for treble damages. I don't think it will be
6 that many people, but there are just going to be those people
7 who, because of the fraud that occurred here, who won't be
8 satisfied. But again, so far to date, the overwhelming
9 reaction I think we're getting is satisfied.

10 And I can make it on a personal level, Your Honor. I
11 bought three of these, two for my kids and one for my cycling
12 team. So I sat down with my kids and walked them through the
13 settlement, and they don't want to follow their father's advice
14 necessarily, but at the end of the day, they said, "Good job,
15 Dad." I don't get that very often, Your Honor.

16 So unless you have some questions, that's all I have.

17 **THE COURT:** No, that's quite a testimonial.

18 Well, again, you know, you raised an interesting question
19 about those people who decide that they want to pursue their
20 claims individually. First of all, they're entitled to do so.
21 The law permits them to do so.

22 But as to those people, I would just urge them to look at
23 the details of this settlement and to look at what is being
24 achieved by this settlement. Not just from the individual's
25 point of view, but from the point of view of the environment

1 and from the point of the view of remediation and from those
2 points of view.

3 Because that's significant. And that's part of what you
4 are attempting to achieve in this settlement. So I just hope
5 that people, when they make their judgments as every consumer
6 must make his or her judgment, will make an informed judgment,
7 will make a judgment based upon the facts. And I think that
8 that will go a long way in hopefully resolving a number of
9 these issues.

10 Thank you very much.

11 **MR. BERMAN:** We do do that, Your Honor. And I just
12 wanted to -- you know, I don't want to sweep under the rug and
13 I want Your Honor to be alert that there's going to be some
14 people who we'll just never make happy.

15 **THE COURT:** Okay. Well, thank you very much.

16 Ms. Rivas.

17 **MS. RIVAS:** Good morning, Your Honor. Rosemary Rivas
18 on behalf of the plaintiffs and the Plaintiffs' Steering
19 Committee.

20 I'm pleased to present on the notice program, which we
21 believe is one of the most, if not the most, comprehensive
22 notice programs in consumer class action history. The parties'
23 proposed notice program is robust and utilizes traditional
24 methods of notice with emerging trends in legal notification.

25 The program consists of direct notice, paid and earned

1 media, and an informational and interactive website that's
2 available in both English and Spanish.

3 In terms of the direct notice, we have the names,
4 addresses, and vehicle information for virtually all class
5 members, whether they are owners, lessees, consumers, or
6 independent dealers.

7 We gave considerable attention to the notice package
8 itself. The mailing package we will use was creatively
9 designed to attract the attention of class members. We'll use
10 flat envelopes that utilize color so that the envelopes stand
11 out from other mail. The outside of the envelopes will also
12 contain language about the case and that options are explained
13 in the materials inside. The envelopes will be tailored to
14 Volkswagen owners and lessees, Audi owners and lessees, and
15 sellers.

16 Along with the long-form notice, a personalized cover
17 letter will also go out to class members which will encourage
18 them to read the lengthy long-form notice that we have
19 provided.

20 The long-form notice itself is in an easy-to-read format.
21 It has a summary of the settlement at the outset in
22 easy-to-read language. And it's followed by a question and
23 answer format that walks class members through their rights and
24 options with regard to the settlement.

25 And to maximize notice delivery, we'll utilize the

1 national change of address database before mailing and also
2 tracing and other services to maximize undeliverables.

3 We also have e-mails for class members who signed up for
4 the goodwill program. So some people will get two direct
5 notifications, via U.S. mail and then via e-mail. That e-mail
6 will have the personalized cover letter which will also contain
7 a link to the settlement website.

8 To reach non-Volkswagen car dealers in the United States,
9 we'll send out the long-form notice to more than 15,000 new car
10 dealers and to more than 58,000 used car dealers. We'll also
11 send out the long-form notice to fleet associations.

12 Updates will be provided to class members who do not
13 select the buyback option. Specifically we'll send them
14 e-mails or letters through the mail with updates about the
15 status of vehicle modifications.

16 While this direct notice program is very comprehensive,
17 we've also developed an expansive paid media program which I
18 think is just icing on the cake. We'll have a short-form
19 notice that will be published in both national and local
20 newspapers. The short-form notice will appear as a two-color
21 advertisement with images so it will attract attention.

22 The national newspapers we selected are the *New York*
23 *Times*, the *Wall Street Journal*, *USA Today*. We selected local
24 newspapers based on vehicle registration data. We selected
25 19 newspapers covering markets with more than 5,000 eligible

1 vehicles, and 26 newspapers covering markets with 2,000 to
2 4,999 eligible vehicles. We've selected 31 Hispanic newspapers
3 and 27 African-American newspapers. .

4 We'll also utilize digital advertising. We'll have banner
5 advertisements which we can specifically target to our class
6 members based on the vehicle data that we have for them. We
7 will utilize social media. We'll have advertising on Facebook,
8 Instagram, Twitter. We'll use LinkedIn in to reach fleet
9 owners and non-Volkswagen dealers. We'll use keyword searching
10 on major search engines such as Google Ad Words and Microsoft
11 Bing, and we'll utilize Google Display Network Services.

12 In terms of earned media, we're not just issuing your
13 traditional press release. We're issuing a multimedia press
14 release. It's also known as a campaign hero website that will
15 be distributed on PR Newswire's US1 national circuit. It
16 reaches 5,000 media outlets and 5,400 websites. Essentially
17 journalists will be able to visit this microsite, review the
18 press release, review collateral materials such as images, such
19 as the payment chart. And the microsite will also be
20 continually updated and it will have a social media sharing
21 function.

22 And, of course, we have the interactive settlement website
23 that will provide the relevant court documents, answers to
24 frequently asked questions. And as Mr. Rice talked about,
25 we'll have -- the class members will have access to a claims

1 portal where they can enter in their personalized information
2 and receive the vehicle value amounts, the restitution payment
3 amounts. There will be a tool for determining the effective
4 mileage on the vehicle value.

5 We'd also like to thank the Court and its staff for the
6 web pages that were posted on the settlement website. We think
7 that that's kept class members informed, and we'll continue to
8 do so.

9 Thank you, Your Honor.

10 **THE COURT:** That seems pretty comprehensive. You
11 might want to sell your services to the political parties.

12 (Laughter.)

13 Ms. Cabraser.

14 **MS. CABRASER:** Thank you, Your Honor.

15 Well, like the political process, the class action
16 settlement process here is all about choice. And if Your Honor
17 grants preliminary approval to the proposed class action
18 settlement, that means that every member of the settlement
19 class everywhere will have an equal opportunity and an equal
20 right to make an individual choice about whether they want to
21 stay in the settlement class and participate in the settlement
22 through either a buyback or fix now or later, whether they want
23 to opt out of the class and go their own way.

24 And that choice was important to us, not simply because
25 it's enshrined in Rule 23(b)(3), but because bringing this

1 settlement to the class through preliminary approval restores
2 to them a much more important choice, and that is that it
3 restores to them the choice they thought they had when they
4 bought these cars. They thought they were making choices about
5 not only mileage and performance, and, by all accounts, the
6 cars delivered in those respects, and that's important for the
7 environment. But they also thought they were making a choice
8 about low emissions. And they were deprived of that choice.

9 The settlement seeks to restore that choice to them so
10 that they can restore to the environment and repair the
11 environment what was lost to the environment. And so that the
12 value of their own cars can be restored to pre-emissions
13 disclosure values.

14 We believe collectively among the PSC that we had an
15 important opportunity that we couldn't let pass by in this
16 case. I think we have three operating principles in the PSC.
17 Number one is no litigation is usual, not in this case. Number
18 two, no potted plants on the PSC. And number three, don't let
19 the opportunity go by to give people a choice, sooner rather
20 than later, in a restorative way rather than a recriminatory
21 way, to try to solve a problem they thought they were solving
22 in the first place.

23 Sometimes a settlement is hard not because a case is hard.
24 This case, at least on our side, we think is compelling. And
25 sometimes a settlement is hard just for that very reason. It's

1 sometimes easier to stay angry, to focus on recriminations, and
2 to seek revenge through the court system, and the court
3 provides a very civilized way of doing that.

4 But there's an alternative sometimes, not always, and that
5 is to actually use the power of the process to solve a problem
6 in the real world and to restore that which was lost and to
7 repair that which was broken.

8 We're very, very honored to be able to present, if this
9 Court grants Court approval, that choice to the consumer class
10 so that they can be instruments of restoration and repair, both
11 literally and figuratively, if that is how they choose to
12 respond. The notice program will give them all the information
13 that we think they need to be able to make that choice on an
14 ongoing matter.

15 I have letters from the PSC mailbag just to remind the
16 Court of two things that are important. First, as Ms. Rivas
17 referred to, there are non-Volkswagen dealers out there that
18 have these cars on their lots. They took them in trade. They
19 bought them. They haven't been able to sell them. Those cars
20 have the same lost value problem and the same emissions problem
21 that the owners and lessees have. And so those nonaffiliated
22 reseller dealers are in the settlement class.

23 We have an amended settlement agreement that makes that
24 very clear, explicitly puts them in the settlement class
25 definition. You've heard that the notice program gives them

1 notice. And we wanted to make sure that they understand that
2 they are treated just as consumers are in this settlement.

3 With respect to Judge Corley's question about eligible
4 sellers and the September 16th deadline, that is the deadline
5 for eligible sellers to identify themselves through settlement
6 website process. The claim doesn't need to be completed by
7 that time. And indeed it couldn't be completed unless and
8 until this Court grants final approval and claims become
9 operative.

10 So the time frame that they have is to get to that website
11 and to provide their information.

12 Finally, and Mr. Geller talked about this, we are asking
13 today for preliminary approval of the settlement under the
14 23(e) procedure. We're asking for approval of the class
15 notice, both content and the notice program, under Rule 23(c).
16 We're asking for provisional and preliminary class
17 certification for settlement purposes only as to two-liters
18 only under Rule 23(a) and Rule 23(b)(3). And we are asking for
19 the appointment of the members of the Plaintiffs' Steering
20 Committee as settlement class counsel under Rule 23(g).

21 You have seen a few of the people who were active in the
22 settlement negotiation process speak to you today. That is the
23 tip of the iceberg. There are no potted plants on the PSC.
24 Almost every member of the PSC was asked to drop other things
25 and to participate and assist in the settlement process during

1 the months we were negotiating, at the same time that every
2 single member of the PSC was actively engaged in discovery of
3 this case, in review and analysis of the millions of documents,
4 in preparation of expedited and contingency trial plans. That
5 work will continue because this proposed settlement is a
6 partial one. It doesn't include three-liters, as you know, and
7 it doesn't include all of the defendants in this case.

8 And so I'm pleased to report that in addition to their
9 other ongoing duties on the litigation side of this case, each
10 of the members of the Plaintiffs' Steering Committee has agreed
11 to also serve as a settlement class counsel to help shepherd
12 this settlement through the approval process and to make sure,
13 if it is granted final approval, that between now and the end
14 of 2018 when this settlement has the real world job of fixing
15 or taking off the road almost 275,000 cars in every state and
16 many territories of the United States, that these lawyers and
17 the members of their firms will be ready, willing, and able to
18 assist class members make this settlement a reality.

19 Thank you, Your Honor.

20 **THE COURT:** Thank you very much.

21 I'd like to turn now to Volkswagen and ask them for their
22 comments and presentation.

23 Mr. Giuffra.

24 **MR. GIUFFRA:** Good morning, Your Honor and
25 Judge Corley.

1 Our presentation, I will speak generally in favor of the
2 preliminary settlement. And my partner, Sharon Nelles, will
3 describe for the Court in some detail all of the important
4 steps Volkswagen has made and will continue to make to ensure
5 that this settlement is a success.

6 First of all, on behalf of Volkswagen, Your Honor, I would
7 be remiss if I did not thank the Court and Director Mueller for
8 all you've done. You know, from the very first conference when
9 I stood here and you were pressing me about getting cars off
10 the road, clearly, you know, Your Honor's setting up the
11 deadline had the effect on the governmental parties, the
12 Plaintiffs' Steering Committee, and Volkswagen. And I think it
13 was very important to set that -- those deadlines as you did.

14 And I'd also like to thank Director Mueller for his
15 hundreds of hours of work bringing this settlement to fruition,
16 and also for the many pizza he served to us late at night at
17 his office. And I would also want to thank his partners, Jim
18 Quarles and Aaron Zebley, who were very instrumental in
19 bringing --

20 **THE COURT:** Yes, I'd like to point that out as well
21 because when I have conferenced with Director Mueller giving me
22 his update, frequently he has brought with him his able
23 cocounsel from Wilmer Hale, and they've been outstanding.
24 They've been outstanding in their reports to me. They've been
25 clear. They've been analytical. They've been helpful.

1 The interesting thing about Director Mueller and his
2 colleagues has been their absolute dedication to resolving the
3 litigation. And their patience, their skill, their integrity
4 is, in my experience on the bench of 20 years, unprecedented.
5 Unprecedented. And so I am in your debt in terms of your
6 service here and your colleagues'.

7 Thank you. Go ahead.

8 **MR. GIUFFRA:** Now, Your Honor, Volkswagen is not the
9 first car company to face a serious issue, and I think that
10 when one assesses this settlement and how Volkswagen has
11 behaved, actions do speak louder than words.

12 And Volkswagen accepted responsibility for what happened
13 here. The company did not litigate this case. You know, one
14 of the things I think on everyone's side, this was not a case
15 where there are armies of lawyers engaged and, you know, just
16 churning for litigation for the purposes of churning. We
17 really wanted to do the right thing and get this thing to a
18 resolution as Your Honor had directed, and I think that's why
19 this is a settlement that was done with unprecedented speed.

20 Now, Volkswagen strongly urges the Court to give
21 preliminary approval to the settlement. We think this is a
22 very fair and very reasonable settlement. We think it is a
23 settlement that is good for consumers and good for the
24 environment and good for the public generally. It's also a
25 settlement that's good for Volkswagen. It allows Volkswagen to

1 turn the page, to begin to make things right in the
2 United States and to begin to re-earn the trust of our
3 customers.

4 Now, this settlement, as I think has been mentioned, is
5 the product of probably an unprecedented degree of cooperation
6 with the Department of Justice, the FTC, the EPA, CARB, the
7 California Attorney General, and the PSC. And I really would
8 like to thank my friend, Elizabeth Cabraser, and her team for
9 all that they did to bring this settlement about.

10 Now, in addition to the fact that this settlement has the
11 seal of approval of the DOJ, the FTC, EPA, CARB, the expert
12 agencies that really know this area better than anyone, I think
13 it's significant, Your Honor, that 44 state Attorney Generals
14 have signed on to support this settlement, as well as the
15 District of Columbia and Puerto Rico. And as Ms. Cabraser
16 mentioned, this settlement does give consumers a choice, it
17 compensates consumers, and it gets cars off the road through
18 either the buyback or the emissions modification.

19 Now, Mr. Berman made the point about asking class members
20 about the terms of the settlement. I can assure the Court
21 Volkswagen obviously did the same. And we needed a premium
22 that was high enough that would encourage car owners to bring
23 cars in, get them fixed or have a buyback, because we have an
24 obligation under our consent decree with the Department of
25 Justice to have an 85-percent participation rate or we pay

1 very, very high fines for not getting those cars off the road.

2 Now, it's been mentioned before, but I think it bears
3 repeating. There's a very detailed provision in Appendix B to
4 the DOJ consent decree which provides for the emissions
5 modification. And that modification is important, we think,
6 for consumers and for the company because there are consumers,
7 as our surveys have shown, who want to keep these cars.

8 Now from VW's perspective, that modification process is on
9 track. The first deadline for making a submission for the
10 Gen 3 two-liter cars is July 29th, and we're hopeful we'll make
11 that deadline. And so we're look forward to working closely
12 with CARB and EPA in getting the modification approved so that
13 consumers have the choice.

14 And just one last point, Your Honor, about the scope of
15 the settlement. This settlement applies only in the
16 United States, and I think that's important to -- it's an
17 important point to make. And there are different emissions
18 laws and environmental laws in, for example, Europe than in the
19 United States. And we are able to address the cars in a
20 different way in Europe than we can in the United States.

21 But this is a U.S. settlement that is driven by U.S. legal
22 considerations which are different from the considerations that
23 the company faces elsewhere.

24 So Ms. Nelles will now talk about all the things that
25 Volkswagen is doing to make the settlement work. And, again,

1 Your Honor, we thank you very much for all you have done to
2 bring about this settlement.

3 **THE COURT:** Thank you, Mr. Giuffra. Be sure to give
4 my regards to your son.

5 **MR. GIUFFRA:** You know, it's interesting, Your Honor,
6 I was with my son yesterday, and he's been reading about how he
7 gets mentioned in the court. And his grandfather was a lawyer
8 and I'm a lawyer, and my son happens --

9 **THE COURT:** So I hope he's learned from that.

10 (Laughter.)

11 **MR. GIUFFRA:** He has, Your Honor. But my son really
12 likes bow ties. There's a show called *Doctor Who*, and it's his
13 favorite show. And he said to me yesterday before I was coming
14 down here, or the day before, Sunday, he said, "Well, can I
15 wear a bow tie if I become a lawyer?"

16 And I said, "You can wear a bow tie if you become a
17 judge."

18 (Laughter.)

19 **THE COURT:** Thank you.

20 Ms. Nelles, you are going to address how Volkswagen is
21 going to successfully implement this settlement if approved.

22 **MS. NELLES:** I am, Your Honor. Though it's always
23 very hard to follow my partner, Mr. Giuffra. He's a tough act.

24 But it is my pleasure to address the very significant
25 efforts that are being undertaken by Volkswagen to support this

1 settlement. As many have mentioned, it's been unprecedented in
2 speed and in scope.

3 From VW's perspective, there are really two twin goals in
4 the implementation process. First, to design a claims process
5 that provides information and relief as quickly as possible,
6 but also to design that process so it provides a seamless an
7 experience as possible for the consumers who are using it.

8 These are not always perfectly compatible goals. VW has
9 taken substantial steps, though, to make sure that they are as
10 integrated as possible and can begin, fingers crossed, as soon
11 as today. And to make sure that the settlement program
12 benefits are available without delay if the Court ultimately
13 determines it will grant final approval.

14 So let me describe some of those efforts.

15 First of all, the settlement itself is going to be
16 implemented by Volkswagen Group of America. And it's being
17 implemented under the direction of Volkswagen Group of
18 America's COO who is one of the most senior people at
19 Volkswagen and he reports directly to the president and the CEO
20 of Volkswagen Group of America.

21 Since well before the settlement was finalized and
22 announced, he has been working with a team of senior people in
23 legal, finance, IT, customer relations to make sure that the
24 settlement could proceed in this expedited fashion should we
25 have gotten to resolution and been able to come to this Court

1 and announce that in June.

2 Going forward there are going to be 40 key Volkswagen
3 Group of America personnel devoted essentially full-time to the
4 settlement. That group, as Mr. Rice noted earlier, is -- it is
5 Volkswagen that has been charged with the implementation of the
6 settlement, and that makes sense in the circumstances here.

7 **THE COURT:** So who -- what is the identity of the
8 individual who is the person at the top here who's going to
9 oversee it?

10 **MS. NELLES:** Who is that?

11 **THE COURT:** Yes.

12 **MS. NELLES:** His name is Mark McNabb, Your Honor.

13 **THE COURT:** I always like to have a name.

14 **MS. NELLES:** Mr. McNabb has worked -- most people in
15 this room know him well. He's been intimately involved with
16 every aspect of the negotiations. He will remain intimately
17 involved in the settlement implementation. And he will be very
18 annoyed with me that I had his name mentioned in court today.

19 **THE COURT:** No. I'll tell you, one thing we're about
20 is responsibility, accountability, and it's always a good idea
21 to have a name with the --

22 **MS. NELLES:** I can personally attest to those
23 qualities, that those qualities reside in Mr. McNabb.

24 Going forward we're going to have 40 people, many of whom
25 have already been involved in or led every aspect of the

1 settlement implementation efforts that you've already heard
2 about today. For example, designing the website, developing
3 the claims portal, working on the notice plan, even designing
4 those flat envelopes that you heard about. Because, of course,
5 these are -- we have a lot of consumers, but these are also
6 Volkswagen customers, and it is, of course, very important to
7 Volkswagen that we get this right.

8 This team of -- this large team of dedicated Volkswagen
9 personnel is also in the process of hiring some 250 to
10 300 people to work exclusively on the settlement going forward
11 for the next several years. And those functions include
12 consumer support, claims processing, dealer support, technical
13 support, and parts and vehicle logistics. In fact, they've had
14 to build out an entire piece of the headquarters located in
15 Michigan to house all these people. And I'm going to go out
16 there and take a look at it in just a few days.

17 Now the efforts have included preparing information books,
18 videos, process flowcharts, to provide in-depth training for
19 the support team so they can be ready to help consumers through
20 the process.

21 Among other things, Volkswagen will be supporting a hot
22 line available seven days a week, 7:00 a.m. to 11:00 p.m.
23 Eastern. And if we receive preliminary approval even as early
24 as today, we are going to go live with that today.

25 There will also be a live chat function that's going to be

1 available on the settlement website in mid August. As Mr. Rice
2 was explaining, people will be able to go on the website
3 immediately upon preliminary approval, enter in car information
4 and start gathering information. In mid August, people will be
5 able to start uploading documents so that if there is final
6 approval, we'll be able to move immediately to begin processing
7 those claims.

8 When the time comes to be able to implement -- to be able
9 to upload documents, we will have people who will be able to
10 live chat with consumers, class members, about how to do that,
11 right on the website, in addition to the hot line, the phone
12 line.

13 In addition, Volkswagen will train and have settlement
14 specialists that are set at dealers to assist with the dealers
15 with the buyback and assist the class members with the buyback
16 and lease termination. There will be somewhere in the
17 neighborhood of 250 settlement specialists at least. It may be
18 twice as many.

19 The Volkswagen core team has already been out conducting
20 road shows with dealers over the past few weeks to educate them
21 about the settlement and their role in the settlement. My
22 understanding is that they have now reached some 90 to
23 95 percent of the Volkswagen dealerships. There's ongoing
24 outreach including now to the Audi dealerships.

25 And Volkswagen will support the dealers, too, through

1 their own call line and will have field specialists who will be
2 able to offer supports in various regions.

3 And finally, again, hoping for a final approval and a
4 positive reaction to the settlement, Volkswagen is already
5 undertaking to have people ready to contract for significant
6 incremental storage so that it can adequately support claims
7 volume if a lot of cars start coming in, in the fall.

8 It has been and is going to continue to be for at least
9 the next several years an extraordinary effort. VW is fully
10 committed to it. And the first fruits of labor will be
11 available, as I said, as soon as today when the website goes
12 live on preliminary approval and consumers can begin to
13 register and see what may be available to them under the
14 program, as well other customers, other consumers, and any
15 interested parties.

16 Thank you.

17 **THE COURT:** Thank you. Any further comments by
18 counsel?

19 (No response.)

20 **THE COURT:** The Court notes, of course, that the
21 attorneys' fees and costs in connection with this matter are
22 not part of the settlement. They do not in any way diminish or
23 reduce the amounts of money that are specified in terms of the
24 settlement or the relief that is being provided by the
25 settlement agreement.

1 I think it is important that the parties advise the Court
2 in the near future as to the method by which the counsel is
3 going to be compensated in this matter. Volkswagen has
4 acknowledged or agreed to assuming the responsibility of the
5 payment of fees and costs in connection with this matter, but
6 indeed one has to have some idea as to how that is going to be
7 implemented, formula or otherwise, so that class members have
8 that in their mind during this period of time. So you can file
9 a statement to that effect in the near future, and the Court
10 would welcome that.

11 Well, I don't know that I need to make any grand
12 observations about the settlement. It appears in your
13 presentation today, as it appeared when you filed your
14 documents, that an enormous effort has been devoted to
15 achieving a series of goals stated eloquently by Ms. Cabraser.

16 I think from what I've seen, those goals have been
17 achieved, at least preliminarily. And accordingly the Court
18 grants preliminary approval to the settlement. Further, it
19 will grant the release sought by plaintiffs in connection with
20 appointment of committees and certification of classes and so
21 forth pursuant to Rule 23.

22 And I will file an order today setting forth the Court's
23 reasons and setting forth the extent of relief that I presently
24 intend to grant at this point. In doing so, however, I don't
25 want any consumer or interested party, interested party --

1 interested party -- to believe that I have made a final
2 decision in this matter with respect to whether the settlement
3 will be ultimately approved. That is a matter that the Court
4 must, before doing so, consider the views of people who have
5 not spoken today or who have not been heard of, heard from, and
6 so that is a process that will be engaged from today forward.

7 The Court does want to set a deadline for the final
8 approval and does so by designating Tuesday, October 18th, of
9 this year to be the date for final approval of the proposed
10 settlement.

11 And is there anything further that the Court need to do at
12 this point?

13 Ms. Cabraser? Mr. Giuffra?

14 **MS. CABRASER:** Your Honor, two detail matters.

15 **THE COURT:** Yes.

16 **MS. CABRASER:** First of all, what time of day for the
17 final approval hearing?

18 **THE COURT:** Well, I like 8:00 o'clock.

19 **MS. CABRASER:** We've --

20 **THE COURT:** I don't like it all that much, but it
21 appears to me that given counsels' and other parties'
22 possibility that they would want to come from the East Coast
23 and so forth, it just makes it much more convenient to hear
24 early in the morning.

25 **MS. CABRASER:** We have all grown to love 8:00 o'clock

1 in the morning, Your Honor. And we will put that date and time
2 in the notice materials. They also need to specify the dates
3 for opt-out or objection and comment.

4 **THE COURT:** Yes.

5 **MS. CABRASER:** And the date for us to file our papers.
6 We had a proposed chart in a proposed preliminary approval
7 order. With the Court's permission, we can -- we have some
8 amendments to that order. We can resubmit it to Your Honor
9 today for consideration in conjunction with your order. It
10 includes the clarified settlement class.

11 **THE COURT:** Would you do so? The Court believes that
12 those dates are appropriate. And so if you would simply insert
13 that in your final submission today, that would be helpful.

14 **MS. CABRASER:** We will do that and get that in to
15 Your Honor today. Thank you very much.

16 **THE COURT:** Okay. Anything further?

17 **MR. GIUFFRA:** Not from the defendants, Your Honor.

18 **THE COURT:** Well, I apologize for taking longer than
19 my customary 10 minutes, but this was a very, very helpful
20 presentation, and the Court appreciates it.

21 We stand in recess.

22 (Proceedings adjourned at 9:56 a.m.)

23

24

25

CERTIFICATE OF REPORTER

I, KELLY SHAINLINE, Court Reporter for the United States District Court, Northern District of California, hereby certify that the foregoing proceedings in 15-md-2672 CRB, In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, were reported by me, a shorthand reporter, and were thereafter transcribed under my direction into text; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

Kelly Shainline, Court Reporter

Tuesday, July 26, 2016