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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

IN RE: VOLKSWAGEN "CLEAN)
DIESEL" MARKETING, SALES) NO. MD 15-02672 CRB
PRACTICES, AND PRODUCTS)
LIABILITY LITIGATION,)
_____)

San Francisco, California
Tuesday, October 18, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

Lieff Cabraser, Heimann & Bernstein
Embarcadero Center West
275 Battery Street, 29th Floor
San Francisco, CA 94111

**BY: ELIZABETH JOAN CABRASER
DAVID S. STELLINGS**

For Plaintiffs:

Robbins Geller Rudman & Dowd LLP
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
(561) 750-3000
(561) 750-3364 (fax)

**BY: PAUL J. GELLER
MARK J. DEARMAN**

For Plaintiffs:

Bleichmar Fonti & Auld, LLP
1901 Harrison Street, Suite 1100
Oakland, CA 94612

BY: LESLEY ELIZABETH WEAVER

Reported by: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter

1 **APPEARANCES:**

2 **For Plaintiff US Environmental Protection Agency:**

3 United States Department of Justice
4 Environmental and Natural Resources
5 Division

6 P.O. Box 7611
7 Washington, D.C. 20044-7611

8 **BY: JOSHUA H. VAN EATON**
9 **BETHANY ENGEL**

10 **For Plaintiff U.S. Federal Trade Commission:**

11 Federal Trade Commission
12 Bureau of Consumer Protection
13 600 Pennsylvania Avenue, N.W.
14 Mailstop CC-9528
15 Washington, DC 20580

16 **BY: JONATHAN COHEN**
17 **MEGAN BARTLEY**

18 **For Plaintiff People of the State of California:**

19 California Department of Justice
20 Consumer Law Section
21 455 Golden Gate Ave., Suite 11000
22 San Francisco, CA 94102-704
23 (415) 703-5500
24 (415) 703-5480

25 **BY: NICKLAS A. AKERS**
JUDITH FIORENTINI
JON WORM

For Plaintiff Wheels, Inc.:

Crowell & Moring LLP
3 Park Plaza, 20th Floor
Irvine, CA 92614
(949) 263-8400
(949) 263-8414 (fax)

BY: DANIEL ALLEN SASSE

For Plaintiffs Jerald Milenbach, Jody Iorns:

Casper, Meadows Schwartz & Cook
2121 N. California Boulevard, Ste. 1020
Walnut Creek, CA 94596
(925) 947-1147
(925) 947-1131 (fax)

BY: NICHOLAS JAMES CASPER

1 **APPEARANCES:**

2 **For Plaintiffs:**

Seeger Weiss, LLP
77 Water Street
New York, New York 10005
(212) 584-0700

4 **BY: CHRISTOPHER A. SEEGER**

5 **For Plaintiff A Plus Auto, LLC:**

6 Beasley Allen
218 Commerce Street
7 Montgomery, AL 36104
(344) 269-2343

8 **BY: W. DANIEL MILES, III**

9 **For Plaintiff Christopher J D'Angelo, et al.:**

10 Morris Polich & Purdy LLP
1055 W. 7th Street, #2400
Los Angeles, CA 90017
11 (213) 891-9100
(213) 488-1178 (fax)

12 **BY: DAVID JAMES VENDLER**

13 **For Plaintiff Daniel Ancona:**

14 Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
15 (203) 653-2250
(203) 653-3424 (fax)

16 **BY: SERGEI LEMBERG**

17 **For Plaintiffs Greg Siewert and Scott Siewert:**

18 Paul S. Rothstein
626 NE 1st Street
Gainesville, FL 32601
19 (352) 376-7650

20 **BY: PAUL S. ROTHSTEIN**

21 **For Plaintiffs Ramiro Banda, et al.:**

22 Davis Law Firm
10500 Heritage Boulevard, Suite 102
San Antonio, TX 78216
23 (210) 393-7592
(210) 870-1490

24 **BY: MARK STEPHEN CICHOWSKI**

25

1 **APPEARANCES:**

2 **For Plaintiff Rone Tempest:**

Hausfeld, LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
(415) 683-1908
(415) 358-4980 (fax)

5 **BY: MICHAEL P. LEHMANN**

6 **For Plaintiffs:**

7 Grant & Eisenhofer, P.A.
30 North LaSalle Street, Suite 1200
Chicago, IL 60602
8 (312) 0000
(312) 214-0001 (fax)

9 **BY: ADAM J. LEVITT**

10 **For Plaintiffs:**

11 Casey Gerry
110 Laurel Street
San Diego, CA 92101
12 (619) 238-1811
(619) 544-9232 (fax)

13 **BY: GAYLE M. BLATT**

14 **For Plaintiffs:**

15 Baron & Budd PC
Encino Plaza
15910 Ventura Boulevard, Suite 1600
16 Encino, CA 91436
(800) 887-6989
17 (818) 986-9698 (fax)

BY: ROLAND TELLIS

18 **For Plaintiffs:**

19 Bailey Glasser LLP
209 Capitol Street
20 Charleston, WV 25301
(304) 345-6555
21 (304) 342-1110 (fax)

BY: BENJAMIN L. BAILEY

22
23
24
25

1 **APPEARANCES:**

2 **For Plaintiffs:**

Roxanne Conlin & Associates, P.C.
600 Griffin Building
319 Seventh Street
Des Moines, IA 50309
(515) 283-1111

5 **BY: ROXANNE BARTON CONLIN**

6 **For Plaintiffs:**

Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1900
(206) 623-3384 (fax)

9 **BY: LYNN LINCOLN SARCO**

10 **For Plaintiffs John Labudde and Jing Labudde:**

Hyde & Swigart
2221 Camino Del Rio S, Suite 101
San Diego, CA 92108-3609
(619) 233-7770
(619) 297-1022 (fax)

13 **BY: JOSHUA B. SWIGART**

14 **For Plaintiffs:**

Motley Rice, LLC
28 Bridgeside Boulevard
Mt. Pleasant, SC 29464
(843) 216-9000

16 **BY: JOSEPH F. RICE**

17 **For Plaintiffs:**

Hagens Berman Sobol Shapiro, LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
(206) 623-7292
(206) 623-0594 (fax)

20 **BY: STEVE W. BERMAN**

21 **For Plaintiff Jolian Kangas:**

Frederic Ray Fletcher
417 2nd Street, Suite 204
Eureka, CA 95501
(707) 502-2642

24 **BY: FREDERIC RAY FLETCHER**

25

1 **APPEARANCES:**

2 **For Plaintiffs:**

Boies, Schiller & Flexner
333 Main Street
Armonk, New York 10504
1 (914) 749-8200
1 (914) 749-8300 (fax)

5 **BY: DAVID BOIES**

6 **For Plaintiffs:**

Carella Byrne, Cecchi, Brody & Agnello
5 Becker Farm Road
Roseland, NJ 7068
(973) 994-1700
(973) 994-1744 (fax)

9 **BY: JAMES E. CECCHI**

10 **For Plaintiffs:**

Finkelstein Thompson LLP
One California Street, Suite 900
San Francisco, CA 94111
(415) 398-8700
(415) 398-8704 (fax)

13 **BY: ROSEMARY M. RIVAS**

14 **For Objector Matthew Comlish:**

Competitive Enterprise Institute Center
1310 L St., NW, 7th Floor
Washington, DC 20005
(917) 327-2392

16 **BY: ANNA ST. JOHN**

17 **For Intervenor Ronald Clark Fleshman, Jr.:**

Law Office of James B. Feinman
1003 Church Street
Lynchburg, VA 24504
(434) 846-7603
(434) 846-0158 (fax)

20 **BY: JAMES B. FEINMAN**

21 **For Defendant Volkswagen:**

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

24 **BY: ROBERT J. GIUFFRA, JR.**

SHARON L. NELLES

25 **DIANE MC GIMSEY**

1 **APPEARANCES:**

2 **For Defendant Volkswagen:**

Herzfeld and Rubin
125 Broad Street, New York, NY 10004
New York, NY 10004
(212) 471-8500

4 **BY: MICHAEL B. GALLUB**

5 **For Defendants Robert Bosch GmbH and Robert Bosch LLP:**

6 Cleary Gottlieb Steen and Hamilton LLP
2000 Pennsylvania Avenue, N.W.
7 Washington, D.C. 20006

8 **BY: MATTHEW D. SLATER**

9 **For Defendant Porsche Cars North America:**

Alston & Bird LLP
1201 West Peachtree Street N.W.
10 Atlanta, GA 30309

11 **BY: CARI K. DAWSON**

12 **ALSO PRESENT: MAGISTRATE JUDGE JACQUELINE SCOTT CORLEY**

13 **ROBERT MUELLER, III, SETTLEMENT MASTER**

SHANNON WHEATMAN

14 **RICHARD CERICK, OBJECTOR**

GUNTER MIHAESCU, OBJECTOR

15 **JUSTIN BELTZ, OBJECTOR**

BETTY CARROLL, OBJECTOR

16 **MARK DIETRICH, OBJECTOR**

JASON HEGENER, OBJECTOR

17 **DANIEL MARTINEZ, OBJECTOR**

BLAIR STEWART, OBJECTOR

18 Multiple other counsel also present, both in person and via
19 telephone through CourtConnect, as reflected in the minutes
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1 Tuesday - October 18, 2016

8:00 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Please be seated.

5 Calling Case 15-0672, In Re: Volkswagen Clean Diesel
6 Marketing, Sales Practices, and Product Liability Litigation.

7 **THE COURT:** Okay. Good morning. Good morning,
8 ladies and gentlemen. Let me ask for your appearances; at
9 least, those individuals who are at counsel table.

10 **MS. CABRASER:** Good morning, Your Honor.
11 Elizabeth Cabraser. With me partner, David Stelling, and a
12 number of the members of the PSC in the audience today.

13 **THE COURT:** Okay.

14 **MR. GIUFFRA:** Good morning, Your Honor.
15 Robert Giuffra, Sullivan Cromwell, for the Volkswagen
16 Defendants. With me is Sharon Nelles, my partner; and
17 Diane McGimsey, also of Sullivan Cromwell. And then
18 Michael Gallub, of the Herzfeld & Rubin firm. We are
19 privileged to be here.

20 **THE CLERK:** Would you please --

21 **MR. SLATER:** Matthew Slater, Cleary Gottlieb, on
22 behalf of the two Bosch Defendants.

23 **THE COURT:** Well, they'll speak when they come up.
24 Yeah.

25 **MS. DAWSON:** Good morning, Your Honor. Cari Dawson,

1 Alston & Bird, for the Porsche defendants.

2 **THE COURT:** Good morning.

3 **MR. VAN EATON:** Good morning, Your Honor.

4 Josh Van Eaton, for the Department of Justice, representing the
5 United States, with my colleague Bethany Engel.

6 **MR. COHEN:** Jonathan Cohen, for the Federal Trade
7 Commission. With me this morning is my colleague,
8 Megan Bartley.

9 **MR. AKERS:** And good morning, Your Honor.
10 Nicklas Akers, for the People of the State of California. I'm
11 joined by my colleagues Judith Fiorentini and Jon Worm.

12 **THE COURT:** All right. Good morning. Let me remind
13 all of the parties that we are on CourtCall, which means that
14 people are all over the country; I guess from outside the
15 country, as well. Interested parties are listening to this
16 matter, rather than flying out to California. So when we
17 speak, we should obviously come up to the podium, and use the
18 microphone, and identify ourselves.

19 This morning has been set aside for the purpose of hearing
20 from not only the parties who are proposing a settlement of the
21 2-Liter Litigation, but any individuals who have objections to
22 this settlement, and who have filed a request to speak. And
23 there are approximately 20 -- well, I think fewer than 25,
24 ultimately, are here this morning. And we will hear from them
25 according to the procedure that has been outlined.

1 At the conclusion, so you have some sense of the schedule,
2 I'm going to ask the plaintiffs' representative -- the lead
3 counsel for the Plaintiffs Steering Committee, Ms. Cabraser, to
4 make her presentation; then turn to Mr. Giuffra, Volkswagen, to
5 speak on behalf of the proposed settlement. Then will here
6 from the objectors. And at the conclusion of the objections I
7 will also hear from other interested parties who have -- the
8 Department of Justice, EPA, CARB, the Federal Trade Commission,
9 who may have some comments, as well, in response to some of the
10 things that have been said.

11 So with that, let me get under way. I have a list here.
12 And I'm just going to go down the list in the order in which
13 they signed up this morning. And we'll start with
14 Blair Stewart.

15 **MR. STEWART:** Here (indicating).

16 **THE COURT:** Would you come forward, please? Thank
17 you. And if you'll identify yourself, Mr. Stewart, and who
18 you're speaking on behalf of. And I want to remind you that
19 you have two minutes to make your presentation.

20 I also think I should say, because two minutes is not by
21 any stretch of the imagination a lengthy time, I have before me
22 the objections that have been filed. Some of them have been
23 lengthy. There has been no restriction in terms of the filing
24 in connection with that. And I will consider that what has
25 been said in terms of the objections are objections, and they

1 ought to be taken into consideration in the Court's
2 determination as to whether or not to approve the settlement as
3 written, or to suggest any modifications or changes in the
4 settlement.

5 So, Mr. Stewart, you may proceed.

6 **MR. STEWART:** Thank you, Your Honor. Blair Stewart,
7 from Palo Alto, California. I'll speak to the repurchase
8 price, and to a penalty payment for VW's fraud.

9 VW defrauded the owners, and the remedy should be
10 rescission. Owners should receive the actual purchase price
11 they paid. That puts the parties back in their original
12 position. And VW, of course, should bear the liability for the
13 entire in-service life of these cars, which -- the older cars
14 have, by necessity, put out more pollution in total than the
15 newer cars. Repurchase at the rescission price captures this
16 liability, and adds a strong incentive for VW and others to
17 comply with environmental laws.

18 If the Court chooses not to award rescission, then the
19 repurchase price should be based on the replacement cost of the
20 car; what it would have cost an owner in September of 2015 to
21 buy an equivalent car. This is a retail cost of the customer,
22 not the smaller trade-in value. Clearly, the owner should get
23 enough money to replace the car.

24 In any event, since the NADA dealers -- is the dealers
25 organization, the owners should receive the higher prices that

1 we'll find in the *Kelley Blue Book* and the NADA guide.

2 Missing from the settlement is a penalty payment for the
3 original owners. This was no inadvertent mistake by VW. This
4 was a program of deception spanning almost 10 years, and
5 involving VW's management, engineers, marketing; and was
6 calculated and intentional. Fraud is fraud, and should not go
7 unpunished. There should be a significant penalty payment.
8 And it should go to all of the original buyers.

9 To sum up, the purchase price should be treated as a
10 rescission at the original purchase price, and there should be
11 an added substantial penalty for fraud.

12 Thank you, Your Honor.

13 **THE COURT:** All right. Thank you, Mr. Stewart.

14 You know, I see that I violated the very thing that I
15 started out to do, which was to first have the Class Counsel
16 and VW respond. However, I didn't want to interrupt your
17 remarks midway. I do have them in mind.

18 Let's turn to plaintiffs' counsel and to VW. And if you
19 want an extra 30 seconds to respond, I'll certainly give it to
20 you.

21 **MR. STEWART:** Thank you, Your Honor.

22 **THE COURT:** Okay. Thank you very much.

23 So, Ms. Cabraser, as originally scheduled, would you come
24 forward?

25 **MS. CABRASER:** Thank you, Your Honor. Good morning.

1 Elizabeth Cabraser, on behalf of the PSC. And I have to note
2 at the outset that Mr. Stewart put most lawyers to shame. He
3 came in under the two-minute time clock. I'm going to do my
4 best to be as brief as possible.

5 We are here on the final approval hearing of the 2-liter
6 class-action settlement. You have an extensive record before
7 you, Your Honor, including declarations from
8 Edward M. Stockton, the Vice President of Fontana Group, a
9 leading auto retail industry expert economist who was with the
10 parties throughout the negotiating process, and probably -- I
11 won't say "probably" -- knows more about cars and car values
12 than anyone in the country today, matched perhaps only by
13 Volkswagen's counterpart.

14 This was a settlement that was negotiated down to the VIN
15 of the cars, with extensive data, as detailed in Mr. Stockton's
16 Declaration. And, as he notes in his Declaration, the bottom
17 line of this settlement is retail replacement value of these
18 cars; in fact, at least 112.6 percent of that retail
19 replacement value, so that for those who elect to buy back
20 under the settlement, their total payment enables them to
21 purchase a similar car of similar vintage, mileage, condition,
22 or better.

23 So although we use as a starting point the NADA clean
24 trade/NADA CTI, to start that process by the end of the
25 formula, we get to replacement value plus. And I think that

1 bottom line is echoed in the Federal Trade Commission's
2 submissions, because that was their goal, as well: To enable
3 people who elected the buyback to replace their cars.

4 We have also submitted a declaration from Professor
5 Andrew Kull, who is the nation's leading authority on
6 rescission, restitution, and unjust enrichment. He literally
7 wrote the book -- the American Law Institute's Restatement
8 Third of Rescission and Restitution -- who surveyed the law
9 with respect to the rescission aspect in argument of these
10 cases. And I won't repeat his very scholarly and lengthy
11 Declaration.

12 Following me will be Shannon Wheatman, who designed,
13 submitted, and has now implemented the class action settlement
14 notice program that Your Honor approved. And Dr. Wheatman will
15 give a brief report on that.

16 With respect to the objections, we asked Professor
17 Robert Klonoff, a leading authority on class actions and class
18 action settlement, who's had a stellar career both in the
19 Solicitor General's Office before the Supreme Court, as a
20 defense attorney at Jones Day, as a plaintiffs' litigator, as a
21 law school dean, and now as a good citizen of Portland, Oregon,
22 the environmentally conscious hub of the nation, second only to
23 Northern California, and Professor at Lewis and Clark Law
24 School, to read and consider and respond and opine on every
25 single one of the letter objections that we got from Class

1 Members, and you have his declaration.

2 Director Mueller, our Settlement Master, has also
3 submitted a Declaration that describes the nature and scope of
4 the negotiating process, to demonstrate to the Court that the
5 settlement process, itself, was at arm's length, free from
6 collusion, and the converging and joint efforts of a number of
7 different parties representing not only the consumers,
8 themselves, but the federal and state governments, to come up
9 with a set of related settlements that you have before you in
10 various forms for approval.

11 We're focusing on the class action settlement, but a
12 footnote to everything I say is that the class action
13 settlement is a part of a set of related settlements.

14 The Department of Justice has called this a unique event.
15 It certainly is unique and uniquely necessary for federal,
16 state governments, and the consumers, themselves, to join
17 together as they have to come up with a comprehensive plan to
18 fulfill the mantra of this litigation, which is to fix the cars
19 or get them off the road, and to do so in record time.

20 Your Honor, the Volkswagen emissions scandal erupted last
21 September, almost 13 months ago literally to the day.

22 We are now here for final approval of a settlement that,
23 for over 475,000 2-liter cars, will do just that. It will fix
24 the cars or get them off the road, through the mechanism of
25 consumer choice whether to participate in the buyback, or

1 whether to participate in emissions modifications, if and when
2 those become available.

3 Oftentimes, when we ask Courts to consider final approval
4 of settlements, we talk about the reaction of the Class. And
5 many times in consumer class actions, that reaction is largely
6 silence. We take that silence as consent, because it's the
7 best proxy that we usually have to say, *Do the Class Members*
8 *like the settlement? Do they appreciate the settlement? Will*
9 *they use the settlement? Will it deliver the benefits that it*
10 *promises?*

11 We have a very different set of metrics for Your Honor
12 this morning, because we have affirmative responses. We have
13 as of last week, October 13th, 2016, 336,612 registrations for
14 settlement benefits. Those include 11,199 current lessees;
15 1,715 former lessees; 18,045 eligible sellers, up from our last
16 number of 13,992; 1,128 Class Members with military addresses,
17 servicepersons serving overseas who'll be able to participate
18 in the buyback or fix in a way that's convenient to them.

19 Just to look at several of the largest states, there are
20 48,400 registrations from California, 24,435 from Texas, 14,571
21 from New York, 18,467 from Florida, 14,903 from Pennsylvania,
22 and from Virginia 11,102.

23 Over 130,000 calls have been made to the settlement call
24 center. That's about 2,000 a day.

25 There have been well over 1 million unique visits to the

1 settlement website. That's about 7,000 a day.

2 We do have opt-outs from the settlement. At last count,
3 approximately 3,200 opt-outs. That number is going down as
4 former Class Members request to revoke their opt-outs, and come
5 back into the Class.

6 Registrations seem to be running at the rate of about
7 22,000 per week. And for most Class Members, there is no
8 deadline in sight.

9 This is not the spike before the deadline. The deadline
10 for owners is September 1st, 2018. They have almost two years
11 to come into the program. They certainly have that length of
12 time to make up their mind what they want to do -- buy back, or
13 fix -- but yet they are here. They are here, waiting for the
14 settlement to be approved and to be implemented with all
15 possible dispatch.

16 Yes, we have objections to the Class. This is a
17 settlement that has captured the hearts and minds and the
18 emotions and interests not only of the public, but the Class
19 Members, themselves. And people have spoken out.

20 Professor Klonoff has looked at approximately 462 of these
21 objections.

22 We made the objection process easy for Class Members.
23 They simply needed to write a letter to the Court and counsel.
24 They didn't need to file anything. A few did file; most did
25 not.

1 Every objection has been reviewed and considered. Every
2 objection is important and entitled to consideration. And we
3 respect and appreciate the Class Members that have voiced their
4 concerns regarding the settlement. I know we'll be hearing
5 from some of them this morning.

6 That said --

7 And we'll respond more specifically to what we hear.

8 That said, Your Honor, this settlement amply meets the
9 prevailing Ninth Circuit standards for final approval of a
10 class action settlement. The Ninth Circuit asks the Court to
11 consider the strength of the case; the risk, expense,
12 complexity, and likely duration of further litigation; the risk
13 of maintaining class action status throughout trial; the amount
14 offered in settlement; the extent of discovery completed and
15 the stage of the proceedings; the experience and views of
16 counsel; the presence of a government participant; and the
17 reaction of the Class Members to the proposed settlement as
18 factors in determining whether a settlement is fair, adequate,
19 and reasonable. The relative degree of importance to be given
20 to each of these factors will vary under the circumstances of
21 the case.

22 The Court also needs to be satisfied that the settlement
23 was reached in a procedurally fair manner. And we submit to
24 Your Honor, given your ongoing information about and
25 involvement in the proceedings, and our guidance, and

1 facilitation from Settlement Master Mueller, that we have met
2 the standard for both procedural fairness -- the settlement
3 speaks for itself, with respect to substantive fairness.

4 This is a very strong case. We're not discounting for a
5 weak case. Litigation would be complex. It would be risky.
6 It would be lengthy. And we know that time is of the essence
7 in this case. What is important is to stop and reduce the
8 ongoing harm to the environment, and to enable the consumers to
9 get compensation while their cars are still in existence. So
10 speed mattered to us.

11 I think we've set a land-speed record -- probably an
12 air-speed record, as well -- in bringing this resolution to
13 Your Honor.

14 Cars depreciate. Cars age in "dog years," as compared to
15 people. But even people shouldn't have to wait years for what
16 might ultimately be a perfectly perfect resolution, when a
17 resolution of this strength and responsiveness can be had now
18 without risk, without further cost to the plaintiffs, and
19 without delay.

20 And we believe, while it isn't always the most important
21 factor what Class Members have to say about the settlement,
22 because so often they don't say much, in this case they have
23 spoken resoundingly in favor of the settlement, and desire its
24 immediate implementation.

25 I'm going to ask Dr. Wheatman to give a very brief report

1 on the implementation of the notice program.

2 **THE COURT:** Thank you.

3 **DR. WHEATMAN:** Good morning, Your Honor.

4 **THE COURT:** Good morning.

5 **DR. WHEATMAN:** So my name is Shannon Wheatman. And
6 I'm the President of Kinsella Media. We are the firm that was
7 chosen to be the notice provider in this case.

8 Now, the reach of the Class through direct notice in
9 national and local newspapers, Hispanic and African-American
10 newspapers, along with online targeted advertising provided
11 multiple exposures to the notice.

12 Let's talk a little bit about the notice. There were
13 811,944 mailings sent to owners and lessees of eligible
14 vehicles; eligible sellers, and non-Volkswagen and non-Audi new
15 and used car dealerships. If a notice was returned with a
16 foreign address from the United States Postal Service, then
17 that notice was remailed. All other undelivered mail was sent
18 through an advanced address search to find a better address.
19 And if a better address was found, then we sent a new notice.
20 To date, 98 percent of the mail notices have been delivered.

21 In addition, we sent 453,797 e-mails to people who had
22 registered at the settlement website, as well as individuals
23 who had provided their e-mail address to Volkswagen or Audi as
24 part of the goodwill program. And 95.6 percent of those
25 e-mails have been delivered.

1 Now, to supplement the direct notice campaign, there were
2 125 newspaper insertions of the Short Form Notice, and 123 of
3 those insertions were in color.

4 There also were over 112 million Internet impressions or
5 opportunities for people to see a banner advertisement about
6 the settlements online. The banner advertisements were sent
7 through online networks such as Google, social-media networks
8 Facebook, Instagram, Twitter and LinkedIn, and specifically
9 targeted to owners and lessees of the eligible vehicles,
10 dealerships, and fleets. The banner ads were placed on
11 relevant car sites, on the National Automobile Dealers'
12 Association, or NADA, website, on *Hemmings Motor News*, *Kelley*
13 *Blue Book*, *Automobile*, *Car and Driver*, *Motor Trend*, and *Road &*
14 *Track*. And the banners also appeared on the National
15 Association of Fleet Administrators website, and websites
16 associated with automotive fleets, automotive news, and auto
17 rental news.

18 While Facebook, Instagram, and Twitter were used to target
19 consumers, LinkedIn ads were targeted to dealerships, NADA
20 members, and fleet professionals. And in total, there were
21 250,724 clicks on these banner ads that took people over to the
22 settlement website. And to date there have been over
23 1.3 million unique visitors to the settlement website.

24 Now, on top of all of this, we were very fortunate that
25 every major newspaper and television network covered the

1 Volkswagen settlements. In the two and a half months after the
2 settlement agreements were filed on June 28th, there have been
3 17,410 news stories about the Volkswagen settlement on media
4 outlets in the United States.

5 So my opinion, Your Honor, is that the numbers speak for
6 themselves, and show the breadth, comprehensiveness, and
7 efficacy of the notice program.

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

9 **DR. WHEATMAN:** Thank you.

10 **MS. CABRASER:** Your Honor, back when you granted
11 preliminary approval to the settlement on July 29th, 2016, you
12 conditionally certified under Rule 23(b)(3) --

13 **THE COURT:** I think you have to hold the mic.

14 **MS. CABRASER:** -- the Consumer Class conditionally
15 for settlement purposes. We ask you to confirm that
16 certification for settlement purposes today.

17 And I'm asking PSC member Paul Geller to make a very brief
18 presentation on the settlements requirements of Rule 23.

19 **THE COURT:** Okay. Thank you.

20 **MR. GELLER:** Good morning, Judge. So as you know, on
21 July 26th at the preliminary approval hearing I ran through the
22 requirements of Rule 23; specifically (b)(3). And Your Honor
23 granted certification for preliminary settlement purposes. So
24 now, as Ms. Cabraser said, we ask Your Honor to certify the
25 Class for final settlement purposes.

1 The law is clear that in the settlement context, even more
2 so than a litigating class, the protections that are designed
3 to protect absent Class Members need to be thoroughly vetted.
4 And we start with Rule 23(a), which has four requirements.
5 There's no dispute that we meet them.

6 Numerosity. We know how many vehicles: 475,754.

7 The commonality and typicality requirements. And again,
8 I'll be brief, unless Your Honor wants me to slow down.

9 **THE COURT:** Okay.

10 **MR. GELLER:** We went through all of that on
11 preliminary approval, but clearly this satisfies those prongs.

12 And then the adequacy requirement under 23(a)(4), which
13 requires that the Class representatives adequately and fairly
14 represent the interests of the Class, and, as well, that Class
15 counsel adequately represents the Class.

16 We had -- we have 75 Class representatives hailing from 39
17 states that have done everything that would be required of a
18 Class representative. The lawyers, under Ms. Cabraser's
19 leadership, were appointed by Your Honor, you know, starting
20 from a hearing in this Ceremonial Courtroom, where it was
21 competitive. 150 applicants. And Your Honor considered a
22 number of factors, including our experience, in appointing this
23 PSC.

24 After the 23(a) requirements, we turn to 23(b). And, as
25 Your Honor nose, we've asked for a 23(b)(3) certification on a

1 nationwide basis. Nationwide.

2 The Court has jurisdiction over a nationwide Class under a
3 number of reasons. We satisfy CAFA. We have federal claims,
4 like RICO and Magnuson-Moss. And, of course, we have state-law
5 claims that -- Your Honor would exercise jurisdiction under the
6 supplemental jurisdiction statute; but because there's original
7 jurisdiction under CAFA, that's not even required.

8 Under 23(b)(3) we have two additional requirements. They
9 are predominance and superiority; "predominance" meaning that
10 the common questions of law and/or fact predominate over any
11 individual questions. No question that here, that's met.

12 Common course of conduct. The defeat device to be proved
13 by common evidence. And all of the Class Members share the
14 common harm.

15 The superiority requirement -- and this will be the
16 subject of at least one of the objectors, who claim that the
17 class action was not the superior method of adjudicating these
18 claims.

19 I find that, sort of -- you know, I'm curious to hear what
20 they have to say. I've read what they've said. But in my
21 experience, this is the poster child for a class action being
22 the superior method of adjudication. I think 900 cases were
23 transferred to Your Honor in the MDL. There were -- there
24 literally could have been hundreds of thousands of lawsuits if
25 it were not for consolidation and class action.

1 As Ms, Cabraser said, we already have 300,000 participants
2 in the settlement at the very early stage, with two years to
3 go. They're signing up at over 20,000 per week; so that these
4 are Class Members that care, that are active, that wanted their
5 rights protected. And if it weren't for the class action,
6 there would have been just, you know, thousands and thousands
7 of possibly conflicting cases.

8 So all of the requirements of 23(a) and 23(b)(3) are
9 satisfied. And so as part of the final approval, I'm going to
10 ask Your Honor to certify a nationwide Class under 23(b)(3).
11 Thank you.

12 **THE COURT:** Thank you.

13 Anything further from the Plaintiffs Steering?

14 **MS. CABRASER:** Not at this point, Your Honor. We'd
15 like to reserve time to respond to the objectors at the end of
16 those presentations.

17 **THE COURT:** So Mr. Giuffra.

18 **MR. GIUFFRA:** Good morning, Your Honor,
19 Robert Giuffra, for the Volkswagen Defendants.

20 It's hard to believe, Your Honor, it was nearly ten months
21 ago that we were in this courtroom when you had the long
22 hearing to select the Plaintiffs Steering Committee. And when
23 I think about everything that's happened in the last ten
24 months, it's really quite remarkable. This has been called the
25 biggest settlement in automotive history, and it may well be

1 one the biggest settlements in consumer history in the
2 United States.

3 On behalf of Volkswagen, I want to thank the Court and
4 Director Mueller for all you have done to bring about this
5 settlement. This settlement is something that I think is very
6 good for -- and the company believes is good for consumers.
7 It's good for the environment. And it's a way for Volkswagen
8 to regain the trust of its customers, the American people,
9 regulators, and to do right by the environment.

10 And when you just look at the support, this settlement has
11 44 Attorney Generals. State Attorney Generals have indicated
12 their support for this settlement, all across the
13 United States: Blue States, Red States. If this were an
14 election, Your Honor, clearly approval for the settlement would
15 be by a landslide.

16 Ms. Cabraser gave the numbers, but they bear repeating.
17 339,751 so far. And the number's growing by the day.

18 The number of opt-outs, tiny: 3,200. And we hope that
19 number comes down. And we welcome the opt-outs to participate
20 in the settlement.

21 And the number of objectors, Your Honor, is less than
22 one-tenth of one percent.

23 And that's not surprising, given the nature of what this
24 settlement is. This is a settlement that was done on a
25 coördinated basis with federal environmental regulators, state

1 environmental regulators, the FTC, the State Attorney Generals,
2 the PSC. And we all worked extremely hard to try to bring this
3 about.

4 And when you think about the size of this settlement --
5 not a single deposition was ever taken -- we really worked from
6 Day One to bring about a settlement that would be right by
7 consumers, right by the company, and do the right thing.

8 And Your Honor appointed an all-star cast of PSC members;
9 you know, some of the best plaintiffs' lawyers in America.

10 We had literally -- I like to call it almost, you know,
11 one four-month meeting; but essentially we negotiated for a
12 very many months. And Director Mueller's Declaration sets out
13 quite clearly the extensive amount of back-and-forth meetings
14 into the late night.

15 Like any settlement, this is a product of compromise. And
16 there were lots of compromises that had to be made.

17 And we think on -- when you look at this under any
18 circumstance, this is a fair and reasonable settlement for
19 consumers. As Ms. Cabraser said, they have choice in this
20 settlement. They have the ability to have their cars be bought
21 back. They have the opportunity, assuming we can get approval
22 from the federal and state regulators, to have it approved
23 emissions modification if they want to keep their cars. Every
24 consumer will receive a restitution payment on top of either
25 getting the car fixed, or the buyback amount. And this

1 settlement provides for, you know, massive relief to consumers,
2 and needs to be looked at in the context of the federal and
3 state regulatory approvals.

4 Your Honor, just to assure the Court, Volkswagen has
5 dedicated substantial resources to making sure that this
6 settlement is successful. We have close to 900 people
7 dedicated to making sure it works. There will be a dedicated
8 person in every dealership who'll assist consumers when they
9 want to, you know, bring their car back. The company is very
10 committed to making this work.

11 Upon final approval of the settlement, Your Honor,
12 customers will be able to submit claims immediately, and will
13 begin that process. We're hopeful that process will go
14 smoothly.

15 Obviously, given the sheer scale of this -- I mean, this
16 is a huge process that had been built up from scratch. There
17 may be some glitches along the way. We've been working
18 extremely closely with the Plaintiffs Steering Committee and
19 the FTC on the implementation of the settlement, so we're
20 hopeful it will be successful.

21 We're continuing to work closely with EPA and CARB on the
22 approved modification of getting that approval, so people can
23 get the cars fixed who want to get them fixed.

24 And we're obviously -- I think this is an issue,
25 Your Honor, I should just mention for a moment. We're

1 continuing to work closely with EPA CARB on the 3-liters. We
2 haven't forgotten about the 3-liters. This settlement is
3 475,000 cars. 3-liters are about 80,000 cars. We're looking
4 forward to seeing Your Honor on November 3rd, and we'll be
5 working between now and November 3rd so that we have hopefully,
6 you know, some positive things to say to Your Honor on
7 November 3rd.

8 But to sum up, Your Honor, the United States is a corps
9 market for Volkswagen. The company wants to do right by its
10 customers. We think this settlement is in the interests of our
11 customers. We think it will be a way for our customers to be
12 compensated, and gives them choice.

13 And, Your Honor, I'd like to reserve just a bit of time to
14 respond to the objectors, many of which, Your Honor, are really
15 just, you know, people essentially questioning compromises that
16 were made; but ultimately when one looks at this settlement, it
17 is a very fair and reasonable settlement, and in the public's
18 interest, and in the interests of Class Members.

19 Thank you.

20 **THE COURT:** Thank you, Mr. Giuffra.

21 So let me now return to the objectors.

22 Mr. Feinman. James Feinman.

23 **MR. FEINMAN:** May it please the Court, Your Honor, my
24 name's James B. Feinman of Lynchburg, Virginia. It's an honor
25 to be here before you.

1 Quite simply, my client, Mr. Fleshman, said if it were not
2 for the Clean Air Act, none of us would be here today; but yet
3 the consolidated consumer class action Complaint does not
4 allege any cause of action under the Clean Air Act.

5 The Clean Air Act provides multiple warranties to each
6 consumer which Volkswagen admits they cannot fulfill. Under
7 our reading of the Clean Air Act, the sale of a vehicle with a
8 defeat device is prohibited. It cannot be allowed. Under our
9 reading of the Clean Air Act, the use of a vehicle with a
10 defeat device cannot be allowed. It is our view that this
11 settlement allows the sale to go through, when it must be
12 rescinded. And it allows hundreds of thousands of vehicles to
13 remain in use when they cannot be allowed to remain in use.

14 The Clean Air Act, as the Court knows, is enforceable by
15 any citizen. This proposed settlement is going to release the
16 claims of all of the consumers before the Clean Air Act, in our
17 view is enforced. We believe that to be unconscionable. And
18 it would be a second deception on the part of the consumers.
19 The consumers do not have the choice to choose something that
20 does not exist; i.e., a repair. And they do not have the
21 choice to say that the sale can go through, when Congress says
22 it cannot.

23 The silence or the approval of the Class, as represented
24 by the Plaintiffs' Steering Committee, we believe, is not true,
25 because none of them have been formed on the Clean Air Act, and

1 they are subject to considerable exposure when it is enforced.

2 I appreciate your time.

3 **THE COURT:** Thank you.

4 Daniel Sasse.

5 **MR. SASSE:** May it please the Court. Daniel Sasse,
6 Crowell Moring, on behalf of Wheels, Inc.

7 Your Honor, Wheels, Inc., is the largest manager and owner
8 of corporate automotive fleets in America, and likely in the
9 world. It has over 1.6 million vehicles under management; and
10 it has 5,000 relevant 2-liter VWs at issue here. So we account
11 for nearly 1 percent of the Class, Your Honor. So to say
12 one-tenth of 1 percent has objected is not correct, Your Honor.
13 We, alone, are 1 percent in raising an objection.

14 And, Your Honor, we're not objecting to the -- to the
15 settlement, itself. We're trying to raise an issue as to the
16 administration of the settlement in a single-rifle-shot issue
17 for Your Honor and for the administrators in this case.

18 Specifically, Your Honor, we're asking that the
19 administrators and that the Class Members rely on actual
20 odometer data when there are contemporaneous business
21 records available. Wheels runs fleets for most of the
22 corporate 500 America, for many of the corporate 500 in
23 America, and has very specific, accurate data on what their
24 odometers are.

25 Rather than an assumption of 12,500 miles per year, which

1 is not accurate for the actual odometer readings and for the
2 calculations at use, we simply ask this Court to rely on
3 actual, contemporaneous business records which can be audited
4 and fully substantiated in determining the calculations.

5 There has never been a Class settlement. And Class
6 Counsel's quite right. This is one of the largest settlements
7 ever that has refused and rejected actual data in exchange for
8 assumptions or calculations. The data here is very accurate.

9 We appreciate that to do this for 500,000 consumers may
10 not be relevant, may not be time efficient; but here for Wheels
11 and its members, this is more than an \$8 million delta in the
12 value of the vehicles. And the data is extremely accurate and
13 can be authenticated.

14 Thank you, Your Honor.

15 **THE COURT:** Let me ask you a question.

16 The value of the vehicle, as I understand the proposed
17 settlement, was set the day before the discovery that
18 contemporaneously -- not again, I think, before -- before the
19 disclosure of the -- of a fraud based upon a Blue Book
20 calculation. I think it's the auto dealers' Blue Book.

21 **MR. SASSE:** In the NADA. Yes, Your Honor.

22 **THE COURT:** Like a *Kelley Blue Book*, but it's
23 actually slightly different than the *Kelley Blue Book*.

24 And this is a standard industry practice, in the sense
25 that frequently car dealers all across the country, for any

1 kind of vehicle, use this book. It's not Volkswagen's book;
2 it's a book used universally.

3 Does that book reflect any calculation as to average
4 mileage in arriving at the valuation?

5 **MR. SASSE:** I'm not sure, Your Honor, whether that
6 book assumes an average.

7 What it does is look at a specific mileage.

8 So if you and I, Your Honor, both turn in our VWs at
9 50,000 miles --

10 **THE COURT:** Actually, I don't have one.

11 **MR. SASSE:** That's probably a good clarification.

12 If I and another person both turn in our vehicles at
13 50,000 miles, Your Honor, and that person actually drove the
14 12,500 miles assumed, they will be compensated on a vehicle
15 that has 37,500 miles, for example; whereas if I actually drove
16 20,000 miles during that last 13, 15 months, through no fault
17 of my own -- I'm a corporation. I have to have this car. It's
18 for work. I have not been provided any alternative. So what's
19 happened over the last 13 or 14 months is no fault of my own.

20 We are trying to return people to the September 18th date.
21 That is the touchstone of this settlement. And to get there, I
22 have actual, verifiable evidence that my odometer was
23 30,000 miles on September 1st.

24 We don't have to assume. We don't have to look at
25 industry averages. It may be that some of my 5,000 vehicles

1 have less than 12,500. It may be that many of them have more
2 than that. But I have actual evidence that doesn't have to be
3 assumed in any industry-standard way. That should be allowed.

4 **THE COURT:** Fine. And I'll ask the parties to
5 address that issue.

6 Thank you.

7 **MR. SASSE:** Thank you, Your Honor.

8 **THE COURT:** Mark Dietrich. Mr. Dietrich.

9 **MR. DIETRICH:** Good morning, Your Honor, my name is
10 Mark Dietrich, San Francisco. And I'm an angry vehicle owner.

11 In 2010, just prior to the arrival of my first baby, my
12 wife and I researched cars to support our growing family. With
13 an eye towards the future, we wanted an environmentally
14 conscious car that we could drive for 15-plus years. Taking
15 Volkswagen at their word, we drank up their marketing materials
16 and their promises of clean diesel, and paid a premium for a
17 2011 Audi A3 TDI. We got played the fool.

18 My first objection to the settlement is that it does not
19 go far enough. I object that my buyback value is being
20 determined as of September 18th, 2015; the date that Volkswagen
21 got caught. While it might have relevance for those who sold
22 their cars, for me this data is absolutely irrelevant. My car
23 has been polluting and breaking emissions laws since the day I
24 drove it off the lot.

25 Volkswagen's deceit did not start on September 18th. For

1 me it started when I began researching vehicles to buy.
2 Volkswagens lies and deception weren't just programmed into the
3 emissions software. They were plastered across the marketing
4 materials that let me to choose a TDI, and they were even
5 written on a sticker on the back of my car, with the words "TDI
6 Clean Diesel." Reimbursing me for my car's value on that day
7 is tantamount to saying that their behavior was perfectly
8 acceptable on September 17th.

9 This is a fairness hearing, and this is what I think is
10 fair. Because my car egregiously does the exact opposite of
11 what Audi told me it did -- and the very reason I bought it --
12 reimburse me for the value I paid to purchase my car. The
13 restitution amount is insufficient to make me whole.

14 My second objection is this. In order to drive my TDI
15 here legally today, I had to renew my car's 12-month California
16 registration just ten days ago, including paying for a smog
17 test. Oh, the irony. Will California refund the unused
18 portion of my registration when I sell my car back to Audi?
19 No, they won't.

20 So what's fair to me? The full purchase price of my
21 vehicle, plus the unused portion of my registration expenses.

22 Thank you, Your Honor.

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

24 Mr. Beltz. Justin Beltz.

25 **MR. BELTZ:** Good morning, Your Honor. I'm here today

1 because the portion of the settlement that addresses eligible
2 seller compensation and that for the new owners of their
3 vehicles is unconscionably unbalanced.

4 The fundamental problem here is that the current
5 settlement structure sets up compensations so that the only way
6 that you're reimbursed for the lost value of your vehicle is in
7 exchange for a buyback; but the key characteristic of eligible
8 sellers is that the change of ownership happened after that
9 drop in value.

10 Look at the 2014 Passat that I owned and sold. I lost
11 nearly \$8,000 of value between September 18th and when I sold
12 it in April. And the settlement aims to provide only \$3,500;
13 half the owner restitution amount.

14 Conversely, the new owner, who purchased the car for
15 around \$15,000, is provided \$27,000 of compensation.

16 There is no valid justification for this lucrative of a
17 payout.

18 This unfairness can be mitigated by simple changes to the
19 compensation approach. Owner restitution should be unchanged,
20 split 50:50; but the buyback offer for the new owner should be
21 set at their purchase price, so that protects them from loss,
22 but no lucrative payoff.

23 The remaining portion of the pre-scandal value should go
24 to the eligible seller, because it directly corresponds to the
25 actual loss that has already been realized on that car.

1 This change to the settlement increases fairness, with no
2 increase to Volkswagen's payout, and still supports the
3 settlement goals, where buyback is still, by far, the best
4 option for the current owner of the car. No one forced
5 eligible sellers to sell their vehicles, but there are
6 compelling reasons why they may have done so, and they
7 shouldn't be penalized.

8 Their values for their vehicles dropped not because they
9 sold their car. It was because of Volkswagen's misconduct.
10 And to make being compensated for that loss contingent on
11 continued ownership of that faulty product is wrong.

12 Settlements inherently involve compromise, but the current
13 structure for eligible sellers -- 18,000 plus of us -- is far
14 outside the bounds of a fair or reasonable approach. And I
15 urge the Court to withhold approval of the settlement until
16 this is addressed.

17 **THE COURT:** Thank you.

18 Mr. Nick Casper.

19 **MR. CASPER:** Thank you, Your Honor. Nick Casper, of
20 Casper Meadows Schwartz and Cook, on behalf of claimants
21 Jody Iorns and Jerald Milenbach.

22 In April 2015 claimants purchased a new Volkswagen Passat
23 TDI from Volkswagen of Oakland. They agreed to purchase the
24 vehicle for \$35,002.28; a hefty sum compared to competing
25 models, but it was a premium that claimants were willing to pay

1 for the clean diesel technology, and for the VW reputation.

2 As we have all known since September of last year, this
3 sale to claimants was secured through VW's fraud. The vehicle
4 that claimants thought they purchased was a fiction. Yet in
5 the proposed settlement VW is entitled to a full loan offset,
6 as if this sales contract was one not induced through
7 fraudulent conduct, and was not for the sale of a fictional
8 clean diesel vehicle.

9 After VW takes a 100-cents-on-the-dollar offset for the
10 loan obligation, claimants are left with only \$3,068.57; less
11 than half of the restitution amount.

12 Furthering the inequity, the loan is owed to VW Credit, a
13 division of VW, itself; not to a third-party financing company.

14 In this case the laws of contract clearly would allow for
15 full contract rescission or even disgorgement of prior payments
16 made to VW, but claimants appreciate that the settlement
17 calculus was in part aimed at keeping VW afloat to live another
18 day, so that the previously esteemed company would continue to
19 exist to settle this case, and maybe redeem itself in the eyes
20 of consumers over the ensuing decades. But claimants do not
21 think that a full loan offset to VW is fair, reasonable, or
22 adequate.

23 Claimants urge that a floor be established for the offset,
24 set at the full restitution amount, or set at \$7,352 in their
25 case. They urge for a greater semblance of fairness in the

1 settlement, and believe that this full restitution amount
2 strikes that balance.

3 Thank you.

4 **THE COURT:** Thank you.

5 Joshua Swigart.

6 **MR. SWIGART:** Good morning, Your Honor.

7 Josh Swigart, of Hyde & Swigart. And I represent Mr. and
8 Ms. Labudde, along with approximately 153 other similarly
9 situated consumers.

10 I think our objection arises from what's perhaps a slight
11 oversight in the settlement, and really what my clients don't
12 know. Mr. and Ms. Labudde were represented by our firm prior
13 to the class action settlement, where we had filed a case on
14 their behalf against VW.

15 Once the MDL was granted and the settlement preliminarily
16 was approved, we shepherded them through the settlement
17 process, where they chose to opt in. And so their question to
18 me was: Are they responsible for our fees?

19 And the way the settlement sits right now, without a
20 pending fee petition, I can't answer that question.

21 So our clients would object, or at least make a request
22 that at the time that a fee petition is submitted, that the
23 Court provide a carve-out and allow consumers who were
24 previously represented by counsel to also petition for fees.
25 This way, that -- the consumers that were previously

1 represented won't be unfairly saddled with those attorneys'
2 fees, Your Honor.

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

4 Jason Hegener. Excuse me if I'm mispronounce names, which
5 I'm sure I'm going to do.

6 **MR. HEGENER:** Good morning, Your Honor. My name is
7 Jason Hegener, from San Francisco. I am an eligible seller,
8 who sold this car back to Volkswagen after September 18th,
9 2015.

10 The settlement chose to compromise unfairly on
11 compensation for those like me. We sold our 2010 Golf TDI back
12 to Volkswagen in February 2016, because we could not, in good
13 conscience, continue to drive a car that doesn't measure up to
14 the TDI clean-diesel claims; nor can we pass on responsibility
15 by selling it to someone else. But because we have already
16 sold our car back to Volkswagen, we are being offered only
17 \$3,000 in restitution. Comparatively, eligible owners of 2010
18 Golf TDI offered a buyback value of \$24,000, plus \$6,000 in
19 restitution.

20 In short, my family and I will receive \$12,000 for the
21 seller restitution payment plus what Volkswagen paid us for our
22 car on February, while eligible owners of the 2010 Golf TDI
23 will receive \$30,000.

24 The settlement is unfair because I am being offered none
25 of the economic damages associated with the loss in car value

1 which my family suffered just as equally as those who still own
2 their car.

3 Also, the buyback option of the settlement calls for
4 eligible owners to sell their vehicles back to VW dealers,
5 which is what I have already done. The only difference is the
6 timing, and a massive gap in compensation.

7 In summary, my family suffered concrete injury as a result
8 of the emissions scandal; will suffer further damages of about
9 \$18,000 if not compensated at the same level as others members
10 of this Class. We contest that the only fair settlement would
11 be to compensate eligible sellers who sold their car back to
12 Volkswagen after September 2015 at the same level as eligible
13 owners.

14 Thank you.

15 **THE COURT:** Thank you.

16 David Vendler.

17 **MR. VENDLER:** Good morning, Your Honor. I actually
18 had two objections, so I don't know if I have four minutes or
19 two.

20 **THE COURT:** No. Two minutes. Sorry.

21 **MR. VENDLER:** Two minutes. Okay. I'm going to stay
22 with the Lujans' objection, then.

23 The Lujans is related to the cost of anti-theft devices
24 that they purchased from their Volkswagen dealer, and not from
25 Volkswagen, itself. And that is not contemplated in the

1 settlement, at all. Also, such a claim does not appear in the
2 master Complaint. And there's no evidence that the named
3 plaintiffs -- any of them -- suffered that same harm. And thus
4 I would submit that since the anti-theft devices were purchased
5 from a dealer, and not from Volkswagen, the damages do not
6 arise out of the same factual predicate as those of the named
7 plaintiffs.

8 There's a case called *Hesse versus Sprint Corp.*,
9 598 F. 3d. 581, where the Ninth Circuit says where the named
10 plaintiffs do not share the same -- the identical factual
11 predicate, that then there is a conflict between them and the
12 people in my situation, which is a different claim. And so
13 therefore, that cannot be a part of the release. And that's
14 what I've asked for, is that the release carve out people who
15 bought anti-theft devices from their Volkswagen dealers.

16 We would object to the declaration of the law professor,
17 as it's not proper expert testimony. It's -- that's a decision
18 for you. In any event, he says, *Well, it would be unmanageable*
19 *to include that.* I disagree that it would be unmanageable.
20 You could just have a percentage.

21 So I think that what the Court should do is either exclude
22 such claims from the release, or there has to be a
23 renegotiation where those claims get -- you need a named
24 plaintiff to represent them, and where those claims get
25 resolved.

1 **THE COURT:** Okay. Thank you very much.

2 Sergei Lemberg.

3 **MR. LEMBERG:** Good morning, Your Honor. My name is
4 Sergei Lemberg. I represent-- my firm represents, rather,
5 Daniel Ancona.

6 The issue I have -- and I join Mr. Swigart's presentation.
7 The issue I have is with the release of fee-shifting claims in
8 the agreement for lawyers other than Class Counsel. Following
9 our objection, the Committee's response is that the objection
10 is premature and unseemly. And I don't think either is true.
11 I think the objection is ripe, because the agreement as it
12 stands releases claims for -- to fees and costs by anyone other
13 than Class Counsel. So perhaps it's an oversight. Perhaps
14 it's a deliberate decision. But either way, there is no
15 justification for it that's been offered on the papers.

16 And I also don't think it's unseemly, Judge, because the
17 laws of all states provide for liens in favor of predecessor
18 counsel. Whether we've been actually discharged or
19 constructively discharged, we're entitled to be paid for our
20 work. Fired lawyers get paid. And, you know, that's by
21 statute in California, and by common law in Connecticut, and by
22 common law virtually in all states.

23 Now, this is a strong case, Ms. Cabraser said. I agree.
24 The settlement is a strong settlement; but the issue is that it
25 treats differently folks like my clients who had hired lawyers

1 before their appointment of Class Counsel. And I believe that
2 the change should be made.

3 Steve Cichowski.

4 **MR. CICHOWSKI:** Good morning, Your Honor.

5 Steve Cichowski. I represent 21 objectors that I filed
6 objections for, as well as representing the (inaudible) law
7 firm and its five objectors.

8 Judge, in the case of *Radcliffe v. Experian Information*
9 *Solutions*, the Ninth Circuit looked at the propriety of a
10 settlement that had two different classes of settlers; one that
11 had preferential treatment over the others. And they found
12 that it had to be set aside.

13 In this case we have two different classes. We have Class
14 Counsel's clients, and those without attorneys, who are having
15 their attorneys' fees paid. We have my clients and those
16 situated like me and my client who are paying their own
17 attorneys' fees.

18 Now, in their response and their reply to my objections,
19 Class Counsel said that was irrelevant because it was yet to be
20 decided. Class Counsel is ignoring the plain and explicit
21 language of both this Court's Order, and the settlement and
22 release agreement. On page 14 of this Court's Order, the Court
23 identified those who are given attorneys' fees and costs as
24 Class Counsel.

25 In the consumer settlement agreement on page 25, it's

1 clearly stated there would be no reduction on the benefits if
2 anything was paid by attorneys fees for private attorneys.

3 On page 38, again, attorneys' fees were mentioned, and
4 only Class Counsel was identified.

5 On page 45, the clause says, *This is the entire agreement.*
6 *If nothing appears in this agreement, it ain't happening.*

7 And there's nothing in there about distribution of
8 attorneys' fees for those of us who not only were attorneys
9 prior to the appointment of Class Counsel, but have put
10 substantial hours into representing our clients.

11 Again, on the Long Form, I asked if -- the question's: Do
12 I have a lawyer?

13 Yes. Class Counsel.

14 Can I hire my own lawyer?

15 Yes, if you pay for him.

16 At page 22: How would the lawyer be paid?

17 VW will pay Class Counsel.

18 Your Honor, this represents two different classes of
19 beneficiaries, but it could be cured easily by --

20 Thank you.

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

22 Betty Carroll. Good morning.

23 **MS. CARROLL:** Good morning, Your Honor. My name is
24 Betty Carroll, and I'm from Placerville, California.

25 I have several objections. One, the amount of restitution

1 settlement, I feel, is not sufficient for the deceit that
2 Volkswagen has done to their customers. The settlement does
3 not cover expenses or the financial burden to their customers.

4 Objection number two. Some cars came with additional
5 options which we paid for in the price, and we're not being
6 allowed any reimbursement for that.

7 Objection three. The amount being not allowed for
8 reimbursement of automatic charges, such as document-processing
9 fees, emission-testing charges, electronic vehicle
10 registration, which are government fees; vehicle license fees,
11 state emissions certificate. Mine added up to \$423, which I'm
12 going to have to repay when I replace this. I'm on a limited
13 income, and can't afford the financial burden that Volkswagen
14 is putting on me -- or I'm sure other people who are in the
15 same situation.

16 Objection four is the compensation for the purchases that
17 we have considered, that we probably wouldn't have purchased if
18 we knew this was going to happen. For example, like purchase
19 an extended warranty for over \$2,700. A lux care surface
20 protection product for over \$500. Plus I have to pay the sales
21 tax of over \$1,900. That's, again, money that we're going to
22 have to spend again to do another vehicle, which we will not be
23 reimbursed for by Volkswagen.

24 I think Volkswagen customers have taken a great loss,
25 which personally -- and I'm sure others -- can't afford. I

1 feel that their customers should be reimbursed the purchase
2 price, plus any other expenses that I noted previously. Their
3 customers have taken again a great loss financially.

4 Americans are tired of these corporations; being lied to
5 by them to us. And I feel that it's time for these
6 corporations to pay up.

7 **THE COURT:** Thank you very much, Ms. Carroll.

8 Paul Rothstein.

9 **MR. ROTHSTEIN:** Good morning, Your Honor. I'm here
10 on behalf of Greg Siewert; also on behalf of Albert Bacharach
11 [sic] of -- I mean, for Scott Siewert and Greg Siewert.

12 Your Honor, you have the authority to make a decision as
13 to whether you're not going to accept the settlement, accept
14 the settlement, or accept the settlement if there are certain
15 changes made. My biggest concern that I want to speak to this
16 Court about, in addition to what's on the papers, is there's a
17 reverter situation. And that reverter is that if the funds of
18 the settlement are not used, they go back to Volkswagen, is my
19 understanding.

20 Now, we have spoken. The other objectors that have spoken
21 have given this Court reason to say that, rather than any funds
22 that are not disbursed go back to Volkswagen, those funds
23 should be used for additional compensation to Class Members
24 like my client, who pay money before the trigger date, for
25 maintenance and other -- that they never would have spent. And

1 these other objectors have spoken to issues that there could be
2 a pool of funds used to make those types of payments. And so I
3 would ask the Court to seriously consider not accepting the
4 settlement on its current terms, but for that change to be
5 made.

6 **THE COURT:** Thank you.

7 **MR. ROTHSTEIN:** Thank you.

8 **THE COURT:** Fred Fletcher.

9 **MR. FLETCHER:** Good morning, Your Honor.

10 Frederic Fletcher, on behalf of Class Member Jolian Kangas,
11 who's present.

12 We understand why the Court's going to approve this
13 settlement, because it starts the recalls. It just makes
14 pragmatic sense.

15 But at the same time, from a consumer's prospective -- and
16 for all of the reasons that we've heard today -- it also makes
17 practical sense to appeal this settlement while recalls are
18 being conducted, because we don't know what's going to happen.
19 Not a single buyback has occurred yet. There's been no fix
20 that's been proposed. So it just makes rational sense to
21 appeal this, and hold VW's feet to the fire while we look how
22 the claims are going to proceed.

23 I provided the Court peer-reviewed studies that concluded
24 that thousands of people are going to die worldwide because of
25 nitrogen oxide emissions.

1 And we know that Volkswagen met with their statisticians,
2 their lawyers, their actuaries before they decided to install
3 this defeat device. And they asked them: Worst-case scenario,
4 what could happen?

5 We're nowhere near that number. There simply is not
6 enough in this settlement that's going to provide a deterrent
7 for Volkswagen. This reversion clause is just not a reversion
8 clause; it's history's largest reversion clause. And it
9 creates a perverse incentive for a company like Volkswagen, who
10 has a corporate culture of fraud, to disincentivize consumers
11 from having their claims processed.

12 Additionally, we have language that we briefed
13 extensively, you know. Volkswagen playing musical chairs with
14 their corporate officers is not going to change their culture
15 of corporate fraud.

16 Finally, I would draw the Court's attention to an
17 October 4th letter from Congresswoman Anna Eshoo to the EPA.
18 I'd ask the Court to take judicial notice of that. Her
19 concerns are that this settlement is going to provide a
20 monopoly for Volkswagen in the electric car industry in
21 California.

22 Thank you.

23 **THE COURT:** Thank you.

24 Daniel Martinez.

25 **MR. MARTINEZ:** Good morning.

1 **THE COURT:** Good morning.

2 **MR. MARTINEZ:** Daniel Martinez. I'm from Texas.

3 Your Honor, I got 2012 VW Passat. One of the
4 considerations in buying the Passat is the miles that I
5 commute. And, you know, that was the whole sales pitch
6 regarding that. So my two objections are the mileage and the
7 value.

8 Now, the value. VW considers the trade-in value, which I
9 totally object to, because I'm not trading. I'm not trading as
10 a resale value. I would prefer a clean retail value on that.

11 Now, the mileage -- you know, they consider average
12 drivers. They need to also consider that TDI drivers are not
13 the average driver. I have a long commute. My commute is
14 50 miles one way, to and from work.

15 So I don't think mileage -- if it was just a mere
16 oversight on VW, yeah, I can do a little leeway; but it's just
17 outright deceptive.

18 Mileage should not be a consideration in the settlement.

19 Thank you.

20 **THE COURT:** Thank you.

21 Anna St. John.

22 **MS. ST. JOHN:** Good morning, Your Honor.
23 Anna St. John, with the Competitive Enterprise Institute,
24 Center for Class Action Fairness, on behalf of objector
25 Matthew Comlish.

1 First, there is no relief provided in the consumer class
2 settlement that's not also provided in the DOJ and FTC orders.
3 In their reply, plaintiffs essentially acknowledge this, and
4 they point to just two things in response. First is an
5 executive summary of the consumer settlement, but the executive
6 summary is not part of any of the settlements. It's not
7 binding. It's not even referenced in the FTC or DOJ Orders.
8 And it does nothing to change the very clear language of the
9 DOJ Consent Order.

10 Volkswagen still must offer the buyback program to all
11 eligible consumers, regardless of whether the consumer
12 settlement is ever approved. It's an independent obligation.

13 Plaintiffs also cite a partial quote from an FTC Order.
14 If you look at the full sentence, it's a bit misleading.
15 Partial quotes -- if you look at the full sentence, it's a bit
16 misleading. If the look at the full sentence, it says that
17 Volkswagen doesn't have to make certain payments under the FTC
18 Order if the consumers opt for the emissions fix. That makes
19 sense. You choose one or the other.

20 On the point that the class action settlement provides a
21 mechanism for the buyback, the DOJ and FTC Orders, themselves,
22 provide a number of mechanisms. For example, Appendix A
23 provides for a time line for compliance, notice, and disclosure
24 requirements. There's a Court-approved claims administrator.

25 Any additional mechanisms provided in the consumer

1 settlement are not -- are inconsequential. It's just one way
2 that Volkswagen can meet its independent obligations.

3 Second, it's just basic math and common sense that a
4 two-step negotiation process upon the Class. If Class Counsel
5 had negotiated fees and relief together at the same time, any
6 reduction of fees could have gone to the Class. And it's
7 likely the Class could have gotten additional money.

8 Thank you, Your Honor.

9 **THE COURT:** Well, let me ask a couple of questions,
10 because you raised some issues that are important. You point
11 to the EPA FTC settlements, and their decrees, and so forth,
12 and say, *Look, there's all that relief. Since it's there, and*
13 *since it's appropriate, why, then, give any credit --*

14 I think this is what you're saying.

15 *Why give any credit or acknowledge it in what the*
16 *Plaintiffs' Steering Committee has achieved in their consumer*
17 *settlement?*

18 Is that a fair way of characterizing what you're saying?

19 I'm trying to figure out the "So what?"

20 In other words, yeah, I hear what you've said. Now I want
21 to figure out: So what?

22 **MS. ST. JOHN:** The "So what?" is: Why are consumers
23 being asked to give up their claims for consumer relief under
24 the class action settlement for essentially zero marginal
25 relief? They're giving everything.

1 **THE COURT:** Because it was keyed by the FTC and CARB.

2 **MS. ST. JOHN:** Because they're independently getting
3 it in their settlements.

4 **THE COURT:** And doesn't -- at least, I think - I
5 mean, I've seen these documents now. And I think that the
6 settlement -- the consumer action of settling wasn't
7 accomplished in a vacuum. That is to say it wasn't, *Well,*
8 *let's just sit down with the consumers and figure out what they*
9 *want. And we'll just deal with that. And, by the way, let's*
10 *then -- or at some point we'll sit down with the FTC or we'll*
11 *sit down with EPA or we'll sit down with CARB and you figure*
12 *out what they want.*

13 It's all -- though not perhaps legally, but you're the one
14 who argues common sense; and you're right. It's all part and
15 parcel of an overall settlement.

16 Who is to say -- because history never teaches us its
17 alternatives -- that had not the Plaintiffs' Steering Committee
18 pushed this type of resolution, then perhaps the Government
19 wouldn't have reacted any particular way, or vice versa?

20 I'm not sitting around trying to credit one group over
21 another group, because they have individual responsibilities.
22 And I think that they've attempted to discharge these
23 individual responsibilities; but a settlement is looked upon as
24 a whole. It can't be necessarily divided up in to its
25 component parts, and then say, *Well, since this was achieved*

1 *here, therefore, whatever is over there is not part of this*
2 *over here.*

3 And I'm saying that the settlement process is a dynamic,
4 all-encompassing process. And that's why I appointed
5 Director Mueller. I appointed Director Mueller to oversee the
6 entire process of the settlement to achieve an entire
7 settlement.

8 Now, we're not quite there yet.

9 And I'll hear from you later, but there are parts that
10 still remain. But I think it's important for consumers, for
11 the public, and for everyone to understand that what's being
12 offered here in terms of a settlement is a comprehensive
13 settlement as to the 2-liter vehicles, and that, while
14 technically one might take the position this part isn't part of
15 that part, and that part isn't part of this part, the overall
16 dynamic of a settlement that is being proposed to me, while I
17 only am ruling on part of it, is not proposed in a vacuum.
18 It's proposed as an entire whole. That's number one.

19 Number two. In terms of fees -- and I'll ask the parties
20 to address it, but from what I have seen, the fees that are to
21 be paid to Class Counsel have been negotiated or at least have
22 not been part of the settlement; not contemporaneously with the
23 settlement; not discussed as part of the settlement.

24 And there is a sense -- some people have raised it
25 today -- that, you know, if the fees were less, or some other

1 amount, that amount would have gone to the Class.

2 And I think, number one, that simply isn't the case. I've
3 seen no evidence to suggest that that's the case.

4 Number two, I think I have to look at the settlement, and
5 make a determination as to whether that settlement, as it is
6 constituted, or perhaps with one or two other changes, is fair,
7 adequate, and reasonable.

8 Now, that it could have been a better settlement -- I
9 don't know. Maybe it could have been.

10 But I see no nexus -- no connection -- between the fee
11 request which has yet to be presented to the Court, and the
12 settlement as being proposed to the Court. And I think it's
13 important to make that point. I think it's in the record, but
14 I think -- and maybe it was your misfortune to stand up in
15 front of me and invite that comment, but I think it really is
16 important that consumers understand that this settlement rises
17 and falls on the adequacy of it as presently constituted, and
18 not with some -- what I think -- theoretical possibility that
19 if you don't pay Class Counsel X , and pay them $X \text{ minus } Y$, those
20 funds, whatever they may be, the delta -- somebody referred to
21 "the delta" -- will go to the Class.

22 I don't think it would; but again, I'm not engaged in --I
23 shouldn't be engaged in speculating. And I think Courts are
24 not asked to speculate. I think specifically Courts just have
25 to convince themselves that it wasn't part of the negotiation

1 process. And I think that there is more than an adequate
2 record to demonstrate that fact.

3 And, number two, that the -- that the overall settlement
4 is reasonable. And I think it is overall, in a sense. That
5 is, any settlement that I'm looking at is looking at all parts,
6 and making a determination whether it's fair and reasonable.
7 And that's what the Court --

8 I am mindful and grateful that you got up and addressed
9 this subject, because I think it's an important one.

10 Thank you very much.

11 **MS. ST. JOHN:** May I respond? May I respond to your
12 two points, or --

13 **THE COURT:** Of course you may. Of course you may.

14 **MS. ST. JOHN:** Well, Your Honor, on the first point,
15 I understand the perspective that this was negotiated together,
16 and therefore maybe it should be viewed holistically; but
17 that's not borne out in the settlement agreement.

18 The DOJ Consent Decree specifically is an independent
19 settlement.

20 And under Rule 23, there are certainly obligations that a
21 consumer settlement needs to meet. And in that regard, going
22 to your second point, the way that -- under Rule 23, part of
23 the adequacy requirement is that Class Counsel puts Class
24 Members' interests ahead of their own. And the way that
25 Volkswagen presumably thought about this is to have a total

1 reserve amount for litigation. If they held some back to pay
2 for fees, then that denied the Class additional relief, if what
3 they held back is more than what they ultimately have to pay in
4 fees. And so that's the dynamic. We're not alleging that
5 there was any kind of prenegotiation involving fees that
6 somehow harmed the Class. It's that the very act of holding
7 money back in reserve denied Class Members the additional
8 amount.

9 **THE COURT:** I don't know what you mean by "holding
10 money back in reserve."

11 I mean, you're talking about a company that has -- from
12 what I read in the paper, where I get my information, it has
13 adequate -- it's been a successful company. That is to say it
14 has adequate financial resources to do a couple of things here.
15 One is to ensure that consumers' wrongs have been righted.
16 That is to say to come up with a sufficient funds and
17 mechanisms by which consumers can have a successful redress of
18 their injuries. That requires a successful company.

19 Let me tell you. I see -- and you do, too, all of the
20 time. You have class actions. You have litigation in which
21 there's no money there to satisfy the injuries.

22 That's not this case. That's not this case.

23 And so I would, of course --

24 So I don't know. When you say they have funds in reserve,
25 I think yes. I am not approaching this from the issue of:

1 Have they paid every cent that they could pay in connection
2 with this? I don't know. But I don't think that's the test.
3 I don't think it's the test of Courts to go in and say, *All*
4 *right. You have to pay every cent you have available to pay.*
5 And you can imagine why: Because ultimately that would lead to
6 bankruptcy of companies, loss of jobs by thousands of people,
7 loss of the opportunity to engage in commerce.

8 Now, there are consequences. There are consequences to
9 wrong behavior. And a primary consequence must be to redress
10 the injuries that you have caused. And that's the focus of the
11 Court.

12 So I haven't looked at Volkswagens balance sheet, nor do I
13 intend to do so, because what I have to look at is whether this
14 is a fair and reasonable resolution of the injuries that have
15 been caused.

16 I can understand that some people can take -- and I've
17 heard this morning -- the position that it's not; it should be
18 more; it should be set at a particular value.

19 And obviously, I'll consider that, because I think that's
20 a fair -- I think that's an objection that I must hear and must
21 deal with.

22 But I don't think it's necessarily an objection to say
23 that they have some money in reserve; and the concomitant
24 conclusion or inference is that that money would go on to the
25 consumers.

1 Thank you very much.

2 **MS. ST. JOHN:** Thank you, Your Honor.

3 **THE COURT:** I'll give you a surrebuttal if you want.

4 Do you have anything further to say?

5 **MS. ST. JOHN:** (Indicating.)

6 **THE COURT:** Okay. That was very smart, because he

7 you realize ultimately I would have the last word in this

8 *tête-à-tête*.

9 Okay. Let me call on Mr. Richard Cerick.

10 **MR. CERICK:** Thank you, Your Honor. I'm a
11 Californian. I also own two affected vehicles: A 2009 and
12 2010 Jetta TDI.

13 I am just a little, old securities lawyer from New York.
14 I'm not a class action litigator, but I've been around.

15 **THE COURT:** You say you're a little securities
16 lawyer?

17 **MR. CERICK:** Little, old.

18 **THE COURT:** You're not referring to stature. You're
19 referring to small cases. Okay.

20 **MR. CERICK:** Yeah. I've been around the block,
21 Your Honor, a couple times in my career, and I know a little
22 bit about fairness and equity. This, to me, is a case about
23 outright deception and fraud affecting almost a half a million
24 consumers. I think it will be the signal business-school case
25 concerning terrible corporate behavior for decades to come.

1 I believe the settlement, as proposed, is deficient in a
2 number of ways. My first objection, which I'd notified the
3 Court and counsel of in my letter, is that I believe
4 compensation should be based on length of ownership; not just
5 on the model year.

6 I have driven my 2010 Jetta TDI for six and a half years
7 and 121,000 miles. The primary driver for me purchasing that
8 vehicle and spending about \$1,800 over the gasoline engine
9 price was to reduce my carbon footprint to the extent humanly
10 possible.

11 I have now been faced with the knowledge that I've been
12 polluting horribly; up to 40 times the NO₂ amounts equivalent a
13 semi -- a large tractor/trailer -- for six and a half years.
14 And I can't undo that damage to the environment.

15 Picking a model year solely exclusive of the number of
16 miles that someone has driven utterly avoids any consequential
17 damages or injury to plaintiffs that may differ. And I
18 understand class action is supposed to be a homogenized,
19 harmonized settlement, but I don't think it can completely omit
20 different injuries that plaintiffs may suffer.

21 My next objection is that I believe that extended
22 warranties by Volkswagen must cover not only the emissions
23 system, but also the transmission and driver chain. Modern
24 automobiles are marvels of technological engineering.

25 Oh, I didn't get too far, at all.

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

2 **MR. CERICK:** All right. Thanks.

3 **THE COURT:** Is there anyone else who has signed up,
4 and who I've failed to call?

5 So I'm concluding now the objectors.

6 Ms. Cabraser, do you want to address the Court?

7 **MS. CABRASER:** Yes, Your Honor.

8 With the Court's indulgence, two things. First, the
9 parties would request very short break to prepare concise
10 responses to the objections. I think it will save time --

11 **THE COURT:** Okay.

12 **MS. CABRASER:** -- in the long run.

13 And secondly, there were three Class Members who asked to
14 be heard today -- indicated they want to be heard -- who were
15 included this Court's Order, but could not attend. And they
16 have asked if their written statements, which are each quite
17 short, could instead be placed on the record in some fashion.

18 **THE COURT:** Yes. If you have their statements,
19 simply file them. The Court will consider them --

20 **MS. CABRASER:** Thank you.

21 **THE COURT:** -- prior to entry of its ruling.

22 **MS. CABRASER:** We'll file them today.

23 **THE COURT:** Pardon? Okay. How much time do you
24 need?

25 **MS. CABRASER:** Five to ten minutes, I think, would be

1 sufficient.

2 **THE COURT:** Well, why don't we resume at quarter of,
3 then?

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

5 **THE COURT:** We're in recess right now. Thank you.

6 (Recess taken from 9:26 a.m. until 9:45.m.)

7 **THE COURT:** Please be seated.

8 Now, the Court is advised that there was one individual
9 who did sign up initially to be heard with respect to an
10 objection, but wasn't on our list. And so I think it's Gunter
11 Mihaescu. I may be mispronouncing your name, sir; but why
12 don't you come forward?

13 **MR. MIHAESCU:** Thank you, Your Honor.

14 **THE COURT:** Sure.

15 **MR. MIHAESCU:** Thank you, Your Honor. It's Mihaescu.
16 You did a fine job. Thank you for the opportunity, for letting
17 me be here. My name's Gunter Mihaescu. I'm an attorney,
18 although I don't represent anyone in this matter; just myself.
19 And I do plaintiff mainly personal injury. I don't do class
20 actions.

21 As a result of my experience, I at least know the value of
22 cases, and maybe individual cases more than class settlements;
23 but as for the value of my individual claim, I'm an owner of a
24 2012 Jetta Sportwagen TDI, purchased new. And I still own it.

25 We purchased it before having our first baby. And we were

1 living in San Francisco at the time. And especially the area
2 where we were living, in the Noe Valley/Mission District
3 borderlands, there were so many TDIs of all kinds: Audis, VWs.

4 And what's the point of that?

5 The point of that is that they were very, very popular
6 car. And the value of the car -- I don't think the settlement
7 values of the car reflect the values of the car, especially in
8 urban areas like San Francisco.

9 And how do I know that?

10 I know that because in August of 2015 we were expecting
11 twins; twin boys. And so we were looking to sell the car right
12 before the scandal hit. And we had researched the value of the
13 car at that time. And the value of the car -- of our affected
14 vehicle at that time, from seeing other list prices online and
15 from doing research, was well over \$20,000; probably in the
16 area -- and concerning the mileage on the car, was well over
17 \$20,000.

18 And according to the settlement worksheet it, was about
19 17,500, although I don't think it takes -- similar to the
20 gentleman from Wheels, Inc., it doesn't take into account
21 mileage, and also the geographic area, and the value of the
22 car, itself.

23 Thank you for your time.

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

25 So let me hear from the parties if they wish to address

1 any of the issues raised by the objectors.

2 Ms. Cabraser.

3 **MS. CABRASER:** Your Honor, we'll be as succinct as we
4 can. And Volkswagen maybe will want to respond to some of the
5 objections, as well as the FTC.

6 With respect to the Wheels point about using precise
7 odometer data, if the settlement were to do that for everyone,
8 we would be building in delay and cost. And that is one thing
9 that most Class Members have told us they do not want. They
10 want the opposite.

11 If we were going to look at individual mileage rather than
12 use the industry standards of mileage allowances, we might then
13 find ourselves down a slippery slope, which Class Members
14 definitely do not want, which is to look at the condition of
15 each car; to look at the values, for example, of the
16 after-market items you heard about, some of which don't
17 increase car value; some of which decrease car value.

18 We opted instead to use formulas derived from what already
19 existed out in the world that were independent of the
20 litigation, and to apply them, to the extent we could, aided by
21 our auto-industry experts, the economists from the FTC, and
22 others to strike a balance between getting as much value back
23 for individuals as we could, while using standardized formulas
24 that already existed and that Class Members could understand,
25 so they could predict what their buyback numbers would be.

1 We did not want to subject Class Members to individual
2 appraisals for trade-in. We wanted to make sure that all cars
3 got the highest clean trade-in value.

4 We didn't want cars to be dinged for age and continued
5 use, are so we froze the cars in time. We wanted to reward
6 folks that had driven their cars less, particularly less after
7 the scandal, who would garage them. So without mileage
8 adjustment derived from industry standards, it's a bit more
9 generous than the norm, and not only does what the industry
10 does, which is to reduce value for extensive mileage; it adds
11 value for mileage, so that those who used their cars less than
12 the programmed mileage actually gained money.

13 Someone like Wheels is really arguing for exceptionalism.
14 And Wheels is exceptional. It's the only large-scale owner
15 that has appeared in this settlement to object. It really
16 wants an exception to be made for itself because it has
17 records, and it thinks it can be done, and it thinks this could
18 be feasible.

19 This is an outfit that may well have had the bargaining
20 power to insist on a settlement with Volkswagen -- they have
21 thousands of cars -- but yet they stayed in the settlement.

22 I think that's a recognition that on the whole, the
23 settlement is fair, reasonable and adequate not simply for the
24 average individual car owner, but even for resellers and
25 independent dealers that have many cars. And you know from the

1 record that several such resellers have filed declarations
2 before the Court, attesting to the benefits of the settlement
3 from their perspective.

4 We heard from those who want to go back to Day One on
5 their cars, and are concerned that the longer they've driven
6 their cars, and the more mileage they've driven, the more they
7 have polluted, and that someone should pay for that.

8 And we agree. Someone should pay for that. Volkswagen
9 should pay for that. Volkswagen is paying for that.
10 Volkswagen is paying for that under the provisions of the EPA
11 and the CARB settlement. They are paying billions of dollars
12 for that. That money was negotiated and calculated based on
13 past, present, and ongoing pollution; recognizing that reality.
14 It's not being paid to the consumers' pockets, quite simply
15 because consumers would be the least efficient at figuring out
16 how to turn those dollars into something good for the
17 environment. That is something the government can do. That is
18 something the government is doing. And that is something that
19 Volkswagen is paying for.

20 And that is why the class action settlement refers
21 specifically to those environmental provisions. This is just
22 one example of how these related settlements truly are related,
23 and truly are synergistic. We have accomplished together the
24 environmental remedy that a consumer class action settlement
25 over an FTC settlement could not do alone. You recognized that

1 concern.

2 We have heard about people that are concerned about
3 trade-in value, because this isn't a trade-in they're choosing.
4 And we agree. Trade-in value is a starting point, as
5 Ted Stockton explains in his Declaration.

6 And from there, we factored in registration costs,
7 sales-tax costs, options costs, the opportunity cost or
8 shoe-leather cost of going to have to choose a new vehicle, so
9 that the bottom line that these payments generate under the
10 buyback option is retail replacement value.

11 I think you'll hear the same thing from the FTC. They got
12 to that point from a slightly different starting place. We
13 converged. We reinforce each other. In both settlements the
14 bottom line is retail replacement value for cars.

15 We heard from someone with a loan. And we would simply
16 indicate that this settlement is unique, or nearly so, for its
17 loan-forgiveness feature. In fact, other Class Members that
18 didn't have loans have criticized, *Why are we paying up to*
19 *130 percent of somebody's loan obligation?* Well, because
20 people find themselves in circumstances where they need that
21 kind of help to make this remedy a real one. This was
22 something else important to the FTC. And it was important to
23 us, as well. And that is the formula we were able to negotiate
24 to provide loan-forgiveness relief to the vast majority of
25 those who owe money on their cars.

1 We have heard from several eligible sellers. These are
2 people that sold their cars after the emissions scandal
3 erupted. And these were liquidated at economic losses. And
4 after much negotiation, we were able to come up with a formula
5 that could be applied across the board to eligible sellers, to
6 provide them 50 percent of an owner restitution.

7 Now, some have said, *That's not fair, because if we still*
8 *had the car we would get the buyback dollars.*

9 Well, there are two reasons for that.

10 Number one: There is a need, from the environmental
11 standpoint as well as the consumer standpoint, to get the cars
12 back to Volkswagen to be fixed or responsibly recycled. And
13 the only ones who can do that are the people that own those
14 cars now. And so there is a bounty on those cars. We want
15 them to come in.

16 Half of that order of restitution, though, gets paid back
17 to the previous owner; the person who sold that car, and the
18 person who got less for the car because its value was
19 diminished because of this scandal.

20 We have a Class representative who's an eligible seller.
21 We looked at his transaction. We looked at all of the
22 transactions that were available to us. It was a thin market
23 out there without a lot of these transactions, because for the
24 most part, the dealers were not taking these cars. And what we
25 found was and -- it sufficed in most instances to restore that

1 economic loss, so that if someone lost 3- or \$4,000 on a
2 trade-in, that 50 percent gets them back that value, and then
3 some. In fact, for people with the lower-mileage cars whose
4 cars have a mileage enhancement -- they do even better.

5 So, for example, our Class representative, as an eligible
6 seller, was essentially made whole through that formula. And
7 it is not an extra payment, but it is a restoration of economic
8 loss, and an elimination of economic loss for Jason Hill, and
9 many like him.

10 We hear anecdotally that this does not work out for every
11 single eligible seller. But we do know this. We think we've
12 done pretty well. We think the settlement is overall fair,
13 adequate, and reasonable on the eligible-seller formula, when
14 we compare the 19,000 eligible sellers who have registered as
15 eligible sellers to get that money, versus approximately 114
16 eligible sellers who have opted out, and 27 eligible sellers
17 who'll objected. And again, every objection is important; but
18 looking at those statistics, that tells us that for the vast
19 majority of the eligible sellers, the formula is working.

20 We have heard criticism of a supposed reverter or
21 reversion. This is not a fixed-fund settlement, and it was
22 never represented to be so. This is a funding-pool commitment.
23 The settlement agreement is very clear. All of the settlement
24 documentation is very clear and consistent that this is a
25 commitment of up to \$10,033,000,000. And every single penny of

1 that would be spent by Volkswagen, depending on what the
2 consumers choose to do.

3 If every consumer comes in for the settlement and chooses
4 a buyback, every penny of that gets spent; not to mention all
5 of the money spent on administering the program, and dealing
6 with the dealers, and all of the other under the wire line
7 costs associated with that. 99 percent of the Class is in.
8 The opt-outs are less than 1 percent.

9 We don't know what that 99 percent will choose. If there
10 is a delay in emissions modification, more of them will choose
11 the buyback. More of the money will be spent. If people like
12 the emissions modification and they choose to wait and drive
13 their cars, then less of that money will be spent. But if
14 there is no emissions modification, there's a back-end opt-out.

15 So we see no perverse incentives, other than the single --
16 and if it weren't the government that is responsible for this,
17 I would call it a "fiendish incentive" to make absolutely sure
18 that Volkswagen doesn't resist claims, but goes out and scours
19 the earth for every single one of these cars to fix or buy
20 back, because if they don't get 85 percent, those excess cars
21 are very, very, very expensive. So the incentives are there.

22 We don't have the reverter problem in any way, shape, or
23 form; and we don't have a reversion settlement.

24 We heard from Ms. Carroll, who was concerned about
25 additional options. Again, those are very hard to deal with on

1 475,000-class-member basis. Many of them do not add value.
2 Many of them depreciate. And many of them can be removed from
3 vehicle to vehicle.

4 It is something we considered. And it's one of those many
5 things that is baked into the owner restitution, so that we
6 have a single payment to people that accommodates that.

7 We also heard about taxes and fees and registration. And
8 what happens we when people can't use their entire
9 registration, because they get -- they choose to buy back
10 early? Don't they get a refund?

11 I wish. That's something that the state governments are
12 not willing to do. It would be a nightmare for them to
13 administer. And their taxpayers would have something to say
14 about that, as well as the Legislature.

15 But there are things that consumers can do to control for
16 that. And again, it's consumer choice. If someone just
17 reregistered their car, they can choose it. They can choose to
18 drive it for the whole year, and get the utility of that
19 registration; get the entire use, and do the buyback at the end
20 of that period of time, before they have to pay another
21 registration, because they control the timing.

22 If people don't want to do that because they're more
23 concerned about the ongoing pollution, then people have to
24 decide what is more important to them.

25 We're not making that choice for people. We've built in

1 as much choice as we could within the confines of a settlement
2 that has to be administered simply and quickly and efficiently.
3 But Class Members can decide what their priorities are, and can
4 act accordingly, whether they would rather save money, or
5 whether they would rather eliminate their cars immediately.

6 We heard that the Class settlement replicates the other
7 settlements. We've heard Your Honor's response. I'm not going
8 to elaborate on that, except to say that it's dangerous
9 business, when faced with a functioning product of any sort, or
10 a recipe, to try to guess what the nonessential ingredient was,
11 and to suggest that it be taken out.

12 We also know from the person in charge of these
13 multifaceted settlement negotiations that everyone was
14 necessary to have comprehensive agreement like this, of this
15 unprecedented, in the words of the Department of Justice,
16 unique set of related settlements.

17 Director Mueller says that at paragraph 7 of his
18 Declaration. And this is true. We all experience this. The
19 parties had overlapping claims of authority. Multiple parties
20 sought economic injunctive and environmental relief. And no
21 single party could, as a jurisdictional or practical matter,
22 obtain and enforce all of the relief sought. The parties had
23 different priorities and perspectives, but we all had to work
24 together. And at the end of the day, we all did. And we have
25 a settlement that is much stronger for that.

1 We heard that there should be penalties and punishment for
2 Volkswagen, and that Volkswagen isn't being punished enough.

3 And I know that Volkswagen does not want to hear this --
4 and I don't really care -- but Ted Stockton, who knows a thing
5 or two about revenues, sales, and profits from the retail auto
6 industry, did note in his Declaration that he simply calculated
7 the revenues from these cars. When you compare them with the
8 money that we know Volkswagen has to pay out to try to make
9 this thing right, it is a negative proposition many times over.
10 That's before we even get to the fines and penalties, on top of
11 what is before you today from the three settlement agreements.

12 I am sure there are things that I have not mentioned, not
13 because they're not important.

14 The fact that people travel many miles on these cars was
15 important to us. We got as generous a mileage allowance as we
16 could. We baked that in to the settlement. We did spend
17 months considering and looking at data on fees, registration,
18 sales taxes, which differ from state to state. We understand
19 that; the fact that people use these cars for many miles.

20 And we would note that consumers have a choice. If they
21 prefer miles per gallon and longer use of their cars, under
22 this agreement they have two more years to take that option
23 before they have to come in and make a final decision.

24 My dad never went to college. And he was a
25 jack-of-all-trades. And his jobs were all about fixing things.

1 And he didn't really understand why I wanted to go to law
2 school and what that would mean, because it wasn't a "real
3 job." And the only way I could explain it is to say that
4 sometimes the law can fix things that are broken.

5 This was a broken situation. It was broken for the
6 environment. It was broken for consumers. It was a scandal.
7 And it needed to be fixed. And it couldn't have been fixed to
8 this extent, without the combined efforts of the Court, of the
9 government agencies, of the class actions before this Court, of
10 the PSC members that worked so hard, and of Director Mueller.
11 It's a joint production.

12 And it isn't the most perfect thing. It isn't the most
13 pristine thing, although we assumed that all of the cars are
14 pristine. And I'm sure that everybody has looked as closely as
15 the objectors have looked. You can see that, where we put it
16 together, there's a little seam here and there. There's a
17 little crack here and there. Maybe there's a little piece
18 missing. You know, it's like Humpty-Dumpty. All of the King's
19 horses and all of the King's men couldn't put Humpty-Dumpty
20 back together again.

21 I think we've all, including Volkswagen, on the 2-liters,
22 put this back together again.

23 Is it as good as new, as if nothing had ever happened?

24 No. That would be magic. And the law can't do that.

25 But what the law can do, when it's allowed to do it, and

1 when Judges and lawyers and parties work to make it so, is to
2 fix something that is broken so that it functions in a
3 realistic way; in the way that serves the people that were
4 wronged.

5 We submit that the settlement is our best effort to do
6 just that. And I hope Your Honor will consider granting final
7 approval.

8 **THE COURT:** Thank you, Ms. Cabraser.

9 You know, let me just make an observation, because without
10 commenting upon all of the aspects of the settlement, no one
11 has and no one can suggest that the people whom you've
12 identified who are at this table in the courtroom, and beyond,
13 have not treated this matter with utmost seriousness, and
14 devoted their time, their energy, their thoughts to bringing
15 about a resolution of the problem. It was, in the Court's
16 experience, extraordinary. There is nowhere that you can go in
17 the country that I've gone to in various judicial conferences,
18 and meeting Judges, and so forth, that have not commented on
19 the speed with which this matter has been brought to the Court
20 for the Court's approval. That's number one.

21 Number two, what is most eloquent in terms of the success
22 of the efforts devoted to this settlement is the fact that you
23 have an opt-out rate of less than 1 percent.

24 What does that mean?

25 That means really that 99 percent -- 99 percent -- more

1 than 99 percent of the people have --

2 (Cell phone ringer sounds in the courtroom.)

3 **THE COURT:** Oh, maybe we're hearing an objection
4 there.

5 (Laughter.)

6 **THE COURT:** -- that have reviewed this matter or have
7 accepted the settlement, and -- with some objections. I
8 understand there's objection.

9 So I do want to simply acknowledge, because there isn't
10 any question about it, that I think what is most extraordinary
11 about this proposal in many ways is that it reflects the fact
12 that people from very different perspectives and from different
13 interests can come together in a judicial or legal setting to
14 try to resolve an issue.

15 This is why we have a country of laws. This is why we
16 have a procedure; a process. This is why we don't want people
17 to take the law into their own hands; not because they're not
18 aggrieved, but because we have decided for more than 200 years
19 that the way to resolve a problem, no matter how serious it
20 is -- or perhaps inconsequential; but in this case, serious.
21 We have decided that the way you resolve problems is sitting
22 down and discussing it in a process, in a procedure that will
23 allow people to be heard, voices to be raised, concerns to be
24 expressed.

25 And it's not that somebody is right or that somebody is

1 wrong.

2 What is true is that somebody has a position; has a view.

3 And the Court believes that this process has worked, in
4 terms of allowing people to express their views; and also for
5 the purpose in mind, as Ms. Cabraser said, of fixing -- of
6 bringing about a resolution to a real problem.

7 So I appreciate your remarks, Ms. Cabraser. They're
8 absolutely accurate.

9 Mr. Giuffra.

10 **MR. GIUFFRA:** Your Honor, I will be brief. I really
11 would want to match your eloquence.

12 From the standpoint of Volkswagen, this has obviously been
13 a very traumatic experience for the company. And when I first
14 got involved in the case, the direction from the highest levels
15 of the company was to move quickly to make things right. And I
16 think that's what the company has done. And that's what I
17 think the level of participation reflects.

18 The company very much regrets this situation, but wants to
19 make things right.

20 And I've said before, "Actions speak louder than words."
21 We did not go down a different path. We went down the
22 coöperation path and the settlement path from Day One.

23 Now, settlements are about compromise. And in this
24 particular case, Your Honor appointed an all-star PSC. We had
25 the most important agencies of the U.S. Government, states'

1 governments. And we all worked together. I can't understate
2 [sic] how much money Volkswagen is putting into the settlement.
3 It's the biggest settlement in the automotive history, forever.
4 And it's a massive settlement, by any size. The 10.033
5 amount -- up to 10.033 -- it's not a funding pool. It's a
6 claims-made settlement. And it requires Volkswagen to achieve
7 85 percent participation rate, or else some fairly onerous
8 penalties kick in.

9 If we miss by 1 percent on the federal side, \$85 million,
10 per percent. On California, if we miss by 1 percent,
11 \$13.5 million. So the company is very incentivized to make
12 this settlement work.

13 Number two. \$2.7 billion in remediation payments. And
14 these are real remediation payments that will make concrete
15 differences throughout this country. You know, buses will be
16 replaced and become clean. And a lot of other things that will
17 be done. This is not about buying credits or anything like
18 that. Real payments.

19 And then there's the \$2 billion ZEV investment, where the
20 company is going to make an investment; what it thinks will be
21 transformative for the ZEV industry. And the company has
22 already announced it's going to be making substantial
23 investments in producing electric vehicles.

24 So from the standpoint of Volkswagen, the goal is to take
25 this, you know, obviously very, very troubling situation, and

1 turn it into a long-term positive for the company and for its
2 shareholders and for the world generally.

3 Now, we're sort of -- when you think about this, there are
4 sort of two alternative universes that the Court is looking at.
5 We could litigate this case for years. That would be bad for
6 consumers, bad for the environment, bad for Volkswagen.

7 We could reopen the settlement. That's another
8 alternative universe.

9 And I can't understate [sic] how interconnected every
10 provision in this settlement is. And as the Director knows and
11 as everyone who was involved in this knows, every provision was
12 heavily negotiated. And so it's not like you could change one
13 provision, and not have all sorts of effects.

14 Now, just to make just a few observations in terms of the
15 specifics, some folks say, *Well, we should get the value of*
16 *what we paid for the car initially.*

17 Well, the law doesn't require that. And I think the PSC's
18 brief goes into that in some detail. The consumer obviously
19 got the benefit of driving their car for a number of years, but
20 under the settlement -- and this is a very important point --
21 the settlement freezes the value of the car as of September
22 2015. Someone could drive that car for a number of years, as
23 late as December 2018 theoretically, and hand us back the keys,
24 and they would get the value of September 2015, with no
25 depreciation at all. So that's a real benefit to consumers.

1 In addition, when people talk about, well, what standard
2 one could use, we tried to do something that was efficient and
3 made sense. And, in fact, it's important that everyone in the
4 settlement is going to get at least \$5,100 on top of either if
5 you do your fix or your buyback amount. And we think that that
6 NADA clean trade picks up all of the other issues or the other,
7 you know, expenses: After-market options, and the like.

8 There was some discussion in the comments about lessees
9 getting less money than owners. Well, obviously, a lessee
10 doesn't bear the risk of asset depreciation.

11 One issue I just want to talk about for a second, which
12 is, I think, an important one, is you know the issue was made,
13 *Well, what did the PSC actually accomplish? Well, you could*
14 *have gotten this through the DOJ settlement.*

15 And I think it's important to look at the relevant
16 provisions. There's in Appendix A. There's a definition of
17 something called -- it's 2.13. Retail replacement value. And
18 that says it's the cost of retail purchase of a comparable
19 replacement vehicle of similar value, condition, or mileage as
20 of September 17, 2015. That's retail replacement value.

21 Well, what's being provided in this settlement is far more
22 than retail replacement value. People are getting additional
23 payments of at least \$5,100 -- and in some cases, much more
24 than that -- plus the ability to drive their cars.

25 So the settlements were incredibly interconnected.

1 Your Honor used the word "holistic." We heartily agree with
2 that. And we think that that, you know -- that is -- the
3 provision's important.

4 It was a reference to fees. I can represent to the Court,
5 Your Honor, there was no discussion of attorneys' fees at all
6 with anyone until after these settlements were signed up. And
7 to the extent there's been a resolution, at least from the
8 standpoint of Volkswagen, with respect to that, it was done
9 last week. And so, Your Honor, on that score we don't see
10 anything.

11 You know, to sum up, Your Honor, from the standpoint of
12 the company, we think this is a fair settlement. It's in the
13 interests of both car owners and customers of Volkswagen, the
14 public, the environment, and it's in the interests of
15 Volkswagen. And we strongly urge the Court to approve this
16 settlement, which, as Your Honor said, is historic, and is the
17 product of a substantial amount of work.

18 I think the job of all of the lawyers here -- and I think
19 everyone can take a certain amount of pride in it -- was to fix
20 the problem. And I really think we have fixed the problem in
21 some very thoughtful and creative ways, and have done so in
22 record time.

23 So thank you, Your Honor.

24 **THE COURT:** Thank you.

25 Mr. Van Eaton, from the Department of Justice and the EPA,

1 or however you want to characterize it.

2 **MR. VAN EATON:** Thank you, Your Honor. Josh Van
3 Eaton, for the Justice Department, on behalf of the
4 Environmental Protection Agency. And it's a pleasure to be
5 here today. Thank you.

6 This is the final approval hearing for the class action,
7 but also before the Court is the partial Consent Decree
8 negotiated by the Justice Department on behalf of the EPA, and
9 by the California Attorney General's Office on behalf of the
10 California Air Resources Board. Mr. Giuffra just commented on
11 some aspects of the Consent Decree, as well.

12 The Consent Decree is the product of months of intense
13 negotiations and hard work by many individuals. It's been well
14 documented. The end result reflects the incredible amount of
15 thought and effort and time spent by the parties working
16 towards a resolution that addresses the urgent need to deal
17 with the cars that are out on the road, and not only for the
18 benefit of the individual car owners, but for the public as a
19 whole.

20 On behalf of the Department, I would like to acknowledge
21 the contributions of the Settlement Master, Director Mueller,
22 and his team, Mr. Quarles and Mr. Zebley, for their dedication
23 and their hard work as they helped facilitate these countless
24 hours of discussion literally at all hours of the day and night
25 over a period of months.

1 Also, we could not have completed this document without
2 the able and limitless technical assistance of our colleagues
3 at the Environmental Protection Agency. I'd also like to
4 recognize Mr. Akers of the California Attorney General's
5 Office, and his team, as well as the California Air Resources
6 Board engineers and lawyers. There is a massive team behind
7 all of this to make this document happen. Just invaluable
8 contributions. And in this case, a unique role as a
9 co-regulator with the EPA.

10 I would also like to acknowledge Mr. Cohen and the Federal
11 Trade Commission; and of course, Lead Plaintiffs' Counsel,
12 Ms. Cabraser, and the entire Plaintiffs Steering Committee for
13 their coöperative efforts throughout this process.

14 This was a unique experience for the Department. We
15 typically do this by ourselves. So a big thank-you to all of
16 those folks.

17 There are, as have been mentioned, Your Honor, three
18 separate agreements before the Court which resolve separate and
19 distinct claims brought by the Department; brought by the FTC
20 on behalf of consumers; and brought by PSC on behalf of the
21 Class. While the claims are distinct, the relief secured by
22 these agreements, as you have noted, overlap. And this
23 required a great deal of coördination among the various
24 plaintiffs. And again, I just wanted to thank all of the
25 parties for their hard work.

1 I would also like to thank counsel for Volkswagen, for
2 their collegiality and professionalism to get to this point.

3 For just a recap of what is covered in the Consent Decree,
4 Your Honor, we filed that back in June. And you have before
5 you our motion to enter the Consent Decree, but I would just
6 like to briefly cover the provisions. It partially resolves
7 the allegations of the EPA and ARB under the Clean Air Act,
8 also under the California Health and Safety Code, and
9 California's Unfair Competition Laws relating to the use of the
10 defeat devices in Volkswagen vehicles -- nearly 500,000 model
11 year 2009 to 2015 2-liter vehicles -- in order to cheat the
12 emissions test.

13 This partial settlement is a significant first step
14 towards holding Volkswagen accountable for what was a breach of
15 its legal duties, and certainly a breach of the public's trust.
16 Altogether the document, as you've reviewed, is nearly 200
17 pages. And it sets forth in various appendices the relief.

18 In Appendix A and B, Your Honor will find the buyback,
19 lease termination, and vehicle modification recall program.
20 The buyback mandated in Appendix A of the decree is a part of a
21 vehicle recall program pursuant to the respective authorities
22 of EPA and CARB, under the Clean Air Act and state statutes.
23 It is designed to remove from the roads and highways of the
24 United States these vehicles that are emitting the NO_x
25 pollution in excess of applicable standards.

1 What the decree requires is for Volkswagen to offer to buy
2 back a hundred percent of those polluting vehicles at their
3 retail value as of September of last year, and to terminate the
4 leases at no cost as part of that program.

5 However, Volkswagen may also, under the provisions of
6 Appendix B, modify the emissions system to reduce the NO_x
7 emissions, if ultimately a modification is submitted to and
8 approved by the regulators. If it is approved, Volkswagen must
9 offer it to all affected vehicle owners and lessees, free of
10 charge, and in perpetuity.

11 If the settling defendants, Volkswagen and Audi in this
12 case, fail to remove from the road or modify the emissions
13 systems on at least 85 percent of those vehicles, as
14 Mr. Giuffra noted, by implementing the buyback and
15 emissions-modifications programs, Volkswagen would be required
16 to pay 85 million for every percentage point that they are
17 short of the 85 personal recall rate into a mitigation trust,
18 which I'll discuss in just a moment, which will be used to
19 reduce those NO_x emissions.

20 The primary goal of the consumer payments required under
21 the EPA and CARB buyback program is to repurchase the vehicles
22 at a fair price, and incentivize participation in the program,
23 with the primary goal of getting the cars off the road.

24 The Consent Decree also addresses the environmental injury
25 resulting from the vehicles. The Court will find in Appendices

1 C and D a zero-emissions vehicle investment commitment, and the
2 NO_x mitigation trust agreement. Under these programs,
3 Volkswagen will address the environmental injury. They will
4 invest \$2 billion towards improving infrastructure, access, and
5 education to support advance zero-emission vehicles over a
6 period of ten years.

7 As part of developing the national plan, they must solicit
8 and consider input from interested states and cities and tribes
9 and federal agencies.

10 The Consent Decree will also require Volkswagen to pay
11 \$2.7 billion to fund projects across the entire country. It
12 will reduce emissions of NO_x, which is the largest monetary
13 mitigation obligation in the history of the Clean Air Act.
14 Volkswagen will place the funds into a mitigation trust over a
15 period of three years, and those funds will be administered by
16 an independent trustee. States, Puerto Rico, the District of
17 Columbia, and Indian tribes are eligible to become
18 beneficiaries and obtain those funds for designated
19 NO_x-reduction projects.

20 NO_x pollution contributes to harmful ground ozone and fine
21 particulate matter; contributes to the formation of harmful
22 smog and soot exposure, which has been linked to a number of
23 respiratory- and cardiovascular-related health effects.

24 And, Your Honor, the mitigation projects carried out from
25 those trust funds will reduce this dangerous pollution. And we

1 think that's an important aspect of what's been accomplished.

2 Altogether, the remedies and Appendix A, B, C, and D --
3 these remedies -- they form the total Consent Decree, which
4 comprehensively will address the environmental injury resulting
5 from the vehicles, by removing them from the road, and making
6 the environment whole.

7 The United States received nearly 1,200 public comments in
8 the public comment process on the Consent Decree. It's a
9 30-day period. That's a lot of comments. We have read them
10 all. We have considered them all. And they touched on every
11 aspect of the Consent Decree. Many of them were from
12 individual CARB owners. We also received comments from
13 institutions, including public and private groups; for-profit
14 and nonprofit groups; public and local governments and tribes
15 and states. There was a lot of interest in what was in this
16 document. And we heard from a lot of parties. We also
17 received positive comments, and we received some suggestions
18 for improvements.

19 I would note, Your Honor, that some of the objectors for
20 the Class settlement also provided public comments to the
21 Consent Decree. One of those objectors, Mr. Fleshman, who was
22 represented today by Mr. Feinman up here -- just briefly, I
23 would note for Your Honor that we have responded, I think
24 rather robustly, to Mr. Feinman's objections, at least as they
25 relate to the Consent Decree, in our motion to enter response

1 to Comment Number 31. So I would direct Your Honor's attention
2 there, as the United States responds to the comments today from
3 Mr. Feinman.

4 As I stated, the Department carefully reviewed and
5 considered all of the comments.

6 One thing Your Honor will note is that we proposed changes
7 as a result of those comments, specifically to Appendix D,
8 primarily in response to comments received by states and
9 tribes, who, of course, are the potential beneficiaries, so
10 it's important to hear from them. The changes that we have
11 suggested and which we filed with the motion to enter for Your
12 Honor's consideration include extending the time for
13 beneficiaries to submit their plans; expanding the list of
14 eligible mitigation actions that beneficiaries may undertake
15 with the funds.

16 And, so Your Honor's aware, we have consulted with and
17 received consent from Volkswagen, of course, with these
18 changes. And, for the Court's convenience, in our filing we
19 submitted a strike-through version, so you can see the changes
20 that have been made with respect to Appendix D, as to what we
21 filed back in June.

22 Approval of the Consent Decree in the Ninth Circuit, of
23 course, is within the informed discretion of the Court. And,
24 as articulated in our motion, the appropriate legal standard
25 for the Court to consider is whether ultimately the Consent

1 Decree is fair, is reasonable, and is consistent with the
2 objectives of the Clean Air Act.

3 As confirmed by Director Mueller, the proposed Consent
4 Decree is the result of rigorous arm's-length negotiations.

5 It provides a robust and timely environmental remedy for
6 the nearly half a million vehicles that are currently on the
7 road that do not meet certified emissions standards, by
8 requiring the buyback and the modification recall remedies.
9 And it provides a technically feasible solution that is
10 achievable in a reasonable period of time.

11 Volkswagen may fulfill its buyback obligations under the
12 Consent Decree by carrying out the detailed obligations set
13 forth in the related settlements, which serve consumer
14 interests, as discussed by Ms. Cabraser.

15 The Consent Decree makes the environment whole through the
16 zero-emissions vehicle investment commitment, and the
17 environmental mitigation trust.

18 And on the whole, Your Honor, the United States thinks
19 this is -- it meets the standard. It's fair. It's reasonable.
20 It's certainly consistent with the objectives of the Clean Air
21 Act. And we respectfully request that the Court approve and
22 enter the Consent Decree.

23 Thank you.

24 **THE COURT:** Thank you, Mr. Van Eaton.

25 Can we hear from California?

1 **MR. AKERS:** Good morning, Your Honor. Nicklas Akers,
2 for the State of California. I represent today both the
3 California Air Resources Board, and the California Attorney
4 General's Office, both of which are parties to the proposed
5 partial Consent Decree.

6 We believe that the Consent Decree effects an appropriate
7 partial resolution of both the United States' claims and
8 California's claims. As you know, and as the United States has
9 indicated, the California Air Resources Board has a unique
10 status under the Clean Air Act as a co-regulator that sets and
11 enforces its own standards for mobile emissions sources.

12 ARB scientists and engineers had a critical role in
13 uncovering and understanding the misconduct that gave rise to
14 this litigation, and in crafting the Consent Decree you now
15 have before you. And both ARB and the California
16 Attorney General were parties to the litigation and to the
17 Consent Decree.

18 The Consent Decree resolved some but not all of
19 California's claims. Specifically, it's a partial settlement
20 of the claims described in paragraphs 76 and 77 of the Consent
21 Decree. That includes the Air Resources Board's and Attorney
22 General's claims for injunctive relief and restitution under
23 California's environmental and Unfair Competition Laws for harm
24 for the environment; for consumers relief; and for disruption
25 to the market for clean vehicles associated with Volkswagen's

1 marketing and sale of its 2-liter vehicles.

2 We believe that the proposed decree effects an appropriate
3 resolution of these claims. And as to California, Your Honor,
4 as you know, it requires Volkswagen to pay \$381 million into a
5 trust that will fund environmental-mitigation projects in
6 California. Those funds will be administered by an independent
7 trustee, and used to fund projects that are identified and
8 selected by the California Air Resources Board.

9 As the parties have noted, if Volkswagen fails to modify
10 or remove from commerce 85 percent of the vehicles in
11 California, it will be required to pay additional -- a
12 substantial amount of additional funds into that mitigation
13 trust.

14 And finally, Volkswagen is required to make \$800 million
15 in investments in zero-emission-vehicle-related technologies in
16 California over the next decade. And in California, those
17 investments will be made pursuant to a plan that is both
18 reviewed by and approved by the Air Resources Board.

19 I'd note that there are a wide range of investments that
20 are identified in Appendix C, and that those investments do not
21 simply relate to charging stations or to other specific forms
22 of technology.

23 In addition, the partial Consent Decree provides what we
24 believe was fair treatment for affected California consumers,
25 through the compensation program provided for in the Consent

1 Decree, and the accompanying FTC Order and related class action
2 settlement. All of these agreements are interrelated, and they
3 are enforceable by the California Attorney General under
4 paragraph 77 of the Consent Decree. And my colleagues have
5 already describes those provisions in detail.

6 In addition, the Consent Decree creates a process for EPA
7 and ARB testing, review, and approval before Volkswagen is
8 permitted to offer any approved emissions modification.

9 And the agreement as a whole was negotiated through a
10 process that's been described by Director Mueller and my
11 colleagues, and involved tremendous amounts of interagency
12 relationships between the Department of Justice, EPA, the Air
13 Resources Board, the California Attorney General, Federal Trade
14 Commission, and the Plaintiffs' Steering Committee.

15 It's important to note that this is a partial Consent
16 Decree that does not completely resolve California's claims.
17 It expressly carves out the Air Resources Board's claims for
18 civil penalties; its claims for injunctive relief designed to
19 prevent and deter future misconduct, the Air Resources Board's
20 and Attorney General's claims for environmental mitigation
21 related to 3-liter vehicles, and the California Attorney
22 General's consumer-restitution claims related to 3-liter
23 vehicles.

24 It also does not resolve the Attorney General's
25 civil-penalty or injunctive-relief claims under the Unfair

1 Competition Law, False Advertising Law, or Dodd-Frank Consumer
2 Financial Protection Act, which were previously resolved
3 through a separate Consent Decree entered by this Court on
4 September 1st. That Consent Decree required the payment of
5 \$86 million and imposed a permanent injunction intended to
6 prevent and deter Volkswagen, Audi, and Porsche from engaging
7 in future misconduct.

8 To sum up, we believe that the proposed partial Consent
9 Decree effects an appropriate partial resolution of the
10 United States' and California's claims, while preserving the
11 ARB's and EPA's civil-penalty claims. And we therefore join
12 the United States in asking that it be entered.

13 **THE COURT:** Thank you.

14 Federal Trade Commission.

15 **MR. COHEN:** Good morning, Your Honor.

16 Jonathan Cohen, for the Federal Trade Commission.

17 This is an excellent settlement, and we urge the Court
18 to approve it.

19 Before proceeding further, the Commission wants to thank
20 the California Attorney General's Office, and CARB --
21 California Air Resources Board -- for the critical assistance
22 those agencies provided with respect to both the consumer and
23 environmental aspects of this global settlement.

24 We also want to thank the Plaintiffs' Steering Committee
25 for its very important contribution.

1 And finally, the Commission also wants to express its
2 support and really genuine gratitude for the Department of
3 Justice's remarkable effort in obtaining nearly \$5 billion in
4 environmental remediation and clean technology for the benefit
5 of the public.

6 For its part, the Commission's efforts focus solely on
7 negotiating the consumer aspects of settlement. And those
8 negotiations led to the \$10 billion judgment against Volkswagen
9 that the proposed FTC Order contains.

10 From the FTC's perspective, when negotiating compensation
11 for Volkswagen's victims -- in particular, for victims who
12 suffered an intentional injury at Volkswagen's hands; and
13 indeed, an injury of historic proportions -- the Commission
14 sought to achieve three important objectives.

15 First, any settlement must make Volkswagen's victims
16 whole.

17 Second, any settlement must foster consumer choice.

18 And third, any settlement must get relief to the victims
19 quickly.

20 The Commission negotiated a proposed order that
21 accomplishes those three goals.

22 The settlement -- first of all, the settlement makes
23 consumers whole. As the Court is aware, buyback prices reflect
24 the replacement value of the vehicle consumers thought they had
25 in September of 2015 before the scandal became public.

1 The Commission also considered and the settlement reflects
2 other expenses consumers will incur when replacing the vehicle,
3 including taxes, registration, as well as other losses, such as
4 the initial overpayments that consumers made when they
5 purchased these vehicles, as well as the lost opportunity to
6 drive a cleaner vehicle.

7 Second, the settlement preserves consumer choice.
8 Consumers who want to keep their vehicles can get a free
9 modification, assuming that one is approved, along with a
10 substantial CARB payment. Consumers choosing to return their
11 cars to Volkswagen for the substantial buyback compensation
12 have no obligation to buy another Volkswagen, although they
13 certainly may. They have no obligation even to buy another
14 car. They can do whatever they want with what is their money.

15 The Commission also negotiated a loan provision -- a
16 loan-forgiveness provision, which is very generous, and is
17 important, because it means that even consumers who have debt
18 on their vehicles will have the opportunity to exercise the
19 choice to participate in the buyback.

20 And third, Your Honor, the settlement is very fast. As
21 the Court knows, the settlement was accomplished in roughly a
22 little -- just a little bit more than a year, which is truly
23 remarkable; but there are other terms in the FTC Order that are
24 designed to get money into consumers' hands as quickly as
25 possible. In many cases, consumers will receive their payments

1 by electronic funds transfer, or receive even a check on the
2 spot. Compensation will not be slowed by issues related to
3 vehicle condition, because Volkswagen must take any eligible
4 car, regardless of condition, as long as that car is drivable.
5 And, as Volkswagen knows, it must process claims quickly.
6 Volkswagen cannot request unnecessary information from
7 consumers, and it must process claims in a transparent manner,
8 and in accordance with deadlines. Once a consumer submits a
9 completed application, Your Honor, Volkswagen must buy back the
10 car within 90 days at a dealer that the consumer will choose.

11 And finally, Your Honor, to ensure that the goals of full
12 compensation, choice, and speed are all satisfied, both the
13 Commission and an independent, Court-appointed claims
14 supervisor will monitor the entire process.

15 Now, Your Honor, I'd like to just very briefly address a
16 few of the specific objections that we've heard today, but from
17 the perspective of the Commission, which is the government
18 agency tasked with protecting consumers.

19 We've heard some discussion about what's been identified
20 as "the Comlish objection." And from our perspective, I think
21 that objection reflects a very fundamental misunderstanding of
22 the overall global settlement that is before the Court.

23 Comlish is simply wrong that the Consent Decree -- the
24 Department of Justice Consent Decree -- overlaps completely
25 with the FTC's Order with respect to the consumer-readdress

1 provisions. Those agreements -- and, in fact, including the
2 private element, as well -- they work together. They're
3 complementary. They are consistent. And in some sense, they
4 are synergistic.

5 There are important differences between the DOJ -- the
6 Consent Decree, and the FTC Order that reflect, frankly, the
7 fact that the Department of Justice is not exclusively focused
8 on consumer-protection issues.

9 There is no requirement that the buyback be it any
10 specific amount. There is no compensation for other losses.
11 There are no modification payments. There's no recovery for
12 lessees. And there's no recovery for eligible sellers.

13 But it's not the case that it would even be appropriate to
14 enter just the government's settlements. It's necessary to
15 enter the private settlement, as well, because this is all part
16 of an overall global settlement.

17 I suppose that on some very theoretical level, that it
18 might be okay for the Commission to agree to enter the
19 Department of Justice Order and the FTC Order; but the problem
20 with that is that that's not what the parties negotiated. I
21 can't imagine that Volkswagen would ever agree to that. It
22 would mean Volkswagen would then spend years litigating against
23 the private bar, and it would entirely defeat the purpose of
24 everything that the parties have accomplished over the past
25 year. It simply doesn't make sense, and that objection should

1 be overruled.

2 There's been quite a bit of discussion, both before the
3 Court today and in other filings, about the differences between
4 clean retail and clean trade. And that's something that is
5 very important to the Commission. The FTC can't speak to why
6 the private parties -- Volkswagen employed that particular
7 methodology; but what we can say is that the Commission
8 absolutely did not use clean trade when negotiating with
9 Volkswagen or when evaluating the overall proposed settlement.

10 Specifically, any proper economic analysis evaluating a
11 replacement-cost settlement, which is what this is, must use
12 clean retail, because clean retail is the purchase price of a
13 comparable car.

14 And in contrast, clean trade, which is important for some
15 purposes, is the amount that a dealer might reasonably pay for
16 a car as a trade-in from a consumer; or put another way, clean
17 trade is the sum a consumer might receive from a dealer if they
18 trade in their car. The dealer then marks up the vehicle, puts
19 it back on the lot, and sells it for the retail price. That
20 retail price is what the consumer can expect to pay. So that's
21 what matters, and that's what the Commission considered.

22 There's one additional critical point, Your Honor.
23 Although the FTC can't endorse the clean-trade methodology that
24 the PSC settlement embodies, the total payments consumers
25 receive under that settlement match the payments that consumers

1 receive under the FTC Order. Accordingly, Your Honor, any
2 objection based on the private settlement's use of clean trade
3 elevates form over substance. The payments are the same. And
4 the FTC confirmed the appropriateness of those payments by
5 using clean retail.

6 There has been some discussion with respect to attorney
7 liens. And I'll be brief here. No consumer will have their
8 recovery reduced by attorneys' fees. The proposed FTC Order
9 actually does address some types of liens; specifically, the
10 ones associated with auto loans. But it's notably silent with
11 respect to attorney liens.

12 Instead what the proposed FTC Order does is direct
13 Volkswagen to make particular payments in particular amounts to
14 individual consumers. What consumers do with those proceeds is
15 up to the consumer. They can pay their lawyers. They can pay
16 their plumbers. They can buy a new car. They can go on
17 vacation. It is up to the consumer.

18 To the extent liens exist -- I'm not certain that they
19 do -- how to address that is up to Volkswagen; but from a
20 consumer perspective, what's important is that the money will
21 go to consumers.

22 There's been some very brief discussion with respect to
23 mileage. And this is something certainly that the Commission
24 did consider. It is important to consider mileage in this
25 particular type of settlement, because the goal, as we've

1 mentioned, is replacement value. Mileage affects replacement
2 value.

3 And one thing that hasn't been, I think, really focused on
4 very much is that because mileage affects replacement value,
5 for consumers who have lower-than-average mileage, they're
6 entitled to a larger sum, because the replacement value of
7 their vehicle is greater, but that's why mileage is included.

8 There's some also been some discussion about the fact that
9 the mileage adjustment fails to account for high-mileage
10 driving behavior associated with these cars; but that's not
11 correct, Your Honor. It's simply wrong.

12 The redress here is based on prescandal values. And those
13 prescandal values already reflect the fact that these vehicles
14 were designed for high-mileage drivers. In effect, it's
15 already baked into the data that all of the parties are using.
16 The mileage adjustment -- the NADA September 2015 mileage
17 adjustment -- is based on the table as it existed at that time.
18 And that table already reflects consumer driving behavior. So
19 again, there's just no basis -- no merit -- to this objection
20 at all.

21 Another thing that we heard, just very briefly, was
22 something about options, and the fact that either options are
23 being miscalculated, or need to be calculated differently.

24 The settlement does consider, as the Court is aware,
25 options that can be easily valued through the NADA guide.

1 There are after-market options that some consumers are
2 purchased, but those are administratively unworkable from the
3 perspective of including in a settlement of this magnitude.
4 Some of them can be removed from vehicles and be resold. Some
5 of them have negative value. Some of them, in terms of their
6 depreciation rate, is almost impossible to measure.

7 So ultimately, trying to price out tens of thousands, if
8 not more, of individual, after-market options is entirely
9 unworkable, and cuts directly against one of the Commission's
10 core goals in implementing this global deal, which is to get
11 relief to consumers quickly.

12 There is one other just brief note. It's not so much an
13 objection, but a clarification based on something that
14 Mr. Giuffra said on behalf of Volkswagen, which is that he
15 noted that the law that the PSC cited with respect to refund
16 remedies in certain contexts, he believes, is correct. And
17 actually the FTC believes that is correct, as well; but the
18 distinction that we want to draw is that the law that the PSC
19 and I believe also Volkswagen is referring to is private law.

20 FTC law works differently in some cases. And sometimes
21 the differences between public law and -- public FTC law and
22 private law are very important Commission's ability to obtain
23 relief in other matters. So we want to make sure the Court
24 understands that those arguments, which are very rightly being
25 used to defend an excellent settlement -- some component of

1 those do not necessarily apply to Commission jurisprudence.

2 Just to sort of sum up, Your Honor, the FTC is the federal
3 agency with statutory authority and responsibility to protect
4 consumers. The Commission's judgment reflects very substantial
5 consumer-protection expertise. And the Commission has
6 authority from Congress to exercise that judgment.

7 Indeed, as the Court may be aware, in the
8 Northern District -- I believe just last year -- in the
9 *TracFone* litigation, the Commission's approval of a global
10 settlement was found to counsel very strongly in favor of Court
11 approval of a Class or related class action settlement.

12 That same principle applies with equal force here. Here
13 the FTC's judgment is that the proposed settlement is an
14 excellent, unprecedented, positive result for the victims of
15 Volkswagen's lies. We urge the Court to respect that judgment,
16 and order redress to proceed as quickly as possible.

17 Thank you, Your Honor.

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

19 I think that I want to make a couple of observations.

20 First, I did, of course, thank the people here for their
21 efforts; their tireless efforts to achieve a settlement
22 proposal; but that only tells part of the story. The fact is
23 when you step back from this litigation, and you try to figure
24 out how do you resolve these cases, the first thing you look at
25 are: Who are the interested parties? Who are the interested

1 parties?

2 Well, obviously, plaintiffs are an interested party. The
3 defendant is an interested party.

4 And if we had a case just involving Volkswagen and, you
5 know, Plaintiffs Steering Committee, I don't think we would
6 have gotten a resolution sooner than we got, but that would
7 have been far less complicated.

8 So what is the complication?

9 And I don't mean that in a bad way, which I'll get to in a
10 minute.

11 The complication is that now we are dealing not just with
12 the plaintiffs and the defendant. We were also dealing with
13 governmental entities. And when you start talking about
14 governmental entities that have statutory obligations that must
15 be discharged in the performance of their duties, you are
16 frequently talking about delays. You are talking about
17 organizations that have bureaucracies, that have staffs, that
18 have rules of procedure, that have safeguards, that have
19 vehicles for comment.

20 And all of that -- when you put all that together, you
21 think, *Not in my lifetime can we achieve any resolution,*
22 *because look at all that has to be gone through.*

23 And, indeed, that was the case here.

24 So then how did it happen?

25 Well, in the Court's view, as reported to me by

1 Director Mueller, the governmental entities, which were the
2 Environmental Protection Agency, CARB, the Federal Trade
3 Commission, 44 Attorney Generals -- they responded individually
4 and collectively with the urgency that you would only hope that
5 the government could respond with in any given situation.

6 They devoted -- "they." I mean the people at this table,
7 but I also mean the Commissions, I mean the staffs, I mean the
8 entire bureaucracy responded with a sense of urgency that this
9 required, because we weren't talking about just one or two
10 cases of some consumer item not operating properly. We were
11 talking about roughly 500,000 vehicles which were on the road,
12 which were polluting the atmosphere, and out of compliance with
13 the requirements that had been instituted by these various
14 agencies. So there was a real urgency here. And it went
15 effectively beyond the consumers. It went to the general
16 public, because the general public has been effected by this
17 matter.

18 And so I want to just thank -- and I can't express it in a
19 more adequate way, but I want to thank the government, writ
20 large, for being so responsive to a serious environmental
21 concern. That's wonderful. That's what we want our government
22 to do. And we want them to do it expeditiously, and we want
23 them to do it fairly, and we want them to do it thoroughly.
24 And they have done it in this case.

25 And I think that you should go back and thank those

1 members of your staffs, and that Commission, and those people
2 who were consulted, because it wasn't just, *I'll deal with it*
3 *when I get around to it*, to which, by the way, there may be no
4 judicial recourse. You know, if -- Judges just think they have
5 a lot of power. Maybe they behave as if they have a lot of
6 power, but they have limits to their power. And the limitation
7 to their power is seen when we determine -- when any agency --
8 any governmental entity, and so forth -- when we ask them to be
9 responsive, because it's up to them, in the final analysis, how
10 responsive they will be.

11 In this case, they were not only responsive, but they were
12 immediately responsive. And I just want to thank people at
13 this table, and express the Court's appreciation for the
14 service you have performed to the public of the United States.
15 It really is absolutely marvelous.

16 So I now have the views of the parties. I have them in
17 written form.

18 And I want to express some views.

19 The Court is strongly inclined to approve the settlement.
20 However, I want to consider the objections further to determine
21 whether the Court should recommend any modification.

22 There is an urgency, as I've expressed, to bring this
23 matter to a conclusion. Cars are on the road, out of
24 compliance with environmental regulations. And it is
25 imperative that this matter be addressed immediately.

1 Therefore, I will issue my Order on or before next Tuesday,
2 October 25th.

3 If I approve the proposed settlement, then the settlement
4 should be implemented forthwith.

5 What that means is that consumers should avail themselves
6 of the terms of the settlement immediately.

7 Saying that, however -- and recognizing that no matter how
8 perfect a settlement may be, this particular settlement
9 presents interesting logistical considerations. It's massive.
10 And it depends on the smooth operation of the systems that had
11 been employed by the parties in order to achieve a satisfactory
12 result for each consumer.

13 So, while I don't anticipate any problems, and while I've
14 received assurances that the processes are in place to
15 effectuate the settlement, I want the consumers to exercise
16 something which the Court generally hasn't been known to
17 exercise, which is called "patience." If you have a problem
18 with it, exercise some patience. We hope to resolve the
19 problem immediately. You will be able to check on the progress
20 of this matter. And I want to assure the consumers that the
21 Court will retain its jurisdiction, in order to make sure that
22 the settlement is properly and expeditiously implemented.

23 So be assured that whatever the resolution of the case is
24 by next Tuesday, this particular matter -- the Court is not
25 absenting itself from the process. To the contrary, I will be

1 very interested in making sure that this settlement is
2 implemented expeditiously.

3 I would encourage consumers to either -- well, to go to
4 several websites in which the Court's Orders will be posted
5 upon release of those Orders. They are, of course, the Court's
6 website; but perhaps more helpful there is a website called
7 *VWcourtsettlement.com*. And the Order will be posted on that
8 website. And consumers are encouraged to go to that website in
9 order to implement the settlement process, and receive the
10 appropriate compensation.

11 I'm also going to direct the Plaintiffs' Steering
12 Committee to file an application for their fees and costs, once
13 the settlement -- assuming that the settlement will be
14 approved. There will then be a hearing on the fee application,
15 which will be set and noticed and placed on the Court's
16 website.

17 I want to turn -- and I think it won't be too lengthy --
18 to the dealers' settlement. I indicated that there is a
19 dealers' settlement. And the Court has reviewed the documents,
20 and I think that I should turn to Mr. Berman -- is that
21 correct? -- just to make his statements with respect to this
22 settlement of the dealers' claims in this litigation.

23 **MR. BERMAN:** Thank you, Your Honor. Steve Berman, on
24 behalf of the proposed Dealer Class.

25 You've been here three hours. You've said you've read the

1 papers. We're seeking a preliminary approval of the settlement
2 and Settlement Class. I was going to go through the highlights
3 of that, but I think, given the length of time we've all sat,
4 unless you have any questions, I would rest on the papers.

5 **THE COURT:** Yeah. I do not have any questions.

6 They are filed. They're available. I'm quite confident
7 that the dealers are aware of this matter. They will be
8 referring to the fact that I've now given you preliminary
9 approval to proceed. You will do the appropriate notice.

10 And when should we set the hearing?

11 **MR. BERMAN:** Well, we were asking for you to set it
12 January 18th.

13 **THE COURT:** January 18th will be the date of the
14 hearing.

15 **MR. BERMAN:** Okay.

16 **THE COURT:** Thank you, Mr. Berman. Thank you.

17 **MR. BERMAN:** Thank you.

18 **THE COURT:** The Court appreciates it.

19 The fact that still there remain 88,000 cars of the
20 3-liter variety, which -- which issues have -- that they have
21 not been resolved, as yet.

22 However, I have been told that the parties are working
23 diligently to bring about a resolution of those claims; of the
24 claims relating to the 3-liter.

25 I won't rest, and neither will they, until we achieve some

1 sort of resolution of those matters.

2 I was pleased, Mr. Giuffra, in Volkswagen's statement
3 today that they are working diligently to bring about a
4 resolution. There must be a resolution. Those people are
5 aggrieved, as are the 450-, -60, -70,000 other vehicle owners
6 of the 2-liters. Their claims are no less important. And
7 they'll -- those claims must be resolved. So I look forward to
8 my next court appearance on November 3rd, where I will get a
9 progress report. I would urge the parties not to make any
10 holiday plans that will take them anywhere other than the
11 Northern District of California, because I really do think it's
12 important to address those problems now.

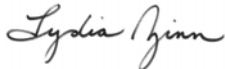
13 And with that, let's see. This lasted a bit longer than I
14 thought, but it was very helpful. And the next thing is that
15 you will hear from the Court on or before October 25th. Thank
16 you. We're in recess.

17 (At 11:05 a.m. the proceedings were adjourned.)

18 I certify that the foregoing is a correct transcript from the
19 record of proceedings in the above-entitled matter.

20

21



22

October 18, 2016

23

Signature of Court Reporter/Transcriber Date

24

Lydia Zinn

25

25