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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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10 IN RE: VOLKSWAGEN 'CLEAN
DIESEL' MARKETING, SALES
11 PRACTICES AND PRODUCTS
LIABILITY LITIGATION

MDL 2672 CRB (JSC)

12 This Documents Relates to:

13 ALL CONSUMER AND RESELLER
14 ACTIONS

**SETTLEMENT CLASS COUNSEL'S
STATEMENT OF ADDITIONAL
INFORMATION REGARDING
PROSPECTIVE REQUEST FOR
ATTORNEYS' FEES AND COSTS
RELATING TO THE 3.0-LITER CLASS
ACTION SETTLEMENT**

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1 Settlement Class Counsel submit this statement pursuant to the Court’s direction in its
2 February 16, 2017 Order Granting Preliminary Approval of Settlement (Dkt. No. 2919) to
3 provide additional information on Settlement Class Counsel’s prospective request for attorneys’
4 fees and costs in connection with the Amended Consumer and Reseller Dealership 3.0-liter Class
5 Action Settlement (“3.0-liter Settlement” or “Class Settlement”) (Dkt. No. 2894).

6 Under the Court’s and the Settlement Master team’s active guidance, the parties to this
7 class action achieved an historic resolution for Volkswagen, Audi, and Porsche 3.0-liter diesel
8 vehicles that will: (1) get over 57,824 3.0 liter Generation Two vehicles repaired to their
9 originally certified emissions levels, modified to an acceptable existing emissions standard, or off
10 the road; (2) get over 19,000 3.0-liter Generation One vehicles modified to an acceptable existing
11 emissions standard or off the road; (3) provide substantial cash compensation to all participating
12 Class Members; and (4) remediate the environmental damage caused by Volkswagen, all at a
13 record pace for complex litigation. The total amount of money to be paid to Class Members, as
14 well as the amount payable to each Class Member under a complex set of events and
15 contingencies, has been established and set forth in the Class Settlement. Assuming 100%
16 participation, and depending upon the outcome and timing of the emissions compliant repair
17 approval process for Generation Two 3.0-liter vehicles, the funding commitment ranges from
18 approximately \$1.24 billion to over \$4.04 billion. The Class Settlement—which sets decision
19 dates for emissions compliant repair approvals, vehicle value for buybacks, and repair and
20 restitution compensation values for vehicle owners and lessees—is part of an interrelated set of
21 private and public resolutions. Achieving the environmental and consumer benefits of these
22 settlements was a team effort, which included the Department of Justice on behalf of the
23 Environmental Protection Agency, the Federal Trade Commission, the California Attorney
24 General’s office on behalf of CARB, as well as Settlement Class Counsel.

25 The Class Settlement requires Volkswagen to pay Settlement Class Counsel’s reasonable
26 fees and costs *in addition to* Class Members’ settlement benefits. This means that regardless of
27 the amount of fees and costs the Court decides to award Settlement Class Counsel, Class
28 Members’ settlement benefits and payments will not be reduced by one cent.

1 Settlement Class Counsel have not yet filed an application for attorneys' fees and costs.
2 As with the procedure followed in the 2.0-liter Settlement, Settlement Class Counsel will file an
3 application for an award of attorneys' fees and costs pursuant to Federal Rule of Civil Procedure
4 23(h) if and after final approval is granted to the 3.0-liter Settlement, on a schedule to be set by
5 the Court. Under the Class Settlement, Settlement Class Counsel and counsel for Volkswagen
6 will attempt to negotiate the amount of attorneys' fees and costs to be paid. Volkswagen and
7 Settlement Class Counsel have not even begun to discuss attorneys' fees. Any future
8 agreement—or lack thereof—will be reflected in the application, which will in either event be
9 subject to the Court's independent determination and award. If the Parties reach an agreement
10 about the amount of attorneys' fees and costs, Settlement Class Counsel will submit the
11 negotiated amount to the Court for approval. If the parties do not reach an agreement as to the
12 amount of attorneys' fees and costs, the parties will litigate the fee issues, and each party will
13 present its respective position to the Court for determination.

14 Notwithstanding the size of the funding commitment to Class Members and the
15 challenging circumstances under which this Class Settlement was negotiated and achieved,
16 Settlement Class Counsel's common benefit fee application will seek no more than a total of \$245
17 million in combined attorneys' fees and reasonable out-of-pocket costs, with respect to the
18 approximately \$1.24 billion in monetary benefits that the Class Settlement makes available to
19 Class Members if all Generation Two 3.0-liter vehicles achieve timely emissions compliant repair
20 approval without reduced performance. Settlement Class Counsel may also make further
21 application, for an additional combined award of fees and costs in an amount no greater than 5%
22 of the additional monetary benefits available to Class Members, if contingent events that increase
23 monetary benefits to Class Members—such as the delay or denial of emissions compliant repairs
24 for any group of Generation Two vehicles—are triggered under the Class Settlement. Because
25 the monetary benefits to the Class Members under all of these contingencies have already been
26 established and are set forth in the Class Settlement, both applications (assuming a second is
27 filed) will use the percentage methodology approved by the Ninth Circuit for class action
28 settlement fee awards, at amounts well below the 25% benchmark established by the Ninth

1 Circuit Court of Appeals. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th
2 Cir. 2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).

3 Since the parties filed the Settlement documents with the Court on January 31, 2017,
4 numerous Class Members have contacted Settlement Class Counsel with requests for information
5 and questions about the Class Settlement. The Class Settlement, by its terms, is designed to
6 provide consumers with choices and options throughout the settlement program and is, of
7 necessity, more complex than the previously-approved 2.0-liter Settlement because of the
8 prospects for regulatory approval of the emissions compliant repair for Generation Two vehicles,
9 and the deadlines and conditions set forth in the Settlement documents. These choices and
10 contingencies are important to Class Members, and they require a detailed discussion with
11 attorneys and/or paralegals who are well-versed in the Class Settlement's terms and procedures.
12 Many of these conversations have required a lawyer or paralegal to spend 30-60 minutes on the
13 telephone speaking to a single Class Member. Occasionally, lawyers from PSC firms have even
14 visited dealerships with Class Members (particularly elderly ones) to assist in the process.

15 As in the 2.0-liter Settlement, Class Members deserve this level of attention when they are
16 making decisions of important financial and practical impact to their lives. This settlement
17 involves real decisions about real cars, and real time must be spent by counsel to guide and assist
18 consumers through the process. The number of such calls and other communications from the
19 tens of thousands of 3.0-liter Class Members will increase significantly after the Class Settlement
20 becomes operational (if the Court grants final approval). As settlement implementation continues
21 through the April 2020, substantial time and effort will be spent to ensure that Class Members are
22 treated fairly in the process and receive their benefits expeditiously. This is particularly
23 applicable to the 57,824 Generation Two vehicles, whose owners are being asked to be patient
24 and to wait for repair approval decisions and a repair or buyback process that will not begin until
25 late 2017 at the earliest.

26 Accordingly, to meet their obligations to their Class Member clients and to the Court, as
27 well as to defend and promote the Class Settlement itself, Settlement Class Counsel will continue
28 to incur time and expenses. To address this reality fairly, Settlement Class Counsel's

1 Rule 23(h)/common benefit fee application(s) will include reasonable and appropriate
2 compensation for ongoing settlement-related common benefit work.

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4 Dated: February 24, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 24, 2017, service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser
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