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

16 IN RE: VOLKSWAGEN 'CLEAN  
17 DIESEL' MARKETING, SALES  
18 PRACTICES AND PRODUCTS  
19 LIABILITY LITIGATION

MDL 2672 CRB (JSC)

20 This Documents Relates to:  
21  
22 ALL CONSUMER ACTIONS

**SETTLEMENT CLASS COUNSEL'S  
STATEMENT OF ADDITIONAL  
INFORMATION REGARDING  
PROSPECTIVE REQUEST FOR  
ATTORNEYS' FEES AND COSTS**

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1 Settlement Class Counsel submit this statement pursuant to the Court's request in the  
2 Amended Order Granting Preliminary Approval of Settlement [Dkt. 1698] for additional  
3 information regarding Settlement Class Counsel's prospective request for attorneys' fees.

4 Under the Court's and Settlement Master Mueller's active guidance, the parties to this  
5 class action achieved a historic resolution that will: (1) get over 475,000 polluting 2.0-liter cars  
6 fixed or off the road; (2) pay up to \$10.033 billion in cash to Class Members; and (3) remediate  
7 the environmental damage caused by Volkswagen, all in a short period of time unheard-of in  
8 modern complex litigation. Settlement Class Counsel did not achieve these results on their own.  
9 This was a team effort from the start, and the members of the parallel litigation and settlement  
10 teams included the Department of Justice on behalf of the Environmental Protection Agency; the  
11 Federal Trade Commission; the California Attorney General's office on behalf of CARB, and  
12 other government entities.

13 The Settlement Agreement requires Volkswagen to pay Settlement Class Counsel's  
14 reasonable fees and costs in addition to Class Members' settlement benefits. This means that  
15 regardless of the amount of fees the Court decides to award Settlement Class Counsel, Class  
16 Members' settlement benefits and payments will not be reduced by one cent.

17 Settlement Class Counsel have not yet filed an application for attorneys' fees; they will do  
18 so in connection with final approval and under Rule 23(h). Volkswagen and Settlement Class  
19 Counsel have reached no agreement on fees; any future agreement—or lack thereof—will be  
20 reflected in the application, which will nonetheless be subject to the Court's independent  
21 determination and award. Various media reports, in guessing at the fee request, have noted  
22 formulas used by courts in other large class settlements and speculated that Settlement Class  
23 Counsel's fee request might be as high as \$3.5 billion, given the prevailing percentage fee  
24 methodology and judicially established benchmarks of 25% and higher. But this is not an  
25 ordinary case, this is not an ordinary settlement, and this will not be an ordinary fee request.

26 In recognition of the joint efforts of Settlement Class Counsel and the government  
27 plaintiffs, and notwithstanding the size of the fund available to Class Members and the  
28 challenging circumstances under which this settlement was negotiated and achieved, Settlement

1 Class Counsel's common benefit fee application will seek no more than \$324 million in  
2 attorneys' fees, plus actual and reasonable out-of-pocket costs, not to exceed \$8.5 million. This  
3 fee application will cover all work performed by the 22 Court-appointed Settlement Class  
4 Counsel firms and the additional counsel designated to perform common benefit work, and all  
5 expenses incurred through October 18, 2016, the date of the Final Approval Hearing. Because  
6 the \$10.033 billion Funding Pool commitment obtained by the Settlement is easily quantified, as  
7 are Class Members' individual payments, the application, as to this "capped" amount, will utilize  
8 the percentage methodology approved by the Ninth Circuit for class action settlement fee awards,  
9 albeit at an amount far below the 25% benchmark established by the Ninth Circuit. *See In re*  
10 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Vizcaino v. Microsoft*  
11 *Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).

12 Since the parties filed the settlement documents with the Court on June 28, 2016, Class  
13 Members have inundated Settlement Class Counsel with requests for information and questions  
14 about the settlement. The class settlement, by its terms, is designed to provide consumers with  
15 choices and options throughout the settlement program. These choices are important to Class  
16 Members, and they often require a detailed discussion with attorneys and/or paralegals who are  
17 well-versed in the settlement's terms and procedures. Many of these conversations have required  
18 a lawyer or paralegal to spend 30-60 minutes on the telephone speaking to a single Class  
19 Member. Class Members deserve this level of attention when they are making decisions of  
20 important financial and practical impact to their lives. This settlement involves real decisions  
21 about real cars, and real time must be spent by counsel to guide and assist consumers through the  
22 process. The numbers of such calls and other communications from the hundreds of thousands of  
23 Class Members are likely to increase significantly after the settlement becomes operational (if the  
24 Court grants final approval), and, as settlement implementation continues through the close of  
25 2018, substantial time and effort will be spent to ensure that Class Members are treated fairly in  
26 the process and receive their benefits expeditiously as their fix or buyback choices and decisions  
27 make this settlement's goals a reality.

28 Accordingly, to meet their obligations to their Class Member clients and the Court, as well

1 as to defend and promote the settlement itself, Settlement Class Counsel will continue to incur  
2 time and expenses. To address this reality fairly, Settlement Class Counsel's Rule 23(b)/common  
3 benefit fee application will include a proposed formula, such as the equivalent of a small  
4 percentage of payments made to Class Members, for the Court's consideration as reasonable and  
5 appropriate compensation for the settlement-related common benefit work to occur after the final  
6 approval hearing.

7 Dated: August 10, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on August 10, 2016, service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser  
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