

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

IN RE: VOLKSWAGEN "CLEAN)
DIESEL" MARKETING, SALES) Master File No.
PRACTICES, AND PRODUCTS) 3:15-MD-02672-CRB
LIABILITY LITIGATION.) MDL No. 2672
_____)

San Francisco, California
Thursday, May 11, 2017

TRANSCRIPT OF PROCEEDINGS

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Also Present:

Mr. Glenn Dasmalchi
Mr. Haegele
Sgt. Henry Camerano Jr.
Mr. Frederic Fletcher

1 Thursday - May 11, 2017

8:07 a.m.

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

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4 **THE CLERK:** Calling civil action C 15-2672, In re
5 Volkswagen Clean Diesel Marketing Sales Practices and Products
6 Liability Litigation.

7 Counsel, please step forward and state your appearances
8 for the record.

9 **MS. CABRASER:** Good morning, Your Honors. Elizabeth
10 Cabraser, Lief, Cabraser, Heimann & Bernstein, on behalf of
11 the PSC. With me this morning is my partner, David Stelling.

12 And there are many PSC members in attendance. Hopefully
13 we'll be hearing this morning from PSC members Joseph Rice and
14 Gerard Stranch.

15 **THE COURT:** Thank you.

16 **MR. VAN EATON:** Good morning, Your Honor,
17 Judge Corley. Joshua Van Eaton for the United States, here
18 with my colleagues Bethany Engel and Nigel Cooney from the
19 Department of Justice.

20 Thank you.

21 **MR. AKERS:** Good morning, Your Honor. Nick Akers for
22 the California Air Resources Board and California Attorney
23 General.

24 **THE COURT:** Good morning.

25 **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen

1 for the Federal Trade Commission. With me today is my
2 colleague Simon Han.

3 **THE COURT:** Good morning.

4 **MR. GIUFFRA:** Good morning, Judge Breyer, Judge
5 Corley. Robert Giuffra, from Sullivan and Cromwell, for the
6 Volkswagen defendants.

7 With me today is my partner Sharon Nelles, partner Michael
8 Steinberg, and my partner Diane McGimsey.

9 And it's good to be here again. Thank you.

10 **THE COURT:** Thank you.

11 **MS. DAWSON:** Good morning, Your Honors. Cari Dawson,
12 Alston & Bird, for the Porsche defendants.

13 **MR. SLATER:** Good morning, Your Honor. Matthew
14 Slater, of Cleary Gottlieb, for Robert Bosch GmbH and Robert
15 Bosch LLC.

16 **THE COURT:** Good morning.

17 Well, good morning, ladies and gentlemen. This is a
18 hearing that has been set for a determination whether final
19 approval should be given to what has been characterized as the
20 3-liter Volkswagen settlement. In addition, it is a hearing on
21 final approval of the Bosch settlement that has been proposed.

22 So I want to hear from the parties on those issues and
23 perhaps other related issues during this morning's session.

24 I want to remind the parties that we are on CourtCall,
25 which means that attorneys and parties and interested parties

1 and the public all over the country have phoned in. And they
2 are listening to this conversation as well. So be sure to
3 speak into the microphone and be sure to identify yourself.

4 So who wishes to start?

5 We have the Environmental Protection Agency.

6 **MR. VAN EATON:** Your Honor, first on the agenda --

7 **THE COURT:** Okay. Mr. Van Eaton.

8 **MR. VAN EATON:** Thank you, Your Honor.

9 I'm here today -- the United States is here to urge the
10 Court to enter what we have styled the Second Partial Consent
11 Decree, which is filed at Docket Number 2520-1, which, if
12 entered, will actually be the third of the settlements between
13 the United States and Volkswagen in this case.

14 The settlements, collectively, will resolve all of the
15 violations of the Clean Air Act that we've alleged against
16 Volkswagen in the United States civil complaint.

17 I think it is important, at this point, to remember that
18 the underlying conduct in this case, that we are addressing
19 through these three settlements, was so egregious that it was
20 criminal, as the Court is aware.

21 Volkswagen, at this point, has now pled guilty to three
22 felonies, including conspiracy to defraud the United States in
23 order to illegally sell the vehicles in this country, and
24 obstruction of justice for destruction of documents in this
25 case, which, I think, underscores the gravity of the conduct

1 that led to the nearly 600,000 noncompliant vehicles polluting
2 our air through the use of these illegal defeat devices.

3 So this case is, first and foremost, an environmental
4 case. And we have addressed the environmental harm throughout,
5 which has been a shared priority of both the Court and the
6 regulators, the Environmental Protection Agency and the
7 California Air Resources Board.

8 The United States believes that, taken together, the three
9 civil settlements provide a comprehensive resolution of the
10 claims by addressing the harm to human health and the
11 environment, requiring Volkswagen to pay the largest civil
12 penalty ever under the Clean Air Act, and imposing a tailored
13 injunctive relief program consisting of vehicle buybacks and
14 modifications, and required changes in corporate governance, as
15 well as the introduction of third-party testing, and an
16 independent auditor to oversee those changes.

17 You entered the first settlement last October, in which we
18 addressed the half million 2-liter cars. I'd like to briefly
19 update the Court on implementation so far. A couple of items.

20 First, there were three components of relief. The first
21 was the buyback and modification program, which, as you know,
22 is well underway. I'm sure you'll hear some statistics today
23 from the other parties.

24 The Consent Decree required Volkswagen to achieve the
25 85 percent recall rate in order to avoid additional payments.

1 And we receive regular reports from the claims administrator,
2 as do the rest of the parties. And I know that the Court is
3 aware that Volkswagen has already made significant progress
4 toward that goal.

5 The Environmental Protection Agency and CARB have also
6 already approved one of the emissions modifications for the
7 generation 3 vehicles. And many car owners have already opted
8 for and received that modification, which improves the
9 emissions coming out of those vehicles.

10 The second component was the mitigation trust, a
11 \$2.7 billion trust established to fund NOx-reducing projects
12 around the country.

13 On March 15th, Your Honor issued an order appointing the
14 trustee. And we are working presently with the trustee to
15 finalize the trust agreement just as quickly as possible so we
16 can make the trust operational, and states and tribes can
17 access those funds and start to apply them toward the
18 NOx-reduction projects.

19 And, finally, the 2-liter Consent Decree required
20 Volkswagen to invest \$2 billion in Zero Emission Vehicle
21 infrastructure and education.

22 And on April 12th, the EPA approved Volkswagen's national
23 ZEV investment plan, which should pave the way for its
24 implementation.

25 That's the 2-liter update.

1 The Court also entered the United States -- what we call
2 the third part of the Consent Decree last month, on April 13th.
3 The third part of the Consent Decree was one of a set of
4 coordinated federal resolutions pertaining to both the 2- and
5 3-liter vehicles, which yielded a total of \$4.3 billion in
6 penalties and fines to resolve many federal and civil and
7 criminal claims.

8 The Volkswagen and Porsche defendants agreed to pay a
9 \$1.45 billion civil penalty to resolve EPA's Clean Air Act
10 claims. And the payment was due as a lump sum within 30 days
11 of entry. And I'm happy to report that Volkswagen has made
12 that penalty payment.

13 It also required Volkswagen to take some specific actions
14 to prevent similar violations in the future, including a suite
15 of corporate governance reform measures, an independent third
16 party to perform annual end-use testing of the vehicles using
17 portable emission-testing equipment of the type that was used
18 initially in this case to discover the cheating.

19 And, finally, the independent auditor was to be appointed.
20 And I believe that Volkswagen filed, last night, a notice with
21 the Court making you aware that the independent auditor has
22 been selected in this case.

23 A monitor was retained pursuant to Volkswagen's criminal
24 plea agreement. And under the provisions of the Consent
25 Decree, the monitor will serve that role under the civil decree

1 as well.

2 Today we're requesting that the Court grant our pending
3 motion to enter the 3-liter Consent Decree which was filed with
4 the Court in December of last year.

5 While in some ways it's similar to the 2-liter decree, the
6 3-liter vehicles presented a few different challenges than we
7 faced with the 2-liter vehicles.

8 For the older cars, which we refer to as the generation 1
9 vehicles, the 3-liter decree offers the same options as we saw
10 in the 2-liter resolution.

11 Volkswagen has offered to buy back the vehicles or
12 terminate the leases, but must also offer an emissions
13 modification designed to reduce the emissions.

14 For the newer vehicles, which we call the generation 2
15 vehicles, Volkswagen believes it's technically feasible to
16 repair those vehicles such that they can be brought into
17 compliance with the certified emissions standard to which they
18 were initially certified.

19 If Volkswagen is successful in demonstrating to the
20 regulators that this technical solution can be achieved, then
21 the Consent Decree does not require Volkswagen to buy those
22 vehicles back. However, if they cannot, then the framework
23 reverts back to the similar structure in the 2-liter decree and
24 for the older generation 1 3-liter cars. We understand that,
25 in that contingency, that could end up costing up to an

1 additional billion dollars.

2 There's another component to the 3-liter decree that's
3 similar to the 2-liter, and that's an additional \$225 million
4 payment into the mitigation trust. And, as I just reported,
5 we're working feverishly to get the trust agreement in place so
6 that the projects can begin.

7 And we think that by allowing Volkswagen to bring at least
8 some of these vehicles back into compliance with their
9 certified emissions standard, we will have reached what we
10 think is a resolution that is tailored to really address the
11 environmental concerns associated with these cars.

12 The U.S., which we report in our motion, received and
13 considered over a hundred public comments on this resolution.
14 Most of the comments we received expressed displeasure over the
15 absence of a buyback option for the 3-liter cars, the gen 2s.

16 But the United States' purpose in this case was to enforce
17 violations of the Clean Air Act and not to redress consumer
18 injury. So we think that the significant environmental benefit
19 from returning these vehicles to their original certified
20 exhaust emissions standard, where that result can be achieved,
21 is a good result. And there's not the same need for a buyback
22 to remedy the Clean Air Act violations in that event.

23 I guess, Your Honor, before I get to the legal standard,
24 in conclusion, I want to just point out that the Clean Air Act,
25 when it was passed a few decades ago, the point was to protect

1 the American people from harmful air pollution. And by
2 disregarding this law, you know, Volkswagen has shown contempt
3 not just for the law but for the Americans who breathe the air.

4 These settlements, we think, provide a mechanism in
5 response to that, to make the environment whole by removing the
6 cars from the road and offsetting those harmful air emissions
7 by holding Volkswagen accountable for its violations in breach
8 of the public trust, and require meaningful change and
9 oversight that's designed to prevent something like this from
10 happening again.

11 Taken together, the three settlements add up to
12 approximately \$17.4 billion worth of relief, which we think
13 sends the message to Volkswagen, and hopefully to others that
14 would consider gaming the system, that it does not pay to
15 cheat.

16 The 3-liter Consent Decree, we believe it's a fair and
17 reasonable decree and is consistent with the purposes of the
18 Clean Air Act, which we lay out in our motion for the Court.
19 It returns the vehicles to emissions compliance in an
20 appropriate time frame. And where compliance isn't feasible,
21 it imposes a very comprehensive plan to remove the cars from
22 the road or reduce their emissions significantly.

23 So, Your Honor, we respectfully request that the Court
24 approve and enter the proposed Consent Decree, which, when
25 entered, would conclude the United States' civil enforcement

1 case against Volkswagen for the claims alleged in our
2 complaint.

3 Those are my remarks. And I'm happy to take your
4 questions.

5 **THE COURT:** Thank you.

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

7 **THE COURT:** Mr. Akers.

8 **MR. AKERS:** Good morning, Your Honor.

9 The settlements before you today will continue to bring a
10 just resolution to one of the most egregious environmental
11 frauds in U.S. history, and we urge you to approve them.

12 The California Air Resources Board and the California
13 Attorney General are parties to two of the proposed Consent
14 Decrees before you today.

15 The first Consent Decree is that between the
16 United States, California, and defendants. It's docket number
17 2520. And, as Mr. Van Eaton has described, it provides
18 mitigation funds to address the emissions from the 3-liter
19 subject vehicles. And it establishes a process for vehicle
20 buybacks, for the review of proposed emission modifications,
21 and the payment of fair compensation to consumers.

22 As to California and California's claims, it provides
23 41 million in mitigation funds, to be used for projects
24 selected by the Air Resources Board to mitigate NOx emissions
25 from the subject vehicles.

1 It provides a commitment, enforceable by the Air Resources
2 Board, that defendants will modify or buy back 85 percent of
3 the roughly 15,000 3-liter vehicles in California. And it
4 provides ARB with the authority, along with the EPA, its
5 co-regulator, to approve or disapprove any emissions
6 modification the defendants may propose for the 3-liter
7 vehicles.

8 The second Consent Decree is simply between California and
9 defendants. And it's docket number 2519. It complements the
10 first Consent Decree and provides additional mitigation and
11 other relief to California. And that includes \$25 million to
12 CARB, to support its enhanced fleet modernization program and
13 Plus-UP projects or similar projects that provide incentives to
14 low-income Californians to replace older polluting vehicles
15 with Zero Emission Vehicles.

16 It also includes a requirement that is part of
17 Volkswagen's existing ZEV investment requirement. It
18 implements a second green city project in a city that's
19 predominantly consisting of disadvantaged communities.

20 And it also includes a mandate that defendants bring
21 additional Zero Emission Vehicle, battery-electric vehicle
22 models to the market in California.

23 **THE COURT:** Could you explain that a minute, that
24 last -- that there will be a dedication of funds to low income
25 neighborhoods.

1 **MR. AKERS:** Yes, Your Honor.

2 There are -- there are two components. The first is a
3 \$25 million payment to -- to CARB, to support existing programs
4 or similar programs that provide incentives for the replacement
5 of old cars, old polluting cars, with Zero Emission Vehicles in
6 lower income communities and for lower income Californians.

7 The second is a modification of the Zero Emission Vehicle
8 investment requirement that's provided for under the 2-liter
9 Consent Decree. And the modification will require the
10 implementation of the green city project in a city composed
11 primarily of low income, disadvantaged communities as
12 identified through California Environmental Protection Agency's
13 EnviroScreen.

14 **THE COURT:** I thought that was very interesting. It
15 caught my attention because, as I know, in a court you're not
16 supposed to go out of the record to inform your judgment on
17 matters, but I did happen to see an op ed piece several weeks
18 ago -- I think it was in the *San Francisco Chronicle* -- in
19 which a lawyer wrote on the VW settlement and said that this
20 was an opportunity to address the effects of inappropriate
21 emissions, unlawful emissions, the effect that that has on low
22 income neighborhoods.

23 And it's not like, look, let's just put the electric
24 station in, to use the term, Pacific Heights in San Francisco,
25 but that pollution has a way of affecting everybody, no matter

1 what their station or their -- in life or whatever their
2 location. It does affect location, but it affects people of
3 all economic strata. And that it's important that in any
4 remediation and in any attempt to ameliorate the adverse
5 effects of emissions, to make sure the people who are low
6 income people, who are disadvantaged people, get the benefit of
7 having clean air. And that that's the responsibility for
8 government, to make sure that we take care of people who can't
9 take care of themselves or are otherwise disadvantaged, the
10 least powerful in society.

11 And I am really pleased, and I would salute CARB for
12 recognizing this and taking this into -- taking these factors
13 into consideration in the distribution of these fines. So I
14 just wanted to acknowledge that.

15 **MR. AKERS:** Thank you, Your Honor.

16 And, in the aggregate, these settlements will provide
17 approximately \$420 million for ARB to do mitigation projects in
18 California. And the environmental justice concerns are core to
19 ARB's mission and will certainly be key in determining where
20 those funds are directed by the agency.

21 Your Honor, with respect to the two Consent Decrees before
22 you today, we think, in the aggregate, the relief provided by
23 these Consent Decrees will further mitigate the excess
24 emissions that resulted from the illegal inclusion of defeat
25 devices and undisclosed AECDs in their diesel vehicles, and

1 that it will further address and correct the disruption that
2 the attacks on unfair competition created in the market for
3 Zero Emission Vehicles.

4 The Consent Decrees were the result of intense
5 negotiations, as you know, facilitated by Director Mueller,
6 that involved attorneys and engineers from the U.S. DOJ, EPA,
7 CARB, and the California Attorney General's Office, and
8 resulted from months of painstaking investigation by engineers
9 and scientists at EPA and CARB, which serve as co-regulators
10 and interact with the California Health and Safety Code.

11 The interlocking consumer relief provisions of the class
12 action settlement and FTC settlement, which will be described
13 in greater detail in a few moments by counsel for the PSC and
14 the FTC, will also ensure that consumers who elect to receive a
15 buyback or modification under the environmental settlements
16 will receive fair compensation, enhanced warranties, and other
17 appropriate protections.

18 We believe that these Consent Decrees before you are fair
19 and appropriate, particularly in light of the other relief
20 already obtained by the United States and the State of
21 California in this and related actions, and in light of the
22 fact that the Consent Decree preserves the Air Resources
23 Board's claims for civil penalties and injunctive relief,
24 which, as you know, we're working to resolve at this time.

25 We, therefore, ask that the Court grant the pending motion

1 for entry of the Consent Decree between the United States,
2 California, and the defendants, and the separate motion for
3 entry of the Consent Decree between California and defendants.

4 **THE COURT:** Thank you.

5 **MR. AKERS:** Thank you, Your Honor.

6 **THE COURT:** Ms. Cabraser.

7 **MS. CABRASER:** Thank you, Your Honors. Elizabeth
8 Cabraser for the PSC.

9 Before we get into the specifics of the 3-liter and Bosch
10 class action settlements, I wanted to just give a brief
11 overview of where we are this morning in Rule 23 terms.

12 This is, of course, the final approval hearing set under
13 Rule 23(e), to consider whether to grant final approval under
14 Rule 23(e) and Rule 23(b)(3) for the VW 3-liter and Bosch class
15 settlements.

16 Your Honor has voluminous briefs and pleadings. You have
17 the settlement agreements. You have declarations of both
18 technical experts and those who have reviewed the responses to
19 the settlements. And suffice it to say that, in terms of the
20 response of the class members themselves to these two proposed
21 settlements, that response is overwhelmingly positive.

22 As you know from the report of Director Mueller, these
23 settlements were the product of intensive and extended vigorous
24 arm's length negotiations. And they were part of the overall
25 discussions and negotiations that also culminated in the

1 Consent Decrees you've heard about this morning and the FTC
2 order that you will hear about later.

3 As Mr. Akers noted, these are interrelated. They work
4 together. And, indeed, they have to work together because this
5 case, uniquely thus far in U.S. litigation experience, deals
6 with allegations of environmental fraud, admissions of
7 environmental fraud, and a consumer defect that relates not to
8 the safety of drivers and occupants themselves, which would be
9 the more typical auto defect consumer case, but the
10 environmental defect.

11 And so the overarching question for everyone -- the
12 federal government agencies, the states and their agencies, and
13 the consumers themselves directly represented by the PSC -- was
14 how to effectuate an expeditious remedy or mitigation of that
15 environmental defect while providing fair, adequate, and
16 reasonable compensation to the consumers not only because they
17 deserve that compensation for having bought and operated and
18 leased these cars, but because we need to incentivize
19 consumers, the owners and lessees of the cars themselves, to
20 participate in the environmental repair, the environmental
21 modification, and the buyback where these cars can't be
22 environmentally restored, so that the long-standing directive
23 of the Court, and I think everyone in the case, to fix these
24 cars or get them off the road could be fulfilled.

25 And so that goal, that necessity, drove the negotiations

1 of these settlements. It drove the structure of the 3-liter
2 settlement. It drove the benefits, terms, and conditions for
3 both the generation 1 and generation 2 cars included in the
4 3-liter class.

5 And it also provided an opportunity, at the appropriate
6 juncture, to change course with respect to the Bosch defendants
7 from an active litigation course to a resolution course so that
8 economic compensation could be delivered to the class members
9 throughout an integrated administration and in the near term.
10 Timing is everything in this case. Sooner is better than
11 later. And that was something that we always kept in mind in
12 both negotiations.

13 When Your Honor granted preliminary approval to these
14 settlements on February 14th, you also, shortly thereafter,
15 granted approval and authorization to send class notice to the
16 members of these two settlement classes.

17 You have extensive and exhaustive reports on the
18 implementation of those settlement programs, submitted by
19 Dr. Shannon Wheatman, from Kinsella, on the 3-liter Notice
20 Program, at docket 3190-3, and, also, with respect to the Bosch
21 Notice Program, declarations from Cameron Azari and others at
22 Hilsoft and Epic, docket numbers 3188-2 and 3.

23 I'm not going to go through all of the statistics of the
24 Notice Program. As you know, these Notice Programs built on
25 the multimedia Notice Program that was so successful in the

1 2-liter program. And, of course, every month or so brings a
2 new innovation in mass communications, which means class
3 communications. And so, of course, the Notice Programs built
4 on that.

5 Fortunately, here we have email and U.S. mail addresses
6 for virtually all of the class members.

7 **THE COURT:** You didn't have to tweet; is that right?

8 (Laughter)

9 **THE COURT:** No tweeting.

10 **MS. CABRASER:** Well, some innovation.

11 (Laughter)

12 **MS. CABRASER:** And we -- and we did -- and we did use,
13 as Your Honor averted to, early feedback from the class to add
14 to the Notice Program going forward.

15 So a common feature of notice programs these days is
16 what's called reminder notice, or an update notice. And we did
17 that. We sent out extra email notices. We added to the
18 settlement websites, which are the hubs of all of the
19 information for class members. And we also added to this
20 court's website as well.

21 So this is an interactive process. And it's not a static
22 process. Notice used to be a single event. Everything had to
23 be crammed into a very long, very technical document called a
24 Long Form Notice.

25 That procedure has been replaced by using, as we did here,

1 the settlement website that contains all of the documents, that
2 contains frequently asked questions that are updated on an
3 undated basis. As class members ask for particular information
4 or ask new questions, we add those to the website.

5 And, again, being able to use email and social media, both
6 of which were used here, we're able to update the notices and
7 send alerts.

8 For example, if these settlements are granted final
9 approval, there will be an email blast that goes out to the
10 class members of the pertinent classes, alerting them to that
11 fact, reminding them what they need to go to register, what
12 they need to do to participate in the settlements. So it is
13 very much an active process.

14 And the goal, of course, is to ensure not only that
15 everyone knows the essentials of the settlement agreement,
16 knows how to participate in the settlement, but that everyone
17 is appropriately encouraged and assisted in participating in
18 the settlement.

19 We used social media to get the essentials out and to
20 remind. We used Twitter, Instagram, Facebook, and LinkedIn.
21 Notice was sent not only to the individual owners and lessees
22 but to dealers who are likely to have vehicles that are
23 eligible for class benefits, as we did in -- in the 2-liter
24 notice.

25 I'm happy to answer any other questions the Court has

1 about the Notice Program. But one thing that I would note is
2 the ultimate test of any notice program, regardless of whether
3 it uses all of the latest and the best methodology and media,
4 is, does it communicate and motivate the class members to
5 exercise their rights under the settlement?

6 And so we were very interested in the statistics that
7 indicate class member participation. And we would note that we
8 had very high settlement vehicle identification number, or VIN,
9 lookups as a result of the notice.

10 Nearly 91,000 VIN lookups have occurred. That's actually
11 more than the number of VINs in the 3-liter class because there
12 were some multiple lookups.

13 But based on an estimated total of 88,500 3-liter class
14 members, we've got 90,814 eligible VIN lookups. Meaning those
15 are the VINs that are eligible for benefits under the 3-liter
16 class.

17 Although there is not a registration deadline for most
18 class members that's looming, there have already been, as of
19 last week, over 62,500 3-liter settlement registrations, which
20 is over 70 percent of the class.

21 So we are not faced with a deafening silence in response
22 to the Notice Program. We are faced with a very high level of
23 participation. This is quite similar to the participation
24 level that we were seeing at the same point in the 2-liter
25 settlement approval cycle.

1 So we have the same level of active participation and
2 interest in participation by the 3-liter class members, but we
3 have lower, by both number and percentage, opt-outs and
4 objections to both settlements.

5 The total number of compliant opt-outs from 3-liter is
6 593. That's approximately .67 percent, well under 1 percent.
7 And that is both lower by count and lower by percentage than
8 for the 2-liter settlement.

9 For 3-liters, we have total objections received of 32, of
10 which 18 of those are compliant. The percentage of compliant
11 objections is .02 percent objections. Again, lower by both
12 count and percentage than for 2-liters.

13 With respect to the Bosch class, the Bosch class comprises
14 both the 2-liter and 3-liter owners and lessees, so it's a
15 larger class. Approximately 589,200 total Bosch class members.

16 There are 640 compliant opt-outs. And that is a
17 percentage of 0.11 percent. Again, approximately a tenth of a
18 percent opt-outs.

19 Of those opt-outs, approximately 536 are from 2-liters,
20 and 104 are from 3-liters. So that's 83.75 percent of the
21 total Bosch opt-outs are from the 2-liter class, and about
22 16.25 percent of the total Bosch opt-outs are from the 3-liter
23 class.

24 And that's roughly proportional to the relative numbers of
25 vehicles in each class. So we didn't see any discrepancy or

1 disparity there as between 2- and 3-liter owners and lessees.

2 There were four Bosch objections, that were compliant,
3 expressed as a percentage of the class. That's 0.001 percent,
4 a minuscule percentage.

5 To go back to 3-liters for a moment, we also took a look
6 at opt-outs by generation of the vehicle. And of the 593
7 3-liter opt-outs -- and these are -- these are estimates
8 because they're based on VIN research we needed to do. But we
9 see 152 with gen 1 vehicles, 460 with gen 2 vehicles. That's a
10 ratio of 25 percent gen 1, 75 percent gen 2. And that is
11 essentially proportional to the way the vehicles themselves are
12 distributed across the class. So, again, no disparity or
13 discrepancy between generation 1, generation 2 in terms of
14 opt-outs.

15 The registration numbers, the VIN lookup numbers,
16 obviously will continue to grow. The statistics I gave you
17 were from May 5th, and those are already out of date.

18 We would plan to report back in to the Court, if and after
19 final approval is granted to these settlements, to report in on
20 the launch of benefits and payments under these settlements
21 after there has been an opportunity to actually implement those
22 in approximately another month to six weeks.

23 These things take a bit of time to launch. It's a
24 complicated program. But, fortunately, so many class members
25 have already provided the information necessary to send them

1 their initial 50 percent repair payments under the 3-liter
2 settlement, if approved, and, of course, their cash payments
3 under the Bosch settlements.

4 I'm going to ask PSC member Joseph Rice to provide a very
5 brief summary of the settlement terms and benefits of the
6 3-liter settlement for consumers.

7 And then after that, Gerard Stranch will do the same,
8 briefly, for the Bosch settlement.

9 **THE COURT:** Thank you.

10 No PowerPoint, Mr. Rice?

11 **MR. RICE:** No PowerPoint. And I've been told I have
12 no less than an hour to do this.

13 (Laughter)

14 **MR. RICE:** I have heard everyone. This will not be
15 long, Your Honor. Good morning.

16 **THE COURT:** Good morning.

17 **MR. RICE:** What I'd like to do is address a few issues
18 that have been brought to the Court's attention.

19 Obviously, we all believe that the small number of
20 opt-outs, the small number of objections, speak loudly to the
21 fairness and the overall overwhelming acceptance of the
22 settlement, as Ms. Cabraser has laid out with her statistics.

23 And those that have filed objections, our experience has
24 been similar to what DOJ says in their comment period. It's
25 been focused on the generation 2 cars.

1 So let me talk a minute. As Mr. Van Eaton said, the
2 generation 1 program is very similar to the 2-liter, with the
3 additional trade-in provisions that were provided. And I don't
4 believe there have been any real questions about that.

5 We've got the buyback and lease termination. We've locked
6 in the September 2015 valuation. We've given the 15,000 miles.
7 And we've -- our experience has been that a lot of people are
8 continuing to drive these cars, waiting to see if an approved
9 modification comes into place. There's no reduction in value
10 from normal wear and tear.

11 We did address in the 3-liter case, very pointedly, the
12 stripping and vandalism that occurred on the 2-liter, that was
13 disturbing to all of us and to the Court, so that the claims
14 administration can deal with that if that occurs again.

15 And, of course, the compensation value ranges anywhere
16 from 7500 to about \$14,000 in generation 1.

17 But there's not really been any questions or objections
18 focused on generation 1. They've been focused on generation 2.
19 And the generation 2 cars -- and there's three generations of
20 generation 2 -- did present some unique issues.

21 As the Court knows, there's thousands of automobile
22 recalls and issues that come through the government agencies
23 every year. And the vast, vast, vast majority of those, they
24 are handled on a recall process.

25 And in the recall process, very rarely there's a

1 compensation. Almost never do you hear anything about a
2 buyback. And the regulatory agencies manage the process.

3 And when we got into the generation 2 negotiations, it was
4 clear that, for reasons good to the regulatory agencies and the
5 environmental agencies, they were looking to try to keep these
6 cars on the road, if possible, but only if they could be
7 returned to the original certified compliant emissions
8 standard.

9 So we were looking at not a -- a small Volkswagen Beetle
10 that had limited ability to put additional equipment or
11 additional exhaust materials in it, or equipment. But we were
12 looking at different cars. And in looking at it, we had to
13 face the reality that this was an environmental damage case.
14 And that was what was being addressed.

15 Granted, the conduct from Volkswagen in this case has been
16 exceptional, as the government has shown in their criminal
17 charges, as well as -- and as to the extent of the fines. But
18 scrapping another 80,000 cars was not going to be in the best
19 interest of the environment.

20 And, therefore, we set out to deal within the parameters
21 that we had, which is the belief by all engineers and
22 scientists that have looked at it, that in these particular
23 vehicles there is a software-type flash that they believe is
24 going to return it to complete compliance.

25 Now, we dealt with that, but we didn't deal with it in a

1 vacuum. We said, well, that may be true, but it may not be
2 true.

3 So how did we address that? First, it has to be emission
4 compliant with the original certification. And it has to be
5 without materially affecting the performance of the vehicles,
6 because people bought these vehicles in large part because of
7 their performance.

8 And we defined the reduced performance as a change in any
9 of the following performance attributes:

10 First one is a reduction in calculated fuel economy using
11 the EPA formula of more than 3 miles per gallon.

12 Obviously, some people drive with a heavy foot. Some
13 people drive with a lighter foot. Some people drive uphill a
14 lot. Some people drive downhill a lot. Gas mileage is going
15 to have a variance. If you do the same test three times,
16 you're going to have a small variance. So there had to be some
17 agreed-to variance, but we felt that 3 miles per gallon was a
18 pretty modest range of error.

19 Second, cannot have a decrease of greater than 5 percent
20 in peak horsepower or a decrease of greater than 5 percent in
21 peak torque. There's been some concerns in addressing
22 acceleration. But when you address horsepower and torque, you
23 addresses acceleration.

24 Now, we have received some objections that say, well, why
25 5 percent? Maybe it should have been 2 percent.

1 Granted, parties could have landed anywhere. What we
2 tried to do is come up with objective standards that they had
3 to meet that were reasonable and gave very small margin of
4 error. And we addressed these in the Long Form Notice.
5 Question 36 extensively talked about what was required.

6 So we had objective standards. We cannot live with the
7 standard of "any effect" because there's no way to know what
8 that really means. So we set numbers and we set standards, and
9 we believe they are fair and reasonable.

10 And we appreciate the concerns that the objectors have
11 stated, but we believe it was fair and reasonable and
12 appropriate to come up with some objective standards.

13 We also gave deference to the Federal Trade Commission and
14 their position that they felt, under these circumstances, that
15 the consumers were getting, basically, the car that they
16 purchased. And that was their purpose and that was their goal.

17 But we added additional safeguards. First, we provided
18 for compensation, 50 percent upfront and 50 percent at the time
19 of the repair. And the repair only occurs if both EPA and all
20 of their engineers and scientists, as well as CARB,
21 independently agree that the changes are compliant and the
22 performance standards are not reduced.

23 And that standard was set out in the Appendix B to the DOJ
24 second -- I believe it was the second. Although, Josh keeps
25 changing the numbers on me. Second or third. The Consent

1 Decree.

2 In Section 4.3A, it requires that Volkswagen must disclose
3 any reasonably predictable change on the vehicle attributes
4 which may reasonably be important to a vehicle owner. That
5 covers pretty much everything.

6 So here we have monitors in place. We have oversight of
7 Volkswagen. We have EPA and CARB independently looking at
8 this. And we have an absolute requirement of full disclosure
9 of anything that a purchaser would want to know.

10 There will be independent testing by EPA and CARB. We've
11 added extended warranties. With these tests, as much as
12 Mr. Giuffra likes to come here, as much as Volkswagen has
13 enjoyed California, I don't think they want to come back and do
14 this again. So I don't think that we're going to be seeing any
15 inappropriate conduct.

16 We believe that Volkswagen truly believes they can repair
17 these, and there is a chance they can when given that chance.
18 However, there's also further protections because we had to
19 have this come to a head.

20 So the agencies and Volkswagen, because they're dealing
21 with 2-liters and 3-liters, needed some time. So we did agree
22 to set some parameters of time. Generally, they have to get
23 this done around November-December of this year. If they
24 don't, then they have the ability to come to Your Honor and
25 explain why -- their good cause for Your Honor to extend the

1 time. And if there's not good cause, then they have to buy an
2 extension. They can buy up to 90 days, at \$500 for every 30
3 days.

4 Now, that does potentially put us into the first part of
5 next year to get this resolved. But it's finality and it's
6 under the Court's control.

7 **THE COURT:** I'm sorry, what is the amount that they
8 would have to pay for every 30-day --

9 **MR. RICE:** Every 30-day extension they get, without
10 Your Honor granting it for good cause, is \$500 per vehicle.

11 **THE COURT:** Per vehicle. Okay. Thank you.

12 **MR. RICE:** So unless Your Honor extends it, this is
13 going to come to an end in the first quarter of 2018.

14 We also drew comfort during the negotiation process when
15 we saw CARB and EPA actually reject some of the things
16 Volkswagen said they could do to fix. So we know they are
17 looking at it. We know they are following up on their
18 independent obligations. And we felt comfortable in that.

19 But there's another. If there is an approval and that
20 approval is granted but it does substantially adversely impact
21 the car, then the consumers, through class counsel, have the
22 absolute right to come back to Your Honor and demand a buyback,
23 rescission, other remedies that the Court addresses, if there
24 is found to be substantially adverse impact on the car.

25 And, of course, if there's not an approval, there's

1 reversion to the buyback, trade, and opt-out. And as
2 Ms. Cabraser said, there is a reminder notice to consumers that
3 will occur at that time so that everyone knows what's going on.

4 So, Your Honor, I think that addresses what Your Honor has
5 been presented as far as questions about the settlement. I
6 want to make a couple of comments to sort of set expectations.

7 If Your Honor approves the settlement, we have fewer cars
8 to deal with, but we are still dealing with the 2-liter cars.
9 So there is about a 15-day period of time that we need to get
10 the system set up to start accepting cases and start getting
11 processed.

12 We do expect the buybacks on the generation 1s to go
13 quicker than it did in 2Ls because Volkswagen has, frankly,
14 ramped up and has gotten -- I think it's over 250,000 cars
15 back. You can see the pictures of the Detroit dome, the cars
16 sitting there.

17 But the consumers do need to be a little patient in the
18 first couple months, letting us get this thing set up and run
19 correctly.

20 I also want to remind the consumers that are persons that
21 owned and sold their cars after September 15, that they do need
22 to pay attention to the deadlines in the document and in the
23 questions and get their claims in early, because we need to
24 know if the seller is going to file a claim before the buyer or
25 current owner files their claim so that we can appropriately

1 pay each party if there are two parties that make a claim.

2 Your Honor, that's all that I have unless Your Honor has
3 questions.

4 **THE COURT:** Thank you, Mr. Rice.

5 **MR. RICE:** Thank you.

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

7 **THE COURT:** Good morning.

8 **MR. STRANCH:** Gerard Stranch, for the PSC.

9 I've been asked to try to speak a little longer than
10 Mr. Rice --

11 (Laughter)

12 **MR. STRANCH:** -- so that he won't be the
13 longest-winded person today.

14 I'm here to speak about the Bosch settlement and to walk
15 the Court through just what the settlement is. The Court has
16 already received all the briefing on it, so I'm not going to go
17 into the intense heavy details.

18 But from a 30,000-foot view, there's two groups of people
19 within the Bosch settlement, which is for a total amount of
20 \$327.5 million. And it covers approximately 589,000 cars. And
21 they're divided into the 2-liter and 3-liter. And then within
22 2- and 3-liter, you're then divided again into lessees, former
23 lessees, owners, former owners.

24 And so for a 2-liter eligible owner who has owned the car
25 the entire time, they will be entitled to a \$350 payment. For

1 a 2-liter eligible seller, someone who sold the car, they will
2 be entitled to a \$175 payment. And if you're an owner who
3 bought the car, so that there is an eligible seller on it as
4 well, then they would split that 350. They would each get 175.
5 Eligible lessees of the 2-liter will receive \$200.

6 Now, for the 3-liters, the eligible owners will receive
7 \$1,500, if they've owned the car the entire time from start to
8 finish. If they bought it during -- during the class period,
9 during the deadlines, then they're going to receive 750, or
10 half of it, because the other amount will go to the eligible
11 seller that sold them the car.

12 Former lessees and eligible sellers will receive 750. And
13 if there are two previous sellers or lessees, which could
14 happen because of the different deadlines within the 3-liter
15 settlement, then everyone would receive 350. An eligible
16 lessee, on their own, who has had the car as a lease the entire
17 time, will receive \$1,200.

18 Now, what is kind of unique about this, and is something
19 that we are particularly proud of, is that once your claim is
20 approved for a 2-liter or a 3-liter car on the Volkswagen side,
21 you are automatically approved in Bosch and will be sent money
22 unless you opt out.

23 And so what that means is, for all the 2-liter people who
24 have already done their buybacks or have already gotten their
25 modifications and have done their paperwork and have approved

1 claims, if the settlement is approved by the Court, shortly
2 after approval a check will be in the mail to them, and they
3 will have to take no further action on their own. There are
4 some deadlines that apply, most of which have passed now, but
5 not all of them.

6 You would need to identify yourself as an eligible seller
7 if you did not do that for the 2-liter settlement before,
8 because there were a group of people that missed that deadline,
9 and they are eligible to reapply in Bosch and can then get the
10 eligible seller payments even if they missed it in the 2-liter
11 settlement. And that deadline was May 1, 2017. It is passed.
12 And my understanding is there were people that did take
13 advantage of that so that they could receive the money.

14 Now, if you excluded yourself from the Volkswagen
15 settlement, a class member, they have until August 15 of 2017
16 to identify themselves and to register to be a part of the
17 Bosch settlement.

18 If they did not file a claim in any of the Volkswagen
19 settlements, then they have until December 31, 2019, to file
20 their claim. And that's because people don't have to file
21 their Volkswagen claims now. So they have that period of time
22 to file the Volkswagen claim themselves. And then they would
23 also have the Bosch claim either automatically done or, if they
24 don't ever file it, they could still register for the Bosch and
25 take that claim.

1 The deadline for opting out or objecting has passed. And,
2 as you heard from Ms. Cabraser, there was overwhelming support
3 for the settlement itself. There was a very low percentage and
4 number-wise of objections to the Bosch settlement.

5 One of the things that -- that is impressive about this is
6 there are really only four objections to the settlement here,
7 Your Honor. We have briefed those in our papers, and we
8 believe that that's been handled well there. And so we're
9 going to just leave that on the papers, subject to our right to
10 reply.

11 If any of those objectors show up today and do present to
12 the Court, then we would reserve that time to respond to that.
13 And so I won't go over that any further.

14 Lastly, Your Honor, the -- the final component of this
15 settlement is the attorneys fee portion and expenses. We've
16 asked for \$51 million as a fee, and \$1 million in expenses.
17 That was part of the notice and has gone to the class. And
18 Ms. Cabraser is going to address that later in the process here
19 today.

20 So unless the Court has any questions.

21 **THE COURT:** Thank you.

22 **MR. STRANCH:** Thank you, Your Honor.

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

24 As the Court is aware, the 3-liter settlement involves
25 addressing a complicated process of repairing cars or buying

1 them back that requires much effort on the ground and
2 extraordinary real-world efforts.

3 We were able to build on the experience of the 2-liter
4 settlement administration in both borrowing from and improving
5 upon the systems that will be used in the 3-liter settlement.

6 And, as Mr. Rice mentioned, one of the reasons that we
7 have every confidence that the process of government review and
8 approval of proposed environmentally compliant repairs or
9 modifications will be one of independence and integrity is the
10 history of both the EPA and CARB in the 2-liter process.

11 This is addressed in detail, for example, in the
12 declaration of Professor Robert Klonoff, which is document
13 number 3190-2, specifically paragraphs, I believe, 19 through
14 23, where he notes prior reviews and rejections of certain
15 Volkswagen-proposed modifications on 2-liters. And, of course,
16 there was the recent approval of the 2-liter generation 3
17 modification. So we know that the consumers can rely on the
18 rigor, independence, and integrity of those processes.

19 For our part, it was important for us to negotiate and set
20 time limits, other provisions, to compensate consumers for any
21 delay in that process, and also to assure that at the end of
22 that process there would be not only environmentally compliant
23 cars, as involves these particular emissions, but cars that
24 were and are or at least can become the cars that our class
25 members believed they were buying or leasing when they made

1 those transactions. And, again, to compensate them throughout
2 the process, including early, upon final approval of Bosch
3 and/or 3-liter.

4 Just to give you a window on how far along that 2-liter
5 process is, it is six months in to what was intended to be a
6 two-year process, and it has already exceeded the halfway mark
7 in terms of claims completed.

8 As of May 5th, 281,900 claims of all types in 2-liter have
9 been completed, including over 7,400 modifications of the gen 3
10 2-liter vehicles.

11 And, of course, that process continues. It doesn't run
12 itself. There are a lot of personnel at VW, a lot of personnel
13 in the government agencies and, frankly, a lot of personnel in
14 our class member response team to make that process work well
15 for consumers.

16 So with the Court's permission, I'm going to make -- I'm
17 going to do a 30-second advertising spot for the class counsel
18 response team.

19 We are available 24/7 to help any class members, 2-liter,
20 3-liter, Bosch, with the registration process, with the claims
21 process, with going through the process of getting their
22 benefits. Our toll free number is 1-800-948-2181. And our
23 email address is info@vwclasscounsel.com.

24 That contact information is available on the Court's
25 website. And a pitch for that, that is

1 cand.uscourts.gov/crb/vwmdl. And, of course, the same
2 information is also available on the VW settlement website and
3 the Bosch settlement website.

4 So give us a call. Send us an email. We're happy to help
5 with claims. We've had communications with tens of thousands
6 of class members throughout the process. And that feedback,
7 frankly, helps us improve the process on an ongoing basis.

8 And, apologies, I do not have a catchy jingle for the
9 1-800 number.

10 **THE COURT:** Well, the catchy jingle, I suppose, is
11 that a transcript of these proceedings will be posted on the
12 Court's website. Isn't that correct?

13 I think that's what occurs.

14 Yes. The court reporter, who is tireless and incredibly
15 accurate, confirms that a transcript will be posted either
16 today or tomorrow on the website so that anyone who heard
17 something or couldn't participate can go to the court's website
18 and see exactly what was said by the parties.

19 **MS. CABRASER:** That's right, Your Honor. Those
20 transcripts have been going up, usually on a same-day basis or,
21 if not, a next-day basis. So it is news. It is the latest
22 that happens in the case.

23 And, of course, all of the Court's orders and other
24 important documents are also on that website, together with
25 executive summaries, which are quite detailed and extensive, of

1 not only the 2-liter settlement, for reference by 2-liter class
2 members, but our proposed 3-liter and Bosch settlements as
3 well.

4 I want to note for the Court that prior to the deadline
5 for opt-outs and objections on the Bosch settlement approval
6 motion, we did, pursuant to the Court's direction, file an
7 application for Bosch attorneys fees and costs.

8 The Bosch settlement is a conventional non-reversionary
9 common fund class action settlement involving a fixed sum of
10 \$327.5 million. That amount was reached after intensive and
11 extensive separate negotiations with Bosch to address the
12 separate allegations against Bosch for its role in the defeat
13 device, and to resolve those allegations.

14 We worked with the FTC on that, both in terms of ensuring
15 that the total amount, net of requested attorneys' fees, would
16 be sufficient, fair, adequate, and reasonable to compensate
17 both 2-liter and 3-liter class members.

18 We defer to the FTC in terms of an allocation between 2-
19 and 3-liter to make sure that everyone nets equitable and equal
20 compensation, considering their opportunities to participate in
21 the 2-liter and 3-liter settlements.

22 So the FTC ran, as you'll hear, an independent economic
23 analysis of that based on all of its information. And one of
24 the things that was factored in in making that allocation was
25 the attorneys' fee issues since, in a common fund case, those

1 fees come from the common fund.

2 So the numbers that are in the class notice, in the
3 executive summary, in all of the briefs and pleadings, are net
4 numbers that assume -- don't presume but assume that the Court
5 has awarded the fees requested, which are 15.57 percent of the
6 fund plus \$1 million in costs.

7 And so the FTC looked at it from the standpoint of if
8 those fees which it considered reasonable were awarded in full,
9 would the net -- would the net distribution to the class
10 members compensate them fully? And the answer to that, as
11 you'll hear, I believe, is yes.

12 We know, compared to percentage awards in settlements of
13 similar size, that we are below, both mean and median, in terms
14 of percentage. Those means and medians are approximately
15 18 percent and 20 percent, respectively, from settlements in
16 the same range; say, 200 million to \$500 million.

17 All of the facts and figures and analyses on that are
18 contained in Professor Fitzpatrick's declaration.

19 We're also aware that in the Circuit and in this District
20 the Court may, and this Court does, do a lodestar cross-check
21 to assure that the fee requested is, indeed, reasonable in
22 relationship to the amount and the quality of the work
23 performed.

24 In this case, using the lodestar cross-check based on work
25 that was dedicated solely to Bosch, not to other defendants,

1 and solely to work that is otherwise uncompensated and
2 unrequested in terms of fees, that that multiplier is a 2.32
3 multiplier, less than the multiplier reflected in the Court's
4 earlier 2-liter fee award, and, I think, proportional to the
5 multiplier awarded with respect to the dealer fee.

6 This is a different defendant. It is a different process.
7 It's a different type of settlement. But we believe that this
8 is not only a reasonable fee but proportional and appropriate
9 given the developing law of the case on attorneys' fees in the
10 Clean Diesels litigation.

11 We had two objections only to the fees. One was a timing
12 objection, which, I think, was basically a mistaken idea that
13 we had not filed our fee application prior to the opt-out and
14 objection deadline. And, of course, we did that. And the
15 application was -- was prominently displayed.

16 We also, of course, included in the class notice the
17 amounts and the percentages that we were seeking as attorneys'
18 fees in compliance with the Ninth Circuit case law.

19 The other objection, which you may or may not hear more
20 about, was that our request includes a reserve for the time
21 that we will spend in implementing and enforcing the Bosch
22 settlement and perhaps in defending it on appeal.

23 The case law supports that sort of reserve as well. We
24 believe it's a modest one. If the Court allowed no reserve or
25 calculations, the fee based on no reserve, the -- the lodestar

1 multiplier goes up to approximately 2.5 percent. Again, well
2 below the range of 3 in similar cases and well below the point
3 at which the Court would be concerned about a disproportionate
4 fee.

5 I'm happy to answer any questions the Court has about
6 that.

7 I think, as we've stated throughout our papers, this is a
8 non-reversionary settlement. And the Court can be assured that
9 every effort will be made to distribute the entirety of the net
10 fund to the class members. We have email and/or mail addresses
11 for virtually all of them. We're getting input from them. We
12 know how to find them. And we will make repeated
13 cost-effective efforts to find them and distribute the entire
14 class benefit to the members.

15 I think, at this point, the Court's scheduling order
16 reserves time for objectors who have noted their intent to
17 appear and be heard on the settlement.

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

19 Does any objector wish to come forward? Please come
20 forward.

21 **MR. DASMALCHI:** Good morning, Your Honors. Thank you
22 for the opportunity. My name is Glenn Dasmalchi. I'm a class
23 member. And the objections are to the 3-liter settlement which
24 has been discussed earlier this morning.

25 Under the terms of the proposed settlement, I would be

1 classified as an eligible lessee. I leased what is classified
2 as a generation 2 vehicle starting in 2014.

3 I believe the proposed settlement is unfair to those of us
4 who leased cars, especially to those of us who may have wanted
5 to exercise the option to purchase the vehicle at the end of
6 the lease term.

7 And I think there are three aspects to the objection that
8 I'd like to cover just very briefly.

9 The first is there is really very minimal compensation for
10 eligible lessees. The compensation listed in the proposed
11 settlement is \$2,000, which is offered. That's assuming an
12 emissions-compliant repair, as discussed earlier, can actually
13 be found for these generation 2 vehicles.

14 Given the diesel situation caused by the deceit of VW, our
15 cars have effectively been devalued in the market. The problem
16 with the settlement -- or the objection I have, in my opinion,
17 is the remuneration at \$2,000 is -- is far less than sufficient
18 compensation for that devaluation.

19 Just as an example, eligible owners of these vehicles, on
20 average, will be getting \$8,000 in compensation. So 2,000
21 is -- is somewhere around 25 percent, in many cases actually
22 less, less than 25 percent of the remuneration that owners
23 would actually receive.

24 So it effectively -- you know, for those of us who leased
25 the cars, who might wish to purchase, this effectively ups the

1 effective purchase price relative to those who just own the
2 cars outright.

3 And, frankly, when we signed the lease term -- or when I
4 signed the lease term, there was the option for me to purchase
5 the car at the end of the lease for a specific residual value.
6 I believe that residual value is now lower because of the --
7 because of the diesel situation, and yet the compensation
8 offered is only 2,000.

9 As a lessee, if I purchased the car, I would also be
10 taking additional risk. If there is an emissions-compliant
11 repair, that's one thing. That's what I've been talking about.
12 If there is no emissions-compliant repair, I believe the
13 lessees would be stuck, because the terms of the proposed
14 settlement are that once an eligible lessee, always an eligible
15 lessee, assuming you do exercise the purchase to -- exercise
16 the option to purchase the car.

17 That actually leads me to my second point. The treatment
18 of lessees of these cars is not consistent in the proposed
19 settlement. It turns out that those who leased the cars, whose
20 lease ended before January 31st of this year, and then
21 exercised their option to purchase the car are treated as
22 eligible owners. And they're subject to much higher
23 compensation. They potentially get a buyback if an
24 emissions-compliant repair cannot be found.

25 But those of us whose lease terms happened to end after

1 January 31st, we're still considered eligible lessees. And so
2 I believe we're, you know, limited. We do have extra
3 compensation, but it's nowhere near the compensation that an
4 owner would get, including those owners that were previously
5 lessees whose lease term ended before January 31st.

6 My final point is that, as noted earlier, this is a --
7 this is a complicated settlement. Gen 1, gen 2 vehicles.
8 There's been a lot of documentation. Frankly, some of the
9 documentation that's been posted to the settlement website and
10 the court website is actually inconsistent in terms of how
11 lessees will be compensated.

12 I won't belabor the point here, but I'm happy to answer
13 questions about that if anybody has questions about that.

14 But, really, the biggest issue that I faced, and I think a
15 subset of lessees have faced, is we had to make a decision
16 before having the benefit of Your Honor's decision on the
17 settlement today.

18 So, for example, my lease term ended three weeks ago. I
19 would have taken a risk, having just purchased the car
20 outright, not knowing how the settlement was going to turn out
21 and how the decisions today were going to turn out.

22 I don't think that affects all the lessees, but it
23 certainly affected me. And I'm sure it affected several of the
24 lessees.

25 **THE COURT:** So what did you do?

1 **MR. DASMALCHI:** I gave the car back. I returned the
2 car.

3 **THE COURT:** You didn't exercise the purchase?

4 **MR. DASMALCHI:** I did not exercise the option to
5 purchase. I felt the risk was too high.

6 The car is in storage. If the decision were better, you
7 know, I'd love to get it back. And I would -- I would exercise
8 the option if the settlement terms were more fair, in my
9 opinion.

10 Thank you very much for your consideration.

11 **THE COURT:** Thank you.

12 Anyone else?

13 Yes. Please come forward. Identify yourself. Thank you.

14 **MR. HAEGELE:** Good morning, Your Honors. My name is
15 William Haegele. I'm a owner of a Audi Q7 2014, myself and my
16 family. And I filed an objection and also wrote this court on
17 two other occasions in this matter.

18 Your Honors, contrary to representations made in the
19 settlement agreement, the settlement notice, the statements to
20 the media that gen 2 vehicles can be repaired without
21 materially reducing performance, the agreement at Section 7.5
22 clearly allows for just the opposite, a repair that materially
23 reduces performance.

24 In my objection that I filed, I provided evidence that
25 this section allows for degradation of the performance of the

1 class members' cars of at least 5 percent in both horsepower
2 and peak torque, and can also combine an 18 percent reduction
3 in fuel economy. Each of these allowances under 7.5 are
4 individually material and in combination material.

5 **THE COURT:** So what car do you own? What is the type
6 of vehicle you own?

7 **MR. HAEGELE:** It's an Audi Q7. It's a gen 2 vehicle,
8 Your Honor.

9 **THE COURT:** Okay.

10 **MR. HAEGELE:** Now, to be clear, Section 7.5 allows the
11 repair, the emissions-compliant repair, to be applied to the
12 gen 2 cars to reduce the performance in those levels and be
13 considered a repair.

14 And the triggers that Mr. Rice spoke about, protections of
15 being able to come back and seek recourse, 7.5 does not provide
16 that. This would be considered a repair within those
17 provisions. An 18 percent reduction in fuel economy along with
18 changes in horsepower and torque.

19 Now, courts have consistently found and affirmed that an
20 item is material if a reasonable person would attach importance
21 to its existence or absence in determining a course of action.
22 I have provided significant evidence that this is, in fact, the
23 case in this matter.

24 First, VW spent millions advertising just these attributes
25 to entice customers to pay a premium for the TDI vehicles. If

1 the performance attributes were not material, these attributes,
2 VW would not have spent the money.

3 VW -- second, VW secretly caused devices to be employed to
4 achieve the EPA compliance and keep those performance
5 attributes. Had this not been material, they would not have
6 taken this dangerous course of action.

7 And, finally, consumers paid a premium, in excess of
8 \$5,000, for the performance benefits. Section 7.5 allows them
9 to be erased or taken away. Clearly, the performance
10 attributes were key to the course of action of class members
11 and, as such, they are, by definition, material.

12 Your Honor, taking away 18 percent of the fuel economy,
13 along with the other performance reductions, takes away the
14 full benefit of that purchase bargain and is material. Simply
15 put, it's not fair or reasonable for the settlement agreement
16 to provide for material alteration in the performance of class
17 members' vehicles while at the same time representing that it
18 won't.

19 Further, it is not fair or reasonable to then, in the
20 event the vehicle is materially altered, call the vehicle,
21 quote, repaired, thereby treating the class member differently
22 as compared to class members' cars that were, quote, modified.

23 This car is not repaired with an 18 percent reduction in
24 fuel economy. From the perspective of an agreement or
25 contract, it's not fair or reasonable for the settlement to

1 represent, on the one hand, that there's no material reduction
2 in performance while in the body of the document containing
3 language that allows for just the opposite.

4 Additionally, as outlined in my letter of April 11th,
5 failure to adequately correct the original Long Form Notice,
6 the continued representation in the media that consumers will
7 get the car they purchased, there'll be no material reduction
8 in performance, renders the settlement notice inadequate and
9 misleading. As such, all comments on the absence of objections
10 and as demonstrative of support of the settlement should be
11 disregarded.

12 Your Honor, if -- I was told I had two minutes. But if
13 allowed more time, I'd like to provide the Court specific
14 examples of the legal standards supporting my objection here.

15 **THE COURT:** I'm familiar with the legal standards.
16 Thank you.

17 **MR. HAEGELE:** I'd also like to talk about the FTC's
18 own position on materiality as well. I think it's important
19 here.

20 **THE COURT:** Go ahead.

21 **MR. HAEGELE:** The FTC has a policy statement on
22 deception which addresses materiality and references several
23 court rulings, including a Supreme Court ruling.

24 In the page 1 of the summary -- and if you're happy, I can
25 give you a copy of that.

1 **THE COURT:** Go ahead.

2 **MR. HAEGELE:** In page 1 of the summary, they say the
3 basic question is whether the adequate practice is likely to
4 affect the consumers' conduct or decision with regard to a
5 product or service. If so, it's material.

6 At reference number 45 in the policy statement, the FTC,
7 in a decision, oddly enough with Volkswagen, notes that a
8 material misrepresentation or omission is one that the
9 reasonable person would regard as important in deciding how to
10 act, or one in which the maker knows that the recipient,
11 because of his or her own peculiarities is likely to consider
12 important.

13 So the Court should equate that to the buyers of this car,
14 who paid this premium for the attributes now that are allowed
15 to be taken away.

16 And it also provides that certain items are presumed to be
17 material. Citing the Supreme Court decision in Central Hudson
18 Gas and Electric versus PSC, the FTC concludes that certain
19 categories of information is presumed to be material.

20 In quotes, in the absence of factors that would distort
21 the decisions to advertise, we may assume the willingness of a
22 business to promote its products reflects a belief that
23 consumers are interested in the advertising.

24 In other words, because VW advertised performance
25 attributes that cannot be taken away, they are, therefore,

1 presumed to be material.

2 Another very important part of the FTC statement is at
3 page 4. And I think it's very instructive as to how this was
4 noticed.

5 In citing the decision in *Litton Industries*, the FTC
6 states: Commission cases reveal specific guidelines.
7 Depending on the circumstances, accurate information and text
8 may not remedy a false headline because a reasonable consumer
9 may glance only at the headline. Written disclosures or fine
10 print may be insufficient to correct a misleading
11 misrepresentation.

12 Your Honor, the executive summary says that our cars will
13 be not materially affected. The body says it will.

14 The first notice that was filed with the Court didn't even
15 contain the provisions of 7.5. It was absent. That notice was
16 filed on February 14th. I wrote the Court and made the Court,
17 as well as the steering committee and Volkswagen and others,
18 aware of that deficiency.

19 And they added Question Number 36 but failed to correct or
20 make mention of anything in the executive summary as to the
21 attributes that could be taken away.

22 Further, they're quoted in the press, and a video has been
23 prepared that says -- and I can provide you copies of this, as
24 well, and a screenshot of the video -- that says the cars will
25 not be materially reduced. This is misleading in comparison to

1 the language of the agreement as well as what it actually
2 provides.

3 I'd also like to comment briefly on -- if I may, on some
4 of Mr. Rice's statements. He brings up the EPA form. And he
5 says gas mileage has a variance. I agree. But he, in the same
6 sentence, says there's an EPA formula.

7 Well, what we're talking about is a test against the
8 formula. It's not dependent upon how a driver drives. In
9 fact, the steering committee's expert brought up the same
10 issue. But in his reply, they -- he brings up that the --
11 there's a -- that the EPA allows a 3 percent variance in their
12 testing. 3 percent is a far cry from 3 miles per gallon or
13 4 miles per gallon, which the Section 7.5 allows. And he
14 attributes 7.5 as being necessary to account for that margin of
15 error.

16 A material degradation in the performance of the vehicle
17 is more than a correction of the margin of error, Your Honors.

18 I'd love to answer any questions anyone may have.

19 **THE COURT:** No. Thank you very much. Appreciate your
20 coming up.

21 The third person. Yes.

22 **MR. CAMERANO:** Good morning. My name is Sergeant
23 Henry Camerano Jr., formerly of the United States Marine Corps.

24 I'm here today to really object over two main issues. The
25 main issue is the -- the -- what I consider the payout to the

1 EPA.

2 These government agencies, as I've worked for the DOD
3 before, for about ten years, I just have -- I just don't
4 understand how in -- in a fair settlement, that -- they are
5 supposed to regulate these companies from the start, to make
6 sure that they are within the law when they are manufacturing
7 these vehicles.

8 Audi doesn't just put the vehicles on the road. They have
9 to be tested. They have to go through vigorous testing in the
10 EPA and the FTC. And there's all these processes that these
11 vehicles have to go through. And, in my general opinion, the
12 EPA was negligent in not catching this.

13 And the reason why is because you have vehicles in the
14 2.0-liter that have been on the road since 2009, with problems
15 with the diesels emissions as well. And it's 2017.

16 So in that time -- in that time frame, the EPA didn't
17 catch this if they were -- if they were negligent, you know, in
18 their process, in any of their processes, then, you know, they
19 would have caught this, and Audi could have fixed this before
20 we got to this point.

21 And I just strongly believe that giving them a trust fund
22 to, you know, fix the environment or something that is -- that
23 we should all care about, which is the reason why I bought the
24 diesel car in the first place, is it was sold on this clean
25 diesel emissions, clean for the environment, clean for the

1 communities, clean for the United States. And, as a
2 Californian, I wanted to do my part to help the environment,
3 because, you know, when I have a kid, I want my kid to live in
4 a clean environment as well.

5 But we cannot forget that these government agencies -- and
6 I'm dealing with the V.A., as well, right now in trying to get
7 the V.A. and the government to admit that certain things need
8 to happen for my ten years of service, regarding mental health
9 issues; you know, a hip replacement I'm going to need in ten
10 years.

11 These are things I have to fight for in trying to get the
12 state -- trying to get the federal government to say, you know,
13 we're liable for this because you went -- you served your
14 country for ten years. It's a pretty hard task to do.

15 That's all I'm going to say about the EPA. I know they
16 mean well. I know that, you know, they're here to make sure
17 that companies -- these big companies are -- are involved in
18 the laws to protect our environment, to protect us, and so
19 forth.

20 The other issue I have is the numbers provided in the
21 literature regarding the 3.0 generation 2 vehicles that I
22 happen to own.

23 My main concern here is the consideration between the
24 2.0-liter and the 3.0-liter. The 2.0-liter cars, you know, if
25 you exclude the buyback program, which is -- from what I'm

1 understanding, is almost \$40,000 to buy back their cars, is
2 what people are getting.

3 Just to the settlement alone, these 2.0 liters are getting
4 9-, 10-, \$11,000; right? From my understanding of the
5 literature. I'm not a lawyer, so I was just reading this,
6 candidly.

7 Then you switch it over to 3.0 liters. Depending on which
8 generation 3.0-liter you have, we're only getting \$8,000 in
9 compensation. And then I think it's, what, \$25- to \$27,000 if
10 the buyback -- this gentleman suggested that if it does -- if
11 somehow this fix -- you know, messing with our mileage and all
12 these other stipulations, you know, that doesn't account for
13 the fact -- for those of us owners that -- that bought the car
14 through a bank.

15 So my Navy Federal -- my credit union through the
16 government, because I was in the Marine Corps when I purchased
17 the vehicle, right now it looks like, to be even with that, I
18 would be \$4,000 short of the loan to my bank. So it didn't
19 really provide in the literature what happens if I have -- if
20 there's still a negative equity in the car.

21 So if I'm still forking over that, I'm still paying for
22 that after we assume all this risk, the risk of waiting to see
23 if the fix is provided --

24 **THE COURT:** That question will definitely be answered.

25 **MR. CAMERANO:** Right. That's one of my main concerns,

1 is that, you know, the point -- the point, to be fair, is to
2 cut even.

3 I'm not here to make Audi or anybody pay millions of
4 dollars. You know, it's good that, you know, we have the low
5 income community being taken care of, and the environment's
6 been taken care of. But my main concern is that being fair
7 means that if I have to give this car back, right, I'm still at
8 negative equity.

9 So I still owe money off a fraudulent sale through Audi
10 because they -- they sold it as a -- you know, as a clean
11 emissions diesel, good mileage -- 700 miles [sic] to the
12 gallon, highway, 500 miles [sic], you know, city. And I spent
13 all this time in Afghanistan, researching this vehicle. And I
14 picked it out and all this time.

15 Which leads me to another point with trying to play --
16 trying to figure out this number game with what's in the
17 literature. We took a hit, obviously, for the depreciation
18 value for the car rolling off the lot. Then we took another
19 hit for the depreciation value for the actual scandal itself.

20 And I'm in a little bit of a particular situation because
21 my car was sold to me -- or was advertised as certified
22 preowned vehicle. It was a fleet vehicle out of Carlsbad,
23 California. And it was bought in 2013, and it was driven for,
24 I think, eight months. And I bought the car at 15,000 --
25 almost 15,000 miles on it.

1 The overall sale price was around 61 grand, give or take.
2 I can't really remember the full amount. But, you know, based
3 upon my research, I pretty much paid a brand-new -- I pretty
4 much paid for a certified preowned vehicle at a new-car cost.

5 Through my research in Afghanistan, I was pricing anywhere
6 between \$62,000 and \$73,000, depending on the packages and so
7 on and so forth.

8 So it comes down to -- you know, aside from the -- in my
9 general opinion, I think that -- I strongly believe that they
10 overvalued the car to begin with. They didn't sell me a
11 certified preowned vehicle. They sold me a brand-new vehicle
12 and then stamped "certified preowned" on it. But still -- I
13 still paid as a -- as a new vehicle, when I was advised by many
14 people that I talked to that I shouldn't have paid more than
15 \$48,000, since it had -- and so forth.

16 So, at the end of the day, I just would like to say that
17 thanks for your time. Thank you for the time of the Court.
18 And that's it. If you have any questions, Your Honor.

19 **THE COURT:** No.

20 A couple of observations. First of all, I would like to
21 thank you for your service to the country. That's an
22 incredibly unselfish act on your part. And we are all in your
23 debt.

24 Secondly, you might think about a career in law school.

25 (Laughter)

1 **THE COURT:** You're not an attorney, but I think you're
2 a very effective advocate. And I want to thank you.

3 **MR. CAMERANO:** If my grandfather had it his way, I
4 would have gone to law school.

5 (Laughter)

6 **MR. CAMERANO:** Thank you, Your Honor.

7 **THE COURT:** Are there any other objectors?

8 Yes.

9 **MR. FLETCHER:** Good morning, Your Honor. Frederick
10 Fletcher appearing for objector Jolian Kangas in regards to the
11 Bosch settlement.

12 I want to talk briefly about the compensation disparity
13 between the two subclasses, the 2.0 and the 3.0.

14 As addressed in the papers, there's roughly five times
15 difference in compensation between the 3.0 and the 2.0 in the
16 Bosch settlement. Their answers to that are that, well, this
17 is what the FTC decided.

18 The FTC is a entity that changes its political composition
19 every four to eight years. It's certainly not qualified to be
20 the arbiter of fairness to decide conflicts of interest between
21 two competing subclasses.

22 **THE COURT:** Well, I'm not sure I would subscribe to
23 part of what you said. First of all, when the FTC considered
24 this, there was no political change in the -- in the makeup of
25 the FTC. It was what it was.

1 Secondly, it's up to Congress, which enacts the statute,
2 as to, one, how the compensation -- how the composition, pardon
3 me -- the composition of the Commission will be established;
4 two, what are the responsibilities of the Commission, who are
5 they answerable to, what is their mission, what is their task,
6 what are the regulations that will guide their conduct.

7 It's an independent body. And I would just say, as to
8 that, I saw no political motivation in any of these aspects of
9 the settlement. That's first.

10 Secondly, what the Court observed was the -- taking aside
11 the parties, the Plaintiffs' Steering Committee and the
12 defendants, but as to the governmental entities -- EPA, CARB,
13 the FTC, an independent agency -- the Court observed over the
14 last year and a half their participation in these lawsuits,
15 guided by their statutory concerns in carrying out the
16 obligations that were imposed upon them by the Congress of the
17 United States in the legislative -- as to the federal entities.
18 And as to the state entity, it was following the procedures set
19 forth in the state law by the legislature and enacted by the
20 governor.

21 So, you know, I know there's been a sea change -- or a
22 change. Pardon me, I don't want to characterize. There's been
23 a political change. Everybody recognizes that. But that
24 political change hasn't at all, in the Court's view of what has
25 occurred, impacted the determination of this litigation or the

1 resolution of this litigation.

2 And I would further say that I have been enormously
3 impressed with the integrity that the governmental counsel, on
4 all these three entities, approached this problem and the
5 energy with which they embarked upon their task.

6 They were nonpartisan. They were intelligent. They were
7 vigorous. They were responsive. They were -- they met day and
8 night. Really extraordinary conduct from what we have some
9 idea as to how government operates.

10 Government operates through people. We should never, ever
11 forget it. We can call it the government. You can call it an
12 agency. You can do that because that's fair. That's how it's
13 characterized. But the success of an agency, the success of a
14 governmental entity depends upon the individuals who are
15 discharging their obligations as public servants.

16 And I have to tell you, I have witnessed this now since
17 the creation of the MDL in this case. And I see no suggestion,
18 whatsoever, that politics has played any role in this. So I
19 just want to make that clear for the record.

20 And I don't know that you're suggesting that it has, but
21 the issue is out there, and I wanted to address it. So thank
22 you.

23 You may continue.

24 **MR. FLETCHER:** Thank you, Your Honor.

25 Our objection is not necessarily that the FTC did not

1 complete the task that it was given, it was that the FTC was
2 given an improper task. Whether it was the FTC or class
3 counsel who decided to split the compensation between the two
4 subclasses really doesn't matter for our objection. The truth
5 of the matter is, the FTC received most of its information from
6 class counsel.

7 But it's improper for any one entity to have represented
8 both subclasses in this scenario. There is no separate
9 independent representative of these two classes that obviously
10 had competing interests. That's why the 2.0 class was
11 separated from the 3.0 class in the larger settlements.

12 Their other response is, well, the 3.0 vehicles were more
13 expensive than the 2.0 vehicles. But that price disparity is
14 somewhere between 20 to 30 percent. It certainly doesn't
15 justify the approximate five times amount of compensation that
16 the 3.0 class is receiving.

17 And, finally, this allocation between the subclasses, that
18 really was class counsel's job, and it should have been two
19 independent counsels.

20 Moving on to the objection regarding the release. PSC
21 cites some authority that they claim is well established when,
22 in reality, they cite three district court cases that aren't
23 even published, and they had to resort to the Westlaw citation.

24 We provided Supreme Court authority that has been
25 published for many, many decades, maybe centuries, that says

1 parties cannot agree to an illegal contract.

2 And what we have here is Bosch wants to be released from
3 liability for hiding and concealing claims from the class
4 during a government investigation. On the other side of it, we
5 have class counsel who wants to be paid. When these two
6 benefits become the basis of the bargain, we have an illegal
7 contract.

8 Thank you.

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

10 Any further objections?

11 No. There are no further objections.

12 So I'd like a reply to the objections. However, I'd like
13 the FTC to go last because I will then hear at one time the
14 FTC's view of this, as well as giving them the opportunity to
15 respond to some of the objections.

16 **MR. COHEN:** Thank you, Your Honor.

17 **THE COURT:** Okay. Anyone -- it's up to you,
18 Ms. Cabraser, how you want to proceed.

19 **MS. CABRASER:** All right. Thank you.

20 Just very briefly to reply, because we did, in effect,
21 reply to each of these specific objections in our reply papers
22 in both the briefs and in -- they were addressed in a quite
23 detailed and granular fashion by Professor Klonoff in his
24 declaration.

25 And these objections were addressed specifically by name.

1 They were given a great deal of attention and analysis. And
2 I'm not going to repeat that here.

3 With respect to the lessees issue, that discussion is
4 contained in paragraphs 60 through 63 of the Klonoff
5 declaration, which is document 3190-2.

6 And not to give it short shrift, but to summarize, the
7 risks and liabilities undertaken in leasing and buying a car
8 are different. The 2-liter settlement recognized that in the
9 differential treatment of owners and lessees. The 3-liter
10 settlement does likewise, while striving to provide adequate
11 compensation for lessees, obviously including the availability
12 of approved repairs and -- and cash compensation.

13 In terms of the dates and deadlines with respect to
14 lessees, the January 31st, 2017, date is the logical one. It's
15 the date the agreement was filed. It enabled us to give notice
16 to everyone to explain to them what the choices and options
17 were.

18 With respect to the performance issues, those were
19 addressed in detail in paragraphs 24 through 30 of Professor
20 Klonoff's declaration.

21 With respect to the performance provisions of the
22 settlement, Section 7.5, that is set forth verbatim in the
23 widely publicized and published executive summary of the
24 settlement. It is included in the settlement agreement, of
25 course, which is posted on this court's website and the

1 settlement website.

2 It is addressed in frequently asked questions. And
3 because of questions about it, yes, we added the entire
4 provision to the class notice.

5 We responded to several thousand inquiries from class
6 members on various aspects of the 3-liter settlement. Various
7 terms, various provisions.

8 Mr. Haegele was one of those folks with whom we had a
9 number of communications on this issue. Some others addressed
10 it as well.

11 So we know from the comparison of the queries we got from
12 class members, the information we provided them in response,
13 which would range from emailing them the complete settlement
14 agreement, to the Long Form Notice, to the executive summary,
15 to transcripts, going on a discussion group with Jalopnik, for
16 example, that a number of provisions were of interest to
17 different class members. We tried to give equal dignity, equal
18 emphasis, and equal attention to all of the key provisions.

19 And, of course, it's an iterative process, as I noted
20 earlier. So, as we go on, we find out what people are
21 interested in, we're able to provide them more information,
22 more sources of information, and make it easier for them to
23 make their opt-out or objection decisions.

24 And, again, I think the proof is in the pudding. We have
25 a very small number of each.

1 With respect to the vehicle value of the cars and of the
2 settlement, which is I think one of the points that the
3 sergeant addressed, in the event of a buyback for any of these
4 cars, the values of those buybacks, certainly combined with
5 other cash compensation under the settlement, in many, many,
6 many cases is not only calibrated at 2015, September 2015, not
7 a clean trade, in many cases the combined compensation would
8 exceed the MSRP of the vehicle or even the purchase price of
9 the vehicle.

10 We can't and couldn't negotiate a settlement with the
11 specifics of every single purchase transaction in mind. What
12 we did have was VIN-specific information. We had market data.
13 We had a market expert. And we had input from many, many class
14 representatives and class members.

15 And so we did the best we could to come up with a set of
16 buyback values that, for virtually all class members, would put
17 them in the position that they would have been otherwise,
18 before the revelation of the emissions scandal.

19 If we haven't accomplished that in a particular instance
20 because of particularities of the original transaction, I think
21 we've gotten very, very close, extremely close.

22 And in terms of Rule 23(e)'s fair, adequate, and
23 reasonable standards for class settlement, we've more than met
24 that standard.

25 There was one objector who asked to appear today; was

1 granted permission; was unable to appear today; had submitted,
2 I believe, a timely written objection; but asked for a written
3 statement to be read into the record.

4 I believe we've checked with the Court. And while that is
5 not possible, we're certainly willing to file that --

6 **THE COURT:** If you would.

7 **MS. CABRASER:** -- written statement.

8 **THE COURT:** Thank you.

9 **MS. CABRASER:** So it will be part of the --

10 **THE COURT:** Thank you.

11 **MS. CABRASER:** -- the court documentation.

12 I would defer to the FTC.

13 **THE COURT:** Well, before the FTC rises, I'd like to
14 say something about the EPA, because one of the objections that
15 has been raised here is that the EPA was negligent -- I don't
16 know whether that spills over to CARB, whether they were put in
17 that group or not -- in administering regulations.

18 And I think I have a couple of observations. First of
19 all, it's clear in this litigation that no deep evidentiary
20 probe was made into all of the circumstances under which the
21 defeat device successfully eluded the regulators -- the
22 regulators' task of approving various cars when they came into
23 the United States for sale.

24 That is to say, this Court did not embark upon an autopsy
25 to try to figure out exactly who knew what when, whose job it

1 was to do a certain thing, why did that fail, what were all the
2 circumstances surrounding the failure, and who does one assign
3 failure to.

4 And one might say, as part of the general public, well,
5 why not? You're a court. Why didn't you do this? We filed
6 our lawsuits. We want to know what happened.

7 And the answer to that -- and it may not be a satisfactory
8 answer, but the answer to that, in the Court's mind, was that
9 we had a case in which over 600,000 vehicles were causing
10 damage to the environment while the case was pending, and that
11 it was extraordinarily important to the Court that we bring an
12 end to that environmental damage, which was occurring, and
13 everything that flowed from it.

14 So we were confronted, and the parties were confronted,
15 the Court was confronted, with a situation in which how does
16 one go about resolving and understanding this entire dispute?

17 And in that regard, I first have to turn to Volkswagen and
18 commend them for stepping up at the outset of the litigation
19 and conceding the liability, because by doing so -- by doing
20 so, they made it much easier and simpler to resolve the
21 problem.

22 So liability was established by way of a concession.
23 Though, of course, had there not been a concession, there could
24 have been the type of inquiry that perhaps some people would
25 like. But by conceding it, and then by that concession it

1 enabled the Court to then move to the next stage, which was
2 essentially remediation.

3 How does one address the ongoing problem? I don't think
4 this is a case of where the good is the enemy -- or I forget
5 how it's said. Whether the good is the enemy of the perfect or
6 the perfect -- is it the perfect that's the enemy of the good?
7 Is that right? Where the perfect is the enemy of the good. In
8 this case, I think it was the imperfect which would have been
9 the enemy of the good.

10 I don't think there's a perfect solution. I don't know
11 what it is unless you could achieve, instantaneously, answers
12 to all of your questions at no cost, which of course you can't.
13 No one suggests you can.

14 So this process, the 2-liter and 3-liter, worked its way
15 out in terms of the goal of figuring out: How does one remedy
16 the situation and compensate consumers, one; and compensate and
17 remediate for the damage to the environment? That was the goal
18 of the litigation, from the Court's point of view. And that's
19 what parties responded to.

20 So I'm sorry as to those people who want all the details
21 as to what the EPA did or CARB did, and when did they do it,
22 and when didn't they do it. I think a fair amount of that
23 information is actually available by way of the criminal
24 prosecution and resolution of that case. And that's a matter
25 of public record.

1 So it's not been covered up, and it's not been concealed.
2 But it actually was not what motivated this Court in trying to
3 achieve an early, expeditious, and efficient resolution.

4 So I think it's important for the Court to make that
5 statement because in any piece of litigation, especially one of
6 this magnitude and significance, there will always be
7 unanswered questions and different approaches and suggestions
8 as to how it should be achieved. And some of them may have
9 merit. I can't tell you that those other approaches are
10 meritless.

11 I can just say that the Court looked at a situation in
12 December of 2015. Seems like it was only yesterday. Looked at
13 a situation and said, this is what has to be done. This is
14 what has to be done. We have to get these cars fixed or off
15 the road. And we have to give consumers confidence that they
16 know how they're going to go forward with perhaps not only the
17 biggest investment of their life but, from a consumer point of
18 view, the most necessary investment of their life, having a
19 car. And that was the goal.

20 And so there's nothing, in a sense, more to be said about
21 the MDL litigation than what I've just said. It was limited in
22 that scope by design of the Court; and only succeeded, if it
23 did succeed, and I think it has, through the efforts of the
24 litigants, the lawyers.

25 I think that sort of sets the record as far as I wanted to

1 set the record.

2 Now we'll hear from the FTC.

3 **MR. COHEN:** Thank you, Your Honor. Jonathan Cohen for
4 the Federal Trade Commission.

5 On behalf of the FTC, I'd like to express the Commission's
6 strong support for the global settlement resolving the
7 litigation related to Volkswagen's clean diesel vehicles.

8 There is quite a bit for me to cover here. I'm going to
9 go quickly. In particular, I'd like to briefly cover a few
10 related issues.

11 First, I'll summarize the FTC's role in this proceeding.
12 There have been recent press reports and public statements that
13 have created an inaccurate impression of the FTC's role and, to
14 some extent, the roles of other players you've heard from this
15 morning.

16 Second, for the record, understanding the FTC's role is
17 irrelevant to certain objections, including certain objections
18 we've heard today, with respect to the consumer portions of the
19 settlement. And I will address those objections.

20 Third, I want to address one issue that has arisen with
21 respect to the claims process.

22 But before I do any of that, Your Honor, I want to thank a
23 few of the other parties here, both public and private, who
24 helped achieve the remarkable resolve that is pending before
25 the Court today.

1 Particularly in light of what we've heard, I would like to
2 mention the Department of Justice and its client, the
3 Environmental Protection Agency. Both agencies did an
4 extraordinary job obtaining more than 6 billion in
5 environmental relief.

6 Among other things, their accomplishments include the
7 largest civil penalty in the history of the Clean Air Act,
8 which, has, of course, a deterrent effect; injunctive
9 provisions designed to prevent similar violations in the
10 future, and very substantial funding for remediation and
11 environmental programs that will make the environment whole.

12 Although we're a consumer protection agency focused on
13 consumer relief, we appreciate what DOJ and EPA accomplished
14 for the environment.

15 Also, the Court mentioned what's available publicly
16 regarding what has transpired. From the FTC's perspective, the
17 work that CARB engineers did was critical. It's likely that
18 Volkswagen's cheating would have remained undetected without
19 the efforts of CARB's engineers.

20 But I want to mention the PSC in particular. As the Court
21 is aware, all manner of excesses, potential conflicts, and
22 other problems afflict the class action process.

23 The FTC has, in the past, been very rightly critical of
24 the class action bar in other contexts. And the Commission
25 will not hesitate to be critical again if it's appropriate to

1 do so. In fact, as the Court may be aware, the Commission has
2 been critical of class action conduct in this courthouse in
3 other proceedings.

4 Here, however, the FTC and the PSC worked closely to
5 obtain 11.2 billion in total consumer relief as part of an
6 excellent public-private partnership.

7 The PSC was the other entity in this process focused on
8 consumer relief. And the PSC's zealous advocacy on behalf of
9 consumers reflects extremely well on the class action bar.

10 In some sense, the FTC-PSC cooperation on consumer issues
11 illustrated both the government at its best and the private bar
12 at its best. That cooperation and the FTC's unique role as the
13 only federal agency with the ability to obtain complete relief
14 for consumers is relevant to certain objections with, again,
15 very significant help from the PSC.

16 The Commission obtained 11.2 billion in relief for
17 consumers. But how the Commission got there is important to a
18 lot of what we've heard today.

19 Specifically, Your Honor, the Commission approached both
20 the 2-liter and 3-liter settlements from the perspective of a
21 consumer protection agency working solely in the public
22 interest. The Commission has a remarkable depth of expertise
23 in consumer economics, including especially assesses the losses
24 caused by consumer frauds of exactly the sort that Volkswagen
25 perpetrated.

1 Importantly, Your Honor, the FTC's goal was never to get
2 the maximum amount possible or to punish Volkswagen, but rather
3 to make every owner whole. And in this complex multiparty
4 case, the FTC fought for that objective regardless of who might
5 have been opposed.

6 Now, I'm not going to address any objection, but I want to
7 address a few that relate to the FTC's particular role or that
8 the FTC is uniquely positioned to address.

9 We heard some objections, just recently, that have to do
10 with politics. And I want to respond in a couple of ways. We
11 agree -- I agree largely with what the Court said, although I'm
12 going to disagree with one particular point.

13 The Court is correct that this happened -- the allocation
14 of the FTC's role, a substantial portion of it, especially with
15 respect to Bosch, happened prior to the change. But it could
16 have been altered. It could be the case now, I could be
17 directed, based on, sort of, a new sheriff in town, we want to
18 do things completely different. I should stand up here and I
19 should say it should be a different allocation or something of
20 that nature.

21 That hasn't happened. There is complete support on behalf
22 of the Commission for exactly the way that the Commission had
23 done it originally. So I think that's important. The politics
24 just has absolutely nothing to do with this.

25 The Court is correct that it's an independent agency.

1 And, in fact, its members can only be removed for good cause.
2 It is very proud of its independence. It acted independently
3 throughout the course of this litigation. Some of the parties
4 can probably attest to that fact that it may have acted even
5 more independently than some people would have be liked. But
6 it absolutely acted independently.

7 There was a suggestion, as well, that somehow this is an
8 improper task for FTC to be involved with. And that doesn't
9 make any sense at all. The FTC is a consumer protection agency
10 with expertise in consumer economics.

11 But the notion of a problem of the distribution of a
12 limited fund is a classic government problem. That is
13 something that the public sector has to deal with all the time.
14 The FTC is equipped to deal with it. And it is the
15 responsibility of the government to do that, and that's exactly
16 what the Commission did.

17 There was also a suggestion, Your Honor, that somehow FTC
18 got information from the PSC or got most of its information
19 from the PSC. And, certainly, there was information sharing
20 that went on, and some of that is nonpublic.

21 But what I will say, Your Honor, what is very public is
22 that the FTC has a number of tools that are available to it,
23 that are not available to the private sector, to obtain
24 information from various parties.

25 Some of the specific things that the FTC did or might do

1 in a particular investigation are confidential by law. But
2 there is something called the Civil Investigative Demand
3 Process, which is 15 U.S.C. 57B-1, which enables the Commission
4 to issue certain types of process.

5 And in a typical investigation, that would often be how
6 the Commission would obtain investigative materials that would
7 influence its economic analysis and so forth. So it wouldn't
8 ordinarily be relying upon third parties.

9 There is also an objection that this conflict affected the
10 PSC's negotiation -- affected the PSC's negotiations with Bosch
11 because PSC was negotiating on behalf of both the 2-liter
12 consumers and the 3-liter consumers.

13 Any conflict had no effect because the FTC, and only the
14 FTC, determined how to allocate the Bosch funds. As I
15 mentioned, the FTC has considerable consumer economics
16 capabilities. And, more important, the FTC has absolutely no
17 financial interest in favoring one group of consumers over
18 another group of consumers. Its sole goal is to proceed in the
19 public interest.

20 Even if the PSC had an interest in favoring one group over
21 another group -- and I'm not saying that they did, but assuming
22 that the PSC did have that interest, it had no effect,
23 whatsoever, because the FTC performed the allocation. The FTC
24 determined what consumers would get.

25 Another objection is that the FTC's allocation of the

1 Bosch proceeds was uneven, purportedly favoring the 3-liter
2 consumers. That objection fundamentally misunderstands the
3 FTC's goal, as I've explained it, which is full compensation
4 for owners and the nature of the injuries that this case
5 involves.

6 As I mentioned, the Commission intended to, and did,
7 achieve full compensation for every owner. In the 2-liter
8 settlement, Your Honor, the FTC and PSC deals made consumers
9 whole with money solely from Volkswagen.

10 Now, although the 2-liter and 3-liter victims might have
11 distinct legal claims against Volkswagen on one hand and Bosch
12 on the other, they did not suffer distinct injuries as a result
13 of the defeat device fraud. Thus, significant additional
14 compensation to 2-liter owners wasn't necessary.

15 However, Volkswagen's contribution to the 3-liter
16 settlement fell short of what was necessary to compensate every
17 owner fully, which was the FTC's goal. By distributing a
18 relatively greater amount of the Bosch proceeds to the 3-liter
19 consumers, the FTC solved that problem.

20 And we agree with Ms. Cabraser, we were able to solve that
21 problem without needing to draw upon the 15 percent that was
22 available for the PCS's fee. That 15 percent is a number that
23 we view is reasonable in light of the context of this case.

24 Another objector talked about lessees. And there are some
25 complicated issues here, but I'm just going to deal with it

1 very briefly because I think it's important that these things
2 be understood.

3 First of all, it goes without saying that lessees and
4 owners are not the same thing. They have very different rights
5 and different obligations. Lessees do not have to keep their
6 car, and that is a very, very fundamental difference between
7 those two groups.

8 In addition, part of what I understood the objector to be
9 complaining about is the fact that, well, he has this option to
10 potentially purchase his vehicle in the future, and that option
11 might be diminished if the value of his car -- the value of the
12 option might be diminished if the value of his car is
13 diminished.

14 Now, it's not clear the value of the car will be
15 diminished; however, the FTC considered the reduced option
16 value when determining that \$2,000 was an appropriate figure
17 for lessees. So this was not at all forgot.

18 We understand that individual consumers may disagree with
19 particular assessments. But we want to make absolutely clear
20 to the Court that the consideration of the option value was
21 something that the Commission took into consideration when it
22 was making the determinations that it did.

23 Another point that the individual made, the objector made,
24 was this January 31st deadline. And I'll simply say that the
25 January 31st deadline is important because prior to

1 January 31st, someone who has a leased vehicle has no idea what
2 the resolution might or might not be. The case might never
3 resolve. It could resolve on horrible terms. Who knows.

4 After the 31st, individuals are able to make informed
5 decisions because they know what the terms of the settlement
6 are likely to be. So that's the significance of that
7 particular date.

8 There was an objector who talked about materiality at some
9 length. And I think that that objector may be conflating
10 materiality for interpreting the settlement agreements, and
11 specifically whether there are material reductions in
12 performance with the materiality standard that is used in the
13 deception statement and in other FTC case law to determine
14 whether particular -- particular conduct or particular
15 communications are actionable.

16 Here, there is no doubt about the fact, none, that the
17 representations that Volkswagen was making under the deception
18 statement, and a lot of other law here in this circuit, were
19 material. And that's one of the reasons there are
20 \$11.2 billion in judgments. Materiality is certainly
21 important, but I think it may have been misunderstood there.

22 There was an objector who spoke about the loan amounts or
23 the issues having to do with loans. And I may not have fully
24 understood that objection, but what I will say is that, if an
25 individual is engaged in a buyback transaction, there is

1 protection for negative equity up to 130 percent.

2 If an individual is not engaged in a buyback transaction,
3 but just has other issues with their loan for any other
4 reason -- I mean, that may be unfortunate, but that consumer is
5 still put back into the position that he or she otherwise would
6 have been in.

7 The final, kind of, set of objections has to do with
8 objectors complaining that the 3-liter generation 1 vehicles
9 receive a buyback, whereas newer 3-liter generation 2 vehicles
10 likely will not.

11 There's a few things to say here. The difference, as a
12 number of parties have already pointed out, is that Volkswagen
13 probably can repair the vehicles so that they meet the
14 standards to which their emissions were originally certified.

15 This is really important. We're not talking about a
16 partial emissions modification that makes the emissions better
17 than with the defeat device. We're talking about a full repair
18 that reduces emissions to the level they were supposed to be
19 and the level they were marketed to be to the consumers.

20 Volkswagen almost certainly can do this without adversely
21 affecting vehicle performance, which means that consumers who
22 purchased these vehicles will get the car that was marketed to
23 them. And that's what's important to the FTC.

24 In addition, they're going to get, on average, a little
25 bit more than \$10,000 each in additional cash compensation.

1 With respect to fuel economy and other performance
2 attributes, Volkswagen represents that it can repair these
3 vehicles without meaningfully diminishing their performance.
4 And the size of the engines and the newness of the vehicle
5 suggest that this is probably right.

6 But the FTC did not take Volkswagen at its word. The
7 \$10,000, or more than \$10,000 on average, that generation 2
8 consumers will receive, if they get a full repair, assumes a
9 somewhat diminished performance and a somewhat diminished
10 resale value. Those considerations are already baked into the
11 FTC's analysis of what is necessary to make those consumers
12 whole.

13 So, put another way, even assuming the worst reasonable
14 case, these consumers will still be made whole. And that's
15 what's important.

16 Turning to a few other issues, Your Honor, with respect to
17 the ongoing settlement process, the FTC is diligently
18 monitoring the 2-liter claims administration process. And we
19 will continue to monitor both that ongoing process and the
20 3-liter process, should it begin.

21 The FTC, in the course of that monitoring, has noticed
22 that sometimes entities calling themselves "claims processing
23 services" are out there. Some of them charge thousands of
24 dollars to file claims, on behalf of consumers, with
25 Volkswagen. Such services are unnecessary. They can't get

1 consumers more money than the court-ordered settlements allow
2 or require.

3 Consumers who go to ftc.gov and look at the consumer blog
4 there can see more that the FTC has written about the problems
5 these claims processing services present.

6 The Court has heard, and likely will hear further, about
7 Volkswagen's considerable progress in the claims process. The
8 FTC will continue to monitor that process, and we absolutely
9 will speak up if there are significant problems. And although
10 there is room for improvement, it is going well.

11 By the way, it's going well in no small part due to the
12 efforts of the Court's own representative, the court-appointed
13 claim supervisor. It's also going well due to Volkswagen's
14 efforts.

15 However, we're at a milestone here. And it's important to
16 consider that Volkswagen's efforts to fix the problem it caused
17 should be acknowledged but not celebrated. Being forced to
18 clean up the environment and repay consumers after the company
19 got caught is necessary but not praiseworthy.

20 It's because of the seriousness of what transpired, the
21 significant injury to the environment, and the substantial
22 injury to consumers that this make-whole settlement is so
23 remarkable.

24 The overall global settlement is excellent. The FTC urges
25 the Court to enter the FTC order and the PSC settlements with

1 Volkswagen and Bosch so that relief for consumers with 3-liter
2 vehicles can begin.

3 Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 So shall we hear from Volkswagen?

6 **MR. GIUFFRA:** Thank you very much, Your Honor. Robert
7 Giuffra for Volkswagen.

8 **THE COURT:** And I think the objections have been
9 covered.

10 **MR. GIUFFRA:** Yes. I only have a few points,
11 actually, I'd like to make, Your Honor.

12 First of all, Volkswagen obviously speaks in strong
13 support of both the governmental and class action settlements.
14 Today represents an important milestone for Volkswagen.

15 If the Court approves these settlements, it will mean it
16 resolved and reached a resolution for every single affected
17 diesel car in the United States; nearly 600,000.

18 Now, the 3-liter settlement is 88,500. And we will also
19 complete -- and it was great to hear Mr. Van Eaton say this --
20 a series of comprehensive settlements, governmental and
21 private.

22 A little over a year ago, I stood here and said that the
23 company was determined to make things right for the
24 environment, with its regulators, and with consumers. And
25 we've done that. We have made things right with all those;

1 with the environment, with consumers, and with regulators.

2 And I also said that actions speak louder than words. And
3 VW has been true to its word to this Court, and its actions
4 have shown that the company has turned a new page here. And
5 there are many situations, Your Honor, where companies have
6 engaged in very serious misconduct and have not gone down the
7 road that Volkswagen did.

8 Volkswagen worked with the Court, with Director Mueller,
9 who deserves a substantial amount of credit here, and others --
10 the government and the PSC -- in a cooperative way so that we
11 can settle with the DOJ, criminally and civilly, completely; so
12 that we can settle with the PSC; so that we can settle with 44
13 states, and I'm still working on the rest; so that we could
14 settle with our dealers. And those are all important
15 milestones.

16 And, also, the speed Your Honor noted. We did not
17 litigate. We did not play games. We moved forward. And that
18 was a direction from the highest levels of Volkswagen. We've
19 addressed the cars on the road, the environment, and we've also
20 put forward what we think will be a transformative ZEV
21 investment.

22 Now, I think it's important to note that we've made
23 significant progress, so far, getting those polluting cars off
24 the road. As of today, Volkswagen -- and this is six months
25 into the program. And this was a program that would go on for

1 two years. We're up to 280,000 vehicles. So that is a
2 substantial amount of progress. And I don't think that a
3 company has ever attempted this complex a buyback.

4 In addition, Your Honor, we're ready to move forward with
5 the 3-liter just as well.

6 So, again, I want to thank the Court, thank Director
7 Mueller. And I think it's clear that this is a reasonable
8 outcome for consumers.

9 Volkswagen believes, with respect to the 3-liter cars,
10 that we can fix them. We've provided lots of information to
11 the CARB regulators, the EPA, the PSC. And everyone who has
12 looked at this believes that the 3-liter generation 2 cars can
13 be fixed to the certified standards.

14 We've made our submissions already for the approval to
15 CARB and EPA for the 2.2 SUVs. And we've done it for the 2.1
16 cars. Just the passenger cars are remaining. And so we've
17 done all of that.

18 In addition, the positive consumer reaction, the small
19 number of opt-outs to both settlements, speaks to the fact that
20 this is a generous, generous settlement.

21 Now, I want to talk about one thing, and then I'll be
22 done.

23 One of the goals of this, you know, when you have a
24 situation like this, Volkswagen has done, I think, everything
25 it could have humanly done to make things right. But we also

1 want to transform the company. And the company is committed
2 and publicly said, and there are agreements we have entered
3 into, where we will be developing and selling more electric
4 vehicles in the United States.

5 So we want to try to make this a positive chapter,
6 something positive that will come out of this for the company.
7 Obviously, you know, we want to put it behind the company.

8 Now, the company has created something called Electrify
9 America. Electrify America is part of a \$2 billion investment
10 that Volkswagen agreed to in connection with the 2-liter
11 settlement.

12 Now, on April 12th, the EPA approved the first tranche of
13 our investments. And those cover 1.2 of the 800 -- of the
14 \$2 billion investment that was approved by the EPA, a national
15 ZEV investment plan. And that covers 49 states.

16 Unfortunately, we still are waiting on California. And
17 that's something that needs to be done, because clearly this --
18 this process of doing this transformative investment, having
19 charging stations throughout the country, needs to be done in
20 California, which is, I think, the leader in ZEV technology.

21 And there have been some politicians in California, who
22 were not part of the settlement discussions, who somehow think
23 that this ZEV investment, it was supposed to be a money-making
24 investment for Volkswagen, electric cars. And it's obviously
25 critical to the success of electric cars that you have charging

1 stations all around the country. And that is one of the things
2 that has held back the area of electric chargers, electric
3 cars.

4 Now, the settlement -- and I'm just going to go through
5 some of the numbers.

6 Your Honor raised the question of low income communities.
7 And the way the -- as best we can tell, we've -- when all the
8 settlements are done with the State of California, we are
9 talking about \$840 million that California can do with what it
10 wants. This includes \$25 million that Volkswagen specifically
11 agreed could go to low income communities.

12 In addition, Volkswagen, in the 3-liter settlement, will
13 provide approximately \$41 million for NOx remediation in
14 California. California can spend that money however it wishes
15 to do so. And it can put all of it into low income communities
16 if they would like to.

17 In addition, in the 2-liter settlement, Volkswagen agreed
18 to pay \$381 million to California. That can all go to low
19 income communities.

20 Volkswagen also agreed to pay \$86 million in penalties for
21 consumer -- under the consumer deceptive statutes. That can be
22 spent however the state wishes to spend that money.

23 And then there's a settlement that we're working on, which
24 I think publicly amounts have been disclosed, roughly
25 \$150 million. A hundred million of that, the State can spend

1 it however it wants. It can direct it all to low income
2 communities.

3 And then there's another 50 million for -- to provide
4 money for CARB to do additional testing.

5 We've also agreed, Your Honor, as part of the \$2 billion
6 investment, a money-making investment, that of the 800 million
7 that goes to California under the 2-liter deal, it was supposed
8 to be one green city. Now we agreed in the 3-liter settlement
9 to have 2 green cities. So that's additional money that is --

10 **THE COURT:** What's a green city?

11 **MR. GIUFFRA:** It's -- basically, we're going to
12 create, like, a city that will have additional ZEV. You have
13 car sharing and electric. A lot of advertising focused on
14 trying to make that particular city -- and this is a concept
15 that has worked successfully in Europe. And so you basically
16 say, look, you can't do electric everywhere, but you can have a
17 concentrated amount of ZEV investment.

18 And we are -- as I've told you before, one of those ZEVs
19 will be a city that falls within the greater low income
20 community issue.

21 The problem that I'm concerned about, Your Honor, is that
22 nothing in the agreement requires Volkswagen to take -- of the
23 800 million, to invest a particular amount in low income
24 communities; although, we are doing plenty of things in low
25 income communities. And the drafting history, in fact, makes

1 clear the opposite. We actually did not have provisions like
2 that in the agreement.

3 We want to get this done, but I think it's important that
4 those -- and it's been written about in the paper. And Your
5 Honor referenced articles that have been written about this
6 subject.

7 There's a misunderstanding, on the part of some, that this
8 was an investment, something where Volkswagen could make it an
9 investment, where it could be part of its investment in
10 electric vehicles in the United States.

11 We're paying plenty of money. And, as I noted before,
12 we're paying 840 million to California. California can spend
13 that money however it wants. But the investment is something
14 different.

15 And so, you know, we want to try to get that approved as
16 soon as we can because we have investment cycles that are being
17 affected by the fact that we've got our approval from EPA for
18 our investment plan, and we need it from California. So that's
19 very important to the company.

20 I think it's important to recognize we have done a
21 substantial amount, through all the penalties and environmental
22 remediation, for low income communities. And we made a deal,
23 and the deal was for an investment.

24 And investments, by definition, involve being able to make
25 money and get a return and not having governmental agencies

1 tell us where every last bit of that money can be spent. That
2 was not something that we agreed to.

3 So, in sum, Your Honor, we think that the settlements
4 before you are extremely fair. They are extremely generous.
5 The company has stood by its word to the Court that we are
6 committed to make things right. We clearly have done that.

7 And we urge the Court to approve the settlements. And,
8 again, we thank consumers. We thank our dealers for all
9 they've done.

10 And, Your Honor, I think we're really toward the end of
11 the road. We're committed now to implementing the settlements.
12 I think we've done an extremely good job to date.

13 And thank you very much for all of your efforts in bringing
14 this about. I think Your Honor had the bully pulpit, to use an
15 expression.

16 **THE COURT:** Well, I use it.

17 (Laughter)

18 **MR. GIUFFRA:** Used it quite effectively.

19 **THE COURT:** I used it.

20 **MR. GIUFFRA:** Thank you very much.

21 **THE COURT:** And I'm quite confident that CARB will --
22 CARB has addressed this problem.

23 Do you want to add to anything?

24 **MR. AKERS:** Your Honor, may I very briefly?

25 **THE COURT:** Sure. Of course.

1 **MR. AKERS:** Your Honor, thank you.

2 As you know, under Appendix C of the 2-liter Consent
3 Decree, Volkswagen is required to make investments related to
4 Zero Emission Vehicle technology. And there are two separate
5 investment programs. One is for the state of California, the
6 other is for the remainder of the United States.

7 The EPA is responsible for reviewing and approving the
8 national plan; ARB for reviewing and approving the California
9 plan.

10 We received a plan from Volkswagen on March the 8th.
11 We've reviewed it. We've had numerous meetings with
12 Volkswagen, and we've provided input both to ensure that it
13 complies with the requirements of the -- of the Appendix C, but
14 also to ensure and provide recommendations and advice on ways
15 that those investments can provide the greatest benefit to all
16 Californians and to the environment.

17 We look forward to continuing that process with
18 Volkswagen. And I would anticipate the submission of a
19 supplemental ZEV investment plan from Volkswagen addressing
20 some of those issues.

21 We will, of course, involve the Court if there's any
22 inability to get to a resolution.

23 **THE COURT:** Soon.

24 **MR. AKERS:** Yes, sir.

25 **THE COURT:** Good. Thank you.

1 All right. Let me hear from Bosch.

2 **MR. SLATER:** Thank you, Your Honor. Matthew Slater
3 for the Bosch defendants.

4 Judge Breyer, Judge Corley, you've been sitting here for a
5 long time today, and I'll be very brief.

6 The first point I want to make is that, as the PSC has
7 amply demonstrated in their written submissions, and
8 Ms. Cabraser and Mr. Stranch in their oral submissions, the
9 Bosch settlement is fully within the requirements of Rule 23.
10 And we stand firmly behind its final approval.

11 Second, and consistent with that, Bosch acted promptly to
12 begin the implementation process. The settlement has been
13 fully funded for over a month now. The funds are ready for
14 distribution.

15 The notice plan was very well-implemented by the PSC.
16 We've been working with the claims administrator to get that
17 program up and running so that checks can be cut once approval
18 is granted.

19 And just to underscore one point, the Bosch settlement is
20 open to people who have opted out of the 2-liter and the
21 3-liter settlement.

22 As Mr. Stranch said, there's an August 15th deadline for
23 those people to register. And we would just encourage them to
24 do so. We have good reason to believe that some have already
25 done so, but we want to be sure they don't miss that date.

1 Third, I wanted to thank Director Mueller and the FTC for
2 the important roles that they've played in bringing this about,
3 and we look forward to the final approval.

4 Thank you, Your Honor.

5 **THE COURT:** Anything further?

6 Oh, Ms. Cabraser, yes.

7 **MS. CABRASER:** Two technical or housekeeping matters,
8 and one final point.

9 With respect to both the 3-liter and Bosch settlements, we
10 would submit and request that the Court confirm class
11 certification for settlement purposes for each of the classes,
12 as defined in the respective settlement agreements and the
13 class notices, and that the Court confirm the appointment of
14 the Plaintiffs' Steering Committee as settlement class counsel
15 so that we can complete our job of making sure that the
16 settlement benefits are delivered in a prompt and timely
17 fashion to the class members, that the settlement's terms are
18 enforced and defended, and that we can make the plans for
19 consumer compensation and environmental remediation that are
20 central to both settlements a true reality.

21 We're at a point, also, in the case where I would beg a
22 moment, or less than a moment, of the Court's indulgence.
23 There have been many thanks made this morning. We echo all of
24 them.

25 This is a unique situation, I believe, in the experience

1 of every lawyer in this room, whether government lawyer or
2 private counsel. We have all been directed to do something
3 that none of us has ever done before, at least not in this way,
4 which is to step outside our roles and our comfort zones and
5 use our obligations to represent our constituencies -- in the
6 PSC's case, the consumers directly; in the government entities'
7 case, the public and the environment -- to create a set of
8 settlements that work together, that would not work completely
9 were any piece missing, and that together constitute a whole
10 that is far greater and more meaningful than the sum of its
11 parts.

12 It has been a unique experience for us. I hope it is one
13 that can be repeated, if necessary, in the future to meet
14 challenges to the environment, challenges to public health and
15 safety, challenges to consumer compensation.

16 And it has been challenging and gratifying to work with
17 lawyers who put the obligation imposed upon them by this Court
18 first.

19 It's hard for all of us to share credit. We all like to
20 believe we've done something on our own. And I think there's a
21 recognition in this room that we have been able to do something
22 together that is uniquely remedial as well as compensatory.

23 So at this point, not that their job is done, I wanted to
24 thank the members of the Plaintiffs' Steering Committee. You
25 have heard from many but not all of them. You know that they

1 have been working on both the litigation and settlement tracks
2 for Volkswagen and for Bosch.

3 I wanted to thank the members of the settlement team that
4 worked specifically to make these settlements possible and to
5 bring them to Your Honor for consideration. Lynn Sarko, Ben
6 Bailey, Joe Rice, Robin Greenwald, Chris Seeger, David Boies,
7 Steve Berman. And, of course, other members of the PSC were
8 there to give us advice and counsel.

9 As you know, the Bosch team worked throughout on a
10 separate track, in terms of investigation, discovery, and
11 prosecution. And I wanted to thank members of that Bosch team,
12 including Lesley Weaver, Gerard Stranch, David Casey, and Jim
13 Cecchi.

14 We had the benefit of expert and very experienced class
15 counsel to work with us on briefing, to work with us on class
16 issues, and to work with us on experts.

17 And I wanted to thank PSC members Frank Pitre,
18 Paul Geller, Adam Levitt, and Jayne Conroy for their expertise.

19 In terms of class notice and daily/hourly class
20 communications, I wanted to especially thank Ms. Revas and
21 Ms. Conlin, as well as Mr. Heygood, because they brought
22 different perspectives, trial lawyer perspectives, Spanish
23 language perspectives, class communication perspectives, to the
24 ongoing task of making sure all of our class members had
25 instant detailed information about what was going on and had

1 their questions answered.

2 All of us were involved, of course, in discovery document
3 analysis, case strategy, and preparing to try the case, if need
4 be. And so I wanted to also thank Mr. Hausfeld, Mr. Miles, and
5 Mr. Tellis, who focused their efforts on those aspects of the
6 case.

7 In a sense, everyone did everything. And we all did what
8 was needed at any one time. But when people were asked to
9 focus on a particular task, even if it wasn't one that was
10 going to involve visibility with the Court, they did so.

11 I also wanted to especially thank my partner, David
12 Stelling, who worked on all of these things with us, and the
13 members of our class member response team headed by
14 Phong-Chau Nguyen and Kevin Budner, Wilson Dunlevy, Gretchen
15 Cappio, the Keller Rohrback firm, and many others.

16 Not to say that they can stop working, because we've got a
17 new task ahead of us, if Your Honor grants final approval to
18 these settlements, and that's in delivering it to the
19 consumers.

20 Thank you very much, Your Honor.

21 And thank you, Director Mueller.

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

23 The Court, of course, has received, over the last several
24 months, the objections. And they have been responded to either
25 in writing, in the responses by the PSC or today.

1 Accordingly, the objections raised to the settlements --
2 I'm now incorporating both the Bosch and the 3-liter VW
3 settlement -- are overruled.

4 The Court finds that the settlements are fair, adequate,
5 and reasonable, and will approve those settlements and appoint
6 the committees as required or requested by the defense.

7 The Court will also approve the EPA's Consent Decrees as
8 well as the CARB Consent Decree and the FTC order as well.

9 The Court will enter those orders and enter the actual
10 approvals not later than Wednesday of next week.

11 The Court wants to make sure that the orders that are
12 issued by the Court reflect the comments, in part, that are
13 germane to the Court's reasoning in its written order that will
14 be issued not later than Wednesday of next week.

15 So that leaves several items that are unfinished. One is
16 that the Court will consider a fee application by the
17 Plaintiffs' Steering Committee.

18 And when can you have that on file, Ms. Cabraser?

19 **MS. CABRASER:** Your Honor, we'd like several weeks'
20 time to discuss to see if we can reach an agreement on a
21 proposed fee. We could file a fee application either way, I
22 think, if we had until the end of June to do so.

23 **THE COURT:** Okay. So file your fee application not
24 later than June 30th.

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

1 **THE COURT:** And as to any response, I would give any
2 party that wishes to respond to the application until
3 July 14th to respond. And then the matter will be taken under
4 submission. If I need a hearing, I'll indicate that.

5 **MS. CABRASER:** Thank you very much, Your Honor.

6 **THE COURT:** So let me just further acknowledge, though
7 I can't be nearly as eloquent as Ms. Cabraser, her comments
8 today, they are all correct.

9 I look to the Plaintiffs' Steering Committee. You know,
10 it was interesting because when the Plaintiffs' Steering
11 Committee was put together there was some, you know, criticism
12 of why do we need 21 lawyers in this case in which Volkswagen
13 had basically conceded liability?

14 And the answer is, we wouldn't be here today without the
15 unique and significant skills of all of the lawyers who
16 participated in the Plaintiffs' Steering Committee. And I know
17 nobody -- you know, you don't see how it's done.

18 The Court doesn't see a lot of what's done. It's not
19 visible. But it is essential to achieving these types of
20 results. And so, of course, I would -- I would thank the
21 Plaintiffs' Steering Committee for its fine work.

22 I would like to mention, because this may be the last
23 time, or not necessarily the last time, I will see these
24 individuals.

25 But Jonathan Cohen and Simon Han, from the FTC, it was an

1 essential role that you played. You did a significant and, in
2 the Court's view, a fine role of representing the consumers in
3 the United States, carrying out your statutory
4 responsibilities. So I want to thank you very much for your
5 participation.

6 Of course, I turn to CARB because they're like the first
7 mover in this work, the initial work that was done by CARB,
8 recognized. And their continual participation in this,
9 bringing the standards that a number of states, California and
10 a number of states, subscribe to was essential in order to
11 achieve the result.

12 Mr. Akers, you did a fine job. And I want to just thank
13 you for that.

14 And, of course, I get to the EPA because Bethany Engel,
15 Nigel Cooney, and especially Josh Van Eaton did a superb job in
16 representing the Department of Justice and their client, the
17 Environmental Protection Agency, a crucial agency in the
18 welfare of all of us. As somebody said, not only us but our
19 children and grandchildren and generations to come.

20 And without this service, this country and this litigation
21 would have had a very different -- could have a very different
22 result. It's key.

23 And I want to thank you, Mr. Van Eaton. I know that
24 initially the EPA filed in Detroit, I think.

25 **MR. VAN EATON:** That's correct.

1 **THE COURT:** And I think that there was a little
2 concern should you just walk out here into California and
3 litigate it here. I'm glad you did.

4 I think the Environmental Protection Agency is glad it
5 did, because we were able to achieve a whole result. As
6 Ms. Cabraser points out, the whole is much greater than the sum
7 of the parts. And so I want to thank you.

8 And, finally, though it may sound like a bit of
9 self-congratulations on my part, which I'm not shy about
10 doing --

11 (Laughter)

12 **THE COURT:** -- but two people I know that the parties
13 have seen, Aaron Zebley and Jim Quarles. The parties have seen
14 them. I don't know that the general public has seen them. But
15 they were part of the settlement process appointed by the
16 Court. They gave hours upon hours, and at odd hours, reacting
17 to crises, reacting to differences of opinion, trying to bridge
18 opinions, overcoming personality issues that may have presented
19 an obstacle to a settlement. That's what they did.

20 But they wouldn't have been able to do it without the
21 fine, steady, experienced hand of the former United States
22 Attorney for the Northern District of California and, of
23 course, the former FBI director, Bob Mueller, who hates my
24 saying this because he just does not want to take any of the
25 credit. But, of course, the credit goes to him. Him, his

1 team, his selflessness, his hours of service.

2 There was never anything that I asked Bob to do, in terms
3 of timing or finding out this or that, to which the answer is,
4 Well, I can't do it, Judge. It was, Let's see. We can do it.
5 We can do it.

6 And the whole can-do attitude permeated the entire group
7 in front of me, including Volkswagen and, in a crucial eleventh
8 hour, Bosch.

9 (Laughter)

10 **THE COURT:** Crucial. But I want to thank you for
11 that. You know, it's so easy to say no, and so much harder to
12 say yes. But having the idea that you have to come to yes is
13 extremely important. So I want to just, of course, thank
14 everybody.

15 Now, one of the other things -- is there anything else I
16 have to resolve?

17 I want to set a further status conference to find out
18 where we are on any of these issues. I may take certain
19 motions and move them to the status conference.

20 But the date I was looking at is June 27th. And we'll get
21 reports and any issues that arise at that time.

22 And let me ask Ms. Cabraser, do you want to add to that?

23 **MS. CABRASER:** Your Honor, the 27th for a status
24 conference works for us.

25 If the Court -- I don't have information with respect, of

1 course, to the securities motions that have been set. I think
2 Volkswagen can probably speak to whether those could be
3 rescheduled to coincide with it.

4 I did contact Mr. Berman with respect to the Bosch pending
5 motion and whether that could be moved. And apparently the
6 28th is not the perfect date for that.

7 **THE COURT:** 27th.

8 **MS. CABRASER:** Or the 28th is not -- well, Your Honor
9 suggested the 28th.

10 **THE COURT:** No, no, no. I think I suggested the 27th.

11 **MS. CABRASER:** Or the 27th, I'm sorry.

12 **THE COURT:** I think Volkswagen --

13 **MS. CABRASER:** The 27th is not, apparently, a perfect
14 date for that. So it may be that the Bosch --

15 **THE COURT:** We can work out --

16 **MS. CABRASER:** -- the parties may --

17 **THE COURT:** We can work out a different date, if
18 that's necessary.

19 **MS. CABRASER:** Okay.

20 **THE COURT:** But I want to do something in June. I
21 want to keep the momentum going. I want to see if there are
22 problems I want to try to resolve. There are securities
23 actions. I want to hear arguments on the motions. I want to
24 try to move ahead on this. I don't want it to slide.

25 **MS. CABRASER:** We're happy to be flexible on that,

1 Your Honor. We very much appreciate having the opportunity of
2 the status report and status conference in that time frame, to
3 be preceded a few days before that with a status report so that
4 we can bring you up-to-date both on further progress on 2-liter
5 and the launch and initiation of the 3-liter program.

6 **THE COURT:** One thing I wanted to add, which I forgot
7 to mention, is that I will address the fees in the Bosch
8 settlement in a separate order but concurrent with the order
9 approving the settlement.

10 So I intend to resolve that matter at the same time, by
11 Wednesday of next week.

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

13 **MR. GIUFFRA:** Your Honor --

14 **THE COURT:** Mr. Giuffra.

15 **MR. GIUFFRA:** Just some dates. We had originally
16 talked about having the argument on the stockholder case on
17 June 30th. We had talked about having the argument on the
18 bondholder case on June 16.

19 I received a statement from Volkswagen the 27th would be
20 fine. We agree that it would be better to have it all on the
21 same day.

22 **THE COURT:** Okay. So we'll figure that out. We'll
23 have some discussion on that.

24 **MR. GIUFFRA:** In terms of the status report, do you
25 want to have that submitted on the 23rd?

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THE COURT: Yes, please.

MR. GIUFFRA: That's the Friday.

THE COURT: I appreciate that.

Well, it's been under three hours. Under three hours.
But everybody can bill for three hours.

(Laughter)

THE COURT: Okay. We're dismissed.

MS. CABRASER: Thank you, Your Honors.

(At 10:50 a.m. The proceedings were adjourned.)

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CERTIFICATE OF REPORTER

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

DATE: Friday, May 12, 2017

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter