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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 IN RE: VOLKSWAGEN "CLEAN DIESEL"  
13 MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

No. 3:15-md-02672-CRB

14 This Document Relates to:

15 ALL CONSUMER AND RESELLER  
16 ACTIONS

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS'  
FEES AND COSTS UNDER FED. R.  
CIV. P. 23(H) AND PRETRIAL ORDER  
NOS. 7 AND 11 RELATING TO THE 3.0-  
LITER CONSUMER AND RESELLER  
DEALER SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: TBD  
Time: TBD  
Place: Courtroom 6, 17th floor

The Honorable Charles R. Breyer

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 23(h), Pretrial Order Nos. 7 (Dkt. 1084) (“PTO 7”) and 11 (Dkt. 1254) (“PTO 11”), and the Court’s direction in the Order Granting Final Approval of the 3.0-Liter TDI Consumer and Reseller Dealership Class Action Settlement (Dkt. 3229), Plaintiffs’ Lead Settlement Class Counsel, on behalf of Settlement Counsel and all counsel performing common benefit services under the provisions of PTO 11, hereby moves the Court for an order approving the award of \$121 million for attorneys’ fees and \$4 million for expenses arising from the claims resolved by the 3.0-Liter TDI Consumer and Reseller Dealership Class Action Settlement, as embodied in the Amended Consumer Class Action Settlement Agreement and Release (Dkt. 2894) (the “Settlement”). Pursuant to agreement reached after the final approval of the 3.0-Liter Settlement, Volkswagen has agreed to pay these fees and costs upon Court approval. This Motion is based on and supported by the Memorandum of Points and Authorities, the Declarations of Elizabeth J. Cabraser, William B. Rubenstein, and Ted Stockton, and the activities and events in these MDL proceedings to date.

The 3.0-Liter Settlement secures at least \$1.22 billion to compensate owners and lessees of 3.0-liter Volkswagen, Audi, and Porsche TDI vehicles for their economic losses associated with the defeat device emissions. Based on reasonable projections of claims data available so far, the vast majority of this money will end up in Class Members’ pockets. While this benefit to the Class is substantial, Class Counsel seek only modest attorneys’ fees and cost reimbursement, especially when compared with awards in comparable cases. The fees requested (including reimbursable costs of \$4 million) are equivalent to less than 10% of the total monetary benefit available to the Class, far below the benchmark in this Circuit and consistent with the average award in “super-mega-fund” settlements exceeding \$1 billion.<sup>1</sup> A lodestar cross-check also yields

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<sup>1</sup> If no Emissions Compliant Repairs (“ECRs”) are timely approved, and buybacks were made available for all vehicles, the value of the Settlement would increase to more than \$4 billion, and the fees requested drop to the equivalent of little more than 3% of the monetary benefits available to the Class, because Class Counsel will not seek additional fees if this happens.

1 a multiplier which is below average and more than justified by the diligent representation and  
2 exceptional results in this case.

3           Importantly, this award will not reduce Class benefits: pursuant to the Settlement, and as  
4 the result of post-Settlement negotiations, Volkswagen has agreed to pay this amount *in addition*  
5 to the Class benefits set forth in the Settlement. Class Counsel thus submit that the fees and costs  
6 requested are fair and reasonable and respectfully request that the Court approve them.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

This fee request arises from one of the largest class actions in history. The Settlement requires Volkswagen AG, Audi AG, Porsche AG, Volkswagen Group of America, Inc. and Porsche Cars of North America, Inc. (together, “Volkswagen” or “Defendants”) to commit to paying between approximately \$1.22 billion and \$4 billion to compensate 3.0-liter TDI owners and lessees for their losses resulting from the “clean diesel” exposé.<sup>2</sup> Because this case presented issues not only of massive fraud, but also of ongoing environmental damage, the Settlement came together quickly and with significant coordination between private plaintiffs and government agencies.

Unsurprisingly, Class Members overwhelmingly supported the Settlement. Despite the high stakes involved in this litigation, and the heightened attention paid to it, a mere 0.67% of the Class opted out. Order Granting Final Approval, Dkt. 3229 at 27, an even lower rate than those for the historic 2.0-liter settlement. *Id.* In contrast, more than 68% of the Class had already registered for Settlement benefits even before the Settlement had received final approval, and almost two years before the deadline for most to register. *Id.* As the Court concluded in granting final approval, “the low opt-out and objection rates . . . strongly favors final approval” of the Settlement and is a testament to its strength. *Id.* at 28. No Class Member has appealed the Settlement’s approval.

Notwithstanding the significant benefits secured by the Settlement, the fees Class Counsel request are relatively low, especially when compared to other multi-billion dollar cases, and, unlike most of those cases, *will not be deducted from the monetary benefits available for Class Members.* Under a conservative estimate of the funds available to the Class, which assumes ECRs are timely approved for all Generation Two vehicles, the fees amount to about 9.89% of the total.<sup>3</sup> This falls far below the 25% benchmark in this Circuit for common fund cases, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002), and below the average

<sup>2</sup> The precise payment obligations of each entity are set forth in the Settlement. Dkt. 3229.

<sup>3</sup> If no ECRs are timely approved, and other conditions are satisfied, the fees would amount to little more than 3% of the total.

1 recovery for settlements of similar size to this one, which, depending on the study and sample  
 2 size, is between 13.7% and 14.5%. *See* Ex. B, Declaration of William B. Rubenstein  
 3 (“Rubenstein Decl.”), ¶¶ 16-17. Moreover, even after calculating the common fund using a “net  
 4 value” analysis that subtracts the value of the vehicles at the time they are sold back—which the  
 5 law *does not require*, *see, e.g., Lopez v. Youngblood*, No. CV–F–07–0474 DLB, 2011 WL  
 6 10483569, at \*12 (E.D. Cal. Sept. 2, 2011)—the fees represent no more than 13.42% of the  
 7 funds that will end up in Class Member’s pockets. Again, this is below both the Circuit’s  
 8 benchmark and average awards in similar cases. A lodestar cross-check, like that previously  
 9 employed by the Court in this case, yields an overall multiplier of only 2.01—well below both  
 10 the mean (3.36) and median (2.7) multipliers in super-mega-fund settlements like this one.  
 11 Rubenstein Decl. ¶ 36.

12 Professor William Rubenstein has conducted a detailed analysis of the fee and cost  
 13 request. His accompanying declaration, attached as Exhibit B, provides quantitative empirical  
 14 data to support the following:

- 15 • ***The PSC’s requested percentage is reasonable.*** The PSC seeks a fee that is the  
 16 equivalent of about 9.89% of the roughly \$1.22 billion gross amount made available to  
 17 the class by this settlement. Three sets of data support the reasonableness of this  
 18 request: it is below the mean for large settlements reported in the two leading  
 19 empirical analyses of class action fee awards and it is below the mean for a  
 20 comparison group of \$1-2 billion settlements that my research assistants compiled for  
 21 purposes of this Declaration. If the fee is expressed as a percentage of the net value of  
 22 the funds made available to the class (that is, subtracting out the value of the cars that  
 23 will be traded in) it is about 13.42%, which remains within the range of reasonable  
 24 percentages for funds of this size.
- 25 • ***The PSC’s requested percentage is reasonable.*** The PSC seeks a fee that is the  
 26 equivalent of about 9.89% of the roughly \$1.22 billion gross amount made available to  
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 purposes of this Declaration. If the fee is expressed as a percentage of the net value of  
 the funds made available to the class (that is, subtracting out the value of the cars that  
 will be traded in) it is about 13.42%, which remains within the range of reasonable  
 percentages for funds of this size.
- ***The PSC’s hours are reasonable.*** The total number of hours the PSC expended  
 producing a billion dollar settlement is consistent with, and indeed far below the mean

1 of, our comparison set of 16 other cases with settlements of \$1 billion or more. A  
2 back-of-the-envelope calculation confirms this. The PSC's lodestar encompasses  
3 about 120,000 hours in the 20 months between the EPA's notice in September 2015  
4 and the entry of final judgment in May 2017. That number implies that 24 lawyers  
5 have worked full-time (3,000 hours/year) to generate this settlement throughout those  
6 20 months. Given the magnitude of this case, the size of the PSC, the understandable  
7 speed upon which the Court insisted on proceeding, and the Court's requirement that  
8 the PSC simultaneously seek to settle and prepare for trial as quickly as possible, the  
9 120,000 hour figure seems reasonable. Moreover, concerns about lodestar padding  
10 largely fall away in this case given its short lifespan.

- 11 • ***The PSC's rates are reasonable.*** An empirical analysis of 40 recent class action  
12 settlements in the Northern District of California shows that the PSC's blended billing  
13 rate in this case (\$461.69) is about 12.5% below the mean (\$528.11) for class actions  
14 approved by courts in this District in the past few years. This is particularly  
15 remarkable because the staffing in this case was necessarily top-heavy given the  
16 Court's appointment of a 22-lawyer leadership team comprised of some of the highest-  
17 paid attorneys in the country and because much of the work in this case involved  
18 relatively high-level negotiations, coordination with other enforcers, and preparations  
19 for trial. The below-average blended billing rate demonstrates that Lead Counsel  
20 appropriately assigned tasks among partners, associates, non-partnership track  
21 attorneys, and paralegals. There is therefore no factual support for any concern that  
22 Lead Counsel erred in not relying more extensively on low-paid non-partnership track  
23 attorneys. Moreover, to the extent that the PSC did employ such attorneys, my  
24 empirical analysis demonstrates that the rates charged for the work these attorneys  
25 undertook is entirely consistent with the rates charged for "contract attorney" or "staff  
26 attorney" work in court-approved class action fee petitions.
- 27 • ***The PSC's proposed multiplier is reasonable.*** The PSC seeks a multiplier of  
28 approximately 2 (2.01-2.02). Three sets of data support the reasonableness of this  
request: it is below the mean for large settlements reported in the leading empirical  
analyses of class action fee awards; it is below the mean of our comparison group of  
settlements of \$1 billion or more; and a review of the facts of the case show that the  
risks the PSC shouldered and the results that it achieved support a multiplier at this  
level.

22 In the context of this historic Settlement, Class Counsel's fee request is more than justified.  
23 So, too, are the requested costs, which are reasonable and were necessary to advance the litigation  
24 and settlement expeditiously. Plaintiffs thus respectfully request a common benefit award of  
25 \$121 million in fees and \$4 million in costs, to be allocated by Plaintiffs' Lead Counsel among  
26 the PSC firms and additional counsel performing work under Pretrial Order Nos. 7 and 11.

1 **II. SUMMARY OF THE LITIGATION AND 3.0-LITER SETTLEMENT**

2 The Court is very familiar with the history of the litigation and the terms of the  
3 Settlement. In short, it provides significant value to Class Members, and it does so in little more  
4 than a year after the fraud was revealed—a remarkably quick result for litigation of this  
5 complexity.

6 **A. The Settlement Provides Exceptional Relief for the Class.**

7 The 3.0-liter Settlement involves two generations of cars. Class Members who own or  
8 lease a Generation One vehicle have three possible options under the Settlement: (1) Buyback /  
9 Lease Termination; (2) Trade-In; or (3) if approved by the EPA and CARB, an emissions  
10 modification that would reduce the vehicle's emissions but not to the levels of their original  
11 certification. Eligible Former Lessees and Eligible Former Owners are entitled to restitution. Dkt.  
12 3229 at 7-8. Owners electing the Buyback option will receive compensation ranging from  
13 \$24,755 to \$57,157, and those electing the emissions modification will receive restitution of at  
14 least \$6,000. *Id.* at 8-9. Lessee Restitution ranges from \$5,001 to \$6,615. *Id.* at 9.

15 The benefits available to Class Members with Generation Two vehicle will depend on  
16 whether the Defendants can timely make available an approved ECR that brings the vehicles'  
17 emissions in compliance with the original levels at which they were certified. *See* Dkt. 3190 at 5.  
18 In the event such a fix is timely approved, Eligible Owners and Eligible Lessees of Generation  
19 Two vehicles will be offered a Repair Participation Payment that ranges from \$7,039 to \$16,114  
20 for owners and is \$2,000 for lessees. *See* Dkt. 3088 at 14. If Volkswagen does not obtain  
21 approval of an ECR for any Generation Two sub-Generation by the applicable deadlines, and  
22 Volkswagen cannot demonstrate good cause for the delay, Volkswagen may seek an extension of  
23 up to 90 days and pay \$500 for each relevant Eligible Vehicle owned or leased for each 30-day  
24 extension. *See* Dkt. 2894 at ¶ 6.4; *see also* Dkt. 3229 at 32.

25 If no ECR is timely approved for any sub-generation of Generation Two vehicles, Class  
26 Members associated with those vehicles will have all the rights and options available to Class  
27 Members with Generation One vehicles. Dkt. 3229 at 12. Class Members who choose a  
28 Buyback will receive the vehicle's September 2015 Clean Trade Vehicle Value, plus an

1 additional restitution amount, for a total payment ranging from \$43,153 to \$144,771. Dkt. 2894-3  
2 at 48. Payments for Class Members who opt for an emissions modification range from \$11,353  
3 to \$45,911. Dkt. 2894-3 at 48.<sup>4</sup> As both the Court and the FTC have observed, even if no  
4 buyback is necessary for the Generation Two vehicles, the Settlement guarantees that “consumers  
5 who participate in the Settlement will be made whole.” Dkt. 3229 at 29.

6 In addition, under the related DOJ/EPA and California AG/CARB settlement,  
7 Volkswagen will pay an additional \$225 million to mitigate the environmental effects of excess  
8 NOx emissions and, separately, Volkswagen has committed to pay \$25 million to CARB to  
9 support the use of zero emissions vehicles in California.

10 The ultimate goal of these Settlements is to compensate all owners or lessees of 3.0-liter  
11 Eligible Vehicles for harm they suffered as a result of the emissions issues, and to ensure that any  
12 excess NOx emissions from Defendants’ 3.0-liter TDI vehicles are mitigated. The Settlements  
13 accomplish these goals.

14 **B. Class Counsel Worked Around the Clock, at the Court’s Direction, to Secure**  
15 **a Comprehensive and Expeditious Resolution.**

16 The speed in which the Settlement was reached has only a single precedent: the  
17 extraordinary efforts undertaken by Class Counsel in the 2.0-liter litigation. This Settlement, on  
18 this schedule, was made possible only by the considerable efforts undertaken by Class Counsel.  
19 News of the defeat device broke on September 18, 2015, prompting hundreds of lawsuits. Three  
20 months later, the Judicial Panel on Multidistrict Litigation consolidated the actions before this  
21 Court, Dkt. 1, and on January 21, 2016, the Court appointed Lead Counsel and the 21-firm PSC,  
22 Dkt. 1084. The Court tapped an unusually large PSC for a reason: to accomplish an extraordinary  
23 amount of work at record pace.

24 The Court notes it has appointed 21 attorneys to the PSC (in addition to Ms.  
25 Cabraser); the Court believes this is an appropriate number given the amount of  
26 work this litigation may entail and the need for an expeditious resolution of the  
matter.

27 \_\_\_\_\_  
28 <sup>4</sup> As indicated in the Settlement, these amounts are subject to adjustment, as they assume standard  
mileage. *See* Dkt. 2894-3 at 48.

1 Dkt. 1084 at ¶ 7. The Court’s words proved prescient, for it took around-the-clock efforts from  
2 the entire PSC—and significant work from other attorneys that Lead Counsel enlisted, per PTO  
3 11—to advance both the litigation and the settlement negotiations at brisk speed to address a  
4 serious, ongoing harm and to accomplish the Court’s objective of “getting the polluting cars fixed  
5 or off the road” as soon as possible. *See* March 24, 2016, Hr’g Tr., Dkt. 1384 at 8:20-21.

6 Settlement negotiations regarding the 3.0-liter vehicles began in earnest from almost the  
7 moment the Court approved the 2.0-liter Settlement. The negotiations were extraordinarily  
8 intense and complex, particularly considering the timeframe and the number of issues and parties  
9 involved, including attorney representatives from numerous governmental entities. Although the  
10 2.0-liter settlement advanced the 3.0-liter negotiations in some ways, the 3.0-liter negotiations  
11 presented their own, unique complications, especially given the potential for a complete  
12 emissions repair for the Generation Two, 3.0-liter vehicles.

13 As Settlement Master Robert S. Mueller III acknowledged in his Declaration submitted in  
14 connection with the Settlement approval briefing, the “settlement process involved meetings and  
15 in-person conferences at various locations, including San Francisco, New York City, and  
16 Washington, DC, over a three-month period. A number of these sessions lasted many hours, both  
17 early and late, and weekends were not excluded.” Dkt. 3089 at ¶ 5. Moreover, “the parties  
18 expended considerable time in discussing, drafting, circulating, and revising the various  
19 [Settlement] documents.” *Id.* at ¶ 6. Director Mueller praised the “extensive preparation,”  
20 “attention to detail,” and the “focused attention and energy,” which Class Counsel brought to bear  
21 in achieving this comprehensive settlement in this truncated time frame. *Id.* at ¶ 8.

22 Because Settlement was not certain—far from it—Class Counsel simultaneously  
23 expended significant time and energy preparing for trial. These tasks were in addition to those  
24 dedicated to, and previously compensated by, the 2.0-liter and Bosch Settlements. Tasks for  
25 which compensation is sought in this application related to solely to 3.0-liter work, as noted in the  
26 accompanying declaration of Elizabeth J. Cabraser (“Cabraser Decl.”), and included among other  
27 things: (1) preparing discovery; (2) reviewing and analyzing millions of pages of documents  
28 produced on an ongoing basis throughout the litigation; (3) responding to discovery requests,

1 including the production of documents from twenty-four 3.0-liter Class Representatives and  
2 completion of comprehensive plaintiff fact sheets; (4) drafting and revising a motion for class  
3 certification regarding 3.0-liter vehicles; (5) preparing for trial, including drafting, and revising a  
4 comprehensive trial plan and various filings pertaining to an expedited trial regarding 3.0-liter  
5 vehicles; (6) working with technical experts to understand the complex issues pertaining to diesel  
6 engine systems and Volkswagen's use of the Defeat Device in the 3.0-liter vehicles; (3) working  
7 with economic experts to analyze 3.0-liter damages; and (7) coordinating substantive and  
8 procedural issues with multiple federal and state governmental agencies, as well as with plaintiffs  
9 in state court actions. Advancing all of these tasks simultaneously was, to say the least, a serious  
10 undertaking, as the Court acknowledged that the MDL litigation "only succeeded. . . . through the  
11 efforts of the litigants, the lawyers." May 11, 2017, Hr'g Tr., Dkt. 3212 at 71:22-24.

12 After the Settlement was filed, and through the present day, moreover, Class Counsel have  
13 devoted substantial resources to implementing the Settlement. Class Counsel have communicated  
14 extensively with Class Members, providing information and advice about the Settlement to  
15 thousands by telephone, correspondence, and email. *See* Joint Status Report, Dkt. 3370 at 14.  
16 Class Counsel and others authorized by Lead Counsel under PTO 11 will continue to devote  
17 significant resources to this litigation for at least the next two-and-a-half years, to ensure that  
18 Class Members have the resources and assistance they need to take advantage of the  
19 extraordinary benefits secured through the Settlement. Moreover, because ECRs for Generation  
20 Two vehicles have not been approved, Class Counsel expects to expend significant additional  
21 resources evaluating the proposals and advancing the interests of the Class if one is not approved,  
22 or results in more performance reduction than is expected.

### 23 **III. ARGUMENT**

#### 24 **A. Class Counsel's Fee Request Is Fair, Reasonable, and Appropriate.**

25 In deciding whether a requested fee amount is appropriate, the Court's role is to determine  
26 whether such amount is "fundamentally 'fair, adequate, and reasonable.'" *Staton v. Boeing Co.*,  
27 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). Where a settlement establishes  
28 a common fund or calculable monetary benefit for the class members, it is both appropriate and

1 preferred to award attorneys' fees based on a percentage of the monetary benefit obtained. *See*  
2 *Vizcaino*, 290 F.3d at 1047; Rubenstein Decl. ¶¶ 11-15. Where, as here, a settlement arguably  
3 does not create a "common fund" *per se*, but instead involves a claims process, "the Ninth Circuit  
4 may analyze the case as a 'constructive common fund' for fee-setting purposes." *Nwabueze v. AT*  
5 *& T Inc.*, No. C 09-01529 SI, 2013 WL 6199596, at \*11 (N.D. Cal. Nov. 27, 2013) (quoting *In re*  
6 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 940-943 (9th Cir. 2011)).

7 "To calculate appropriate attorneys' fees under the constructive common fund method,  
8 the Court should look to the maximum settlement amount that could be claimed." *Nwabueze*,  
9 2013 WL 6199596, at \*11. Courts have long looked to the entire value of the benefit made  
10 available to class members, even in cases where it is unlikely all or most of that benefit would be  
11 claimed. *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at \*12 (E.D. Cal.  
12 Sept. 2, 2011); *accord Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-81 (1980); *Williams v.*  
13 *MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). The benchmark award of  
14 attorneys' fees in common fund or constructive common fund cases is 25%, *Bluetooth*, 654 F.3d  
15 at 942, and the average percentage awarded in settlements of sizes comparable to this one is  
16 between 13.7% and 14.5%, depending on the samples used. Rubenstein Decl. ¶¶ 16-17.

17 Here, the \$125 million aggregate award of fees and costs that Class Counsel request, and  
18 that Volkswagen has agreed to pay in addition to compensation for the Class, is modest in  
19 comparison to the total monetary benefit available to Class Members. The Settlement's  
20 monetary benefit indisputably includes the approximately \$1.22 billion available to fund the  
21 Buyback, Lease Termination, and Restitution programs. Class Counsel's requested fees  
22 represent only about 9.89% of that figure. And, if no ECRs, are approved, the fees represent  
23 little more than 3% of the total \$4 billion available for Class compensation; Class Counsel will  
24 not request additional fees in that scenario.

25 The requested award is fair, appropriate, and reasonable under the circumstances. In fact,  
26 it is far lower than the typical attorneys' fees awarded in similar settlements. In the few "super-  
27 mega-fund" settlements of comparable size to this one, Professor Rubenstein reports that,  
28 depending on the sample size used, the average percentages awarded, is between 13.7% and

1 14.5%. Rubenstein Decl. ¶¶ 18-19. Class counsel’s requested fee percentage falls below both.

2 Even if, for the sake of argument, one were to calculate the common fund by using a “net  
3 value” analysis that subtracts the value the projected value of the cars if there had been no  
4 Settlement at the time that Class Members sell them back to Volkswagen, the percentage  
5 requested remains entirely reasonable. Economist Ted Stockton calculated these values, and  
6 concluded that the amount that would be deducted using this analysis, assuming an average trade  
7 value, is \$379,951,483 if all the vehicles were sold back at the beginning of the claim period, and  
8 \$263,346,731 if they were all sold back at the end of the claim period. Ex. C, Declaration of Ted  
9 Stockton ¶¶ 7-12. Professor Rubenstein observed that, even taking a mid-point between these  
10 numbers, the total fees requested represent no more than 13.4% of the Settlement’s “net value,”  
11 even assuming no buyback of Generation Two vehicles. Rubenstein Decl. ¶ 21. Again, this  
12 approach is not required under the law. *See Lopez v. Youngblood*, No. CV-F-07-0474 DLB,  
13 2011 WL 10483569, at \*12 (E.D. Cal. Sept. 2, 2011); *accord Boeing Co. v. Van Gemert*, 444  
14 U.S. 472, 479-81 (1980); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026, 1027 (9th Cir.  
15 1997). But even applying it, the percentage of the fund requested remains reasonable and  
16 customary. Rubenstein Decl. ¶ 21.

17 Although it has adopted 25% as the presumptive benchmark for fees in class settlements,  
18 the Ninth Circuit frequently references five additional factors in evaluating the reasonableness of  
19 a requested fee. Those are: (1) the result achieved; (2) the skill required and the quality of the  
20 work of plaintiffs’ counsel; (3) the customary fees for similar cases; and (4) the contingent nature  
21 of the fee and financial burden carried by counsel; and (5) the risks inherent in the litigation.  
22 *Vizcaino*, 290 F.3d at 1048-50. Courts also sometimes engage in a streamlined lodestar “cross-  
23 check” analysis. *Vizcaino*, 290 F.3d at 1048-50. Each of these factors supports Class Counsel’s  
24 request.

25 **1. Class Counsel Obtained Exceptional Results for the Class.**

26 The benefit obtained for the class is the single most important factor. *In re Bluetooth*, 654  
27 F.3d at 942; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). It  
28 weighs heavily in favor of approving Class Counsel’s fees.

1 From an aggregate standpoint, the Settlement is extraordinary. But perhaps more  
2 important than the aggregate statistics is the meaningful relief the Settlement provides to each and  
3 every individual Class Member—relief that allows defrauded owners and lessees to recoup their  
4 losses, and then some, on what may be one of the largest purchases of their lifetimes. All of this  
5 is detailed above, in the Settlement approval briefing, and in the Court’s Order approving the  
6 Settlement.

7 For the Generation One vehicles, the Settlement gives Class Members the option to  
8 receive an emissions modification (if approved by the EPA) to bring their vehicles in compliance  
9 with governmental regulations and receive a significant cash payment; to terminate their leases  
10 without penalty and receive a significant cash payment; or to sell back their vehicles for an  
11 amount that is pegged to the vehicles’ pre-scandal “clean” valuation, regardless of the condition  
12 of vehicles. As Professor Andrew Kull observed regarding the 2.0-liter Settlement, and as is  
13 equally true here, Class Members will likely do as well if not better under the 3.0-liter Settlement,  
14 which similarly restores pre-scandal value to the vehicles, than they would if they tried their cases  
15 to verdict under a theory of rescission. Dkt. 1784-2 at 19-20. This is especially true given the  
16 remarkable speed in which the benefits become available under the Settlement.

17 Class Members with Generation Two vehicles will receive an ECR and payments ranging  
18 from \$7,039 to \$16,114 for owners, and \$2,000 for lessees. Dkt. 3229 at p. 11-12. Consumers  
19 will receive additional compensation if the Repair is delayed or causes reduced performance. If  
20 the repair causes a “substantial, material adverse degradation” above specified levels, Plaintiffs  
21 reserve the right to seek additional remedies through Motion practice before this Court. Dkt.  
22 3229 at 31. In all likelihood, at the end of the day, these class members will drive away the  
23 vehicle they thought they bought or leased, plus thousands of dollars in their pockets.

24 The unassailable fact that the Settlement resulted from an historic collaboration with  
25 government entities does not diminish the benefits Class Counsel obtained for the Class. As  
26 Director Mueller explained, “no single party could, as a jurisdictional or practical matter, obtain  
27 and enforce all the relief sought.” Dkt. 1977 at ¶ 7. The Class Settlement provides the  
28 mechanism through which the relief is administered, and critically, provides Volkswagen the

1 releases that were essential to any resolution. This simply is not a case where the plaintiffs  
2 piggybacked on the efforts of government counsel. *Compare In re NASDAQ Mkt.-Makers*  
3 *Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) and *In re VISA Check/Mastermoney*  
4 *Antitrust Litig.*, 297 F. Supp. 2d 503, 523-24 (E.D.N.Y. 2003) with *In re First Databank Antitrust*  
5 *Litig.*, 209 F. Supp. 2d 96, 101 (D.D.C. 2002). In fact, the consumer litigation here pre-dates  
6 government litigation, and the two have moved forward collaboratively, in tandem, since the  
7 actions were consolidated. Like plaintiffs’ counsel in *In re Gulf Oil/Cities Serv. Tender Offer*  
8 *Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992), Class Counsel cannot “be cast as jackals to the  
9 government’s lion, arriving on the scene after some enforcement or administrative agency has  
10 made the kill.” Instead, Class Counsel did much of the work “on their own,” and with the  
11 assistance of government agencies, “made the kill.” *Id.*

12 Such collaboration speaks to the competence and diligence of Class Counsel and to their  
13 interest in achieving as much for the Class as possible as fast as possible. It does not, therefore,  
14 follow that the constructive common fund should be discounted. *See, e.g., In re TracFone*  
15 *Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015); *Ebarle v. Lifelock, Inc.*,  
16 No. 15-CV-00258-HSG, 2016 WL 5076203 \*9-11 (N.D. Cal. Sept. 20, 2016); *In re Reebok*  
17 *Easytone Litig.*, No. 4:10-CV-11977-FDS, Dkt. 74 (D. Mass. Jan. 19, 2012).

18 Finally, the overwhelmingly positive response from Class Members further validates the  
19 Settlement’s merit. As detailed in the Settlement approval briefing, this is an exceptionally  
20 engaged Class, and the Settlement received an extraordinary amount of attention, from the media  
21 and from Class Members themselves—which required a commensurate level of responsiveness  
22 and engagement from Class Counsel. Nevertheless, and notwithstanding the efforts of some  
23 attorneys to collect opt-outs, less than 1% of the Class excluded itself, and far less than 0.1%  
24 objected to the terms of the Settlement. Dkt. 3229 at 27. In contrast, before the Settlement had  
25 even received approval, upwards of 68% of the Class had already registered for Settlement  
26 benefits—almost two years before the deadline to do so. *Id.* This juxtaposition further  
27 demonstrates the value of the relief obtained.

28 Viewing all of these features together, it is clear that the strength of the settlement

1 benefits—the most important factor in the reasonableness evaluation—strongly supports Class  
2 Counsel’s requested fees.

3 **2. Class Counsel’s Skill and Work Product Have Been Exemplary.**

4 This was (and remains) a complex case requiring the skills of a “group of diverse” and  
5 “highly competent counsel,” as the Court has recognized. Feb. 25, 2016, Status Conference Hr’g  
6 Tr., Dkt. 1270 at 5:8-12. The Court selected Class Counsel out of a group of approximately 150  
7 applying attorneys and concluded that Class Counsel “are qualified attorneys with extensive  
8 experience in consumer class action litigation and other complex cases.” Dkt. 1688 at 18. Even  
9 opposing counsel dubbed Class Counsel an “all-star cast of . . . some of the best plaintiffs’  
10 lawyers in America.” Dkt. 2079 at 27:8-9. As the Court noted in the Order granting preliminary  
11 approval of the Settlement, “[t]he extensive efforts undertaken thus far in this matter,” including  
12 the myriad of litigation and settlement related-duties outlined herein, “are indicative of Lead  
13 Plaintiffs’ Counsel’s and the PSC’s ability to prosecute this action vigorously.” Dkt. 2919 at 23  
14 (citing Dkt. 1698 at 18). The skill and diligence demonstrated by Class Counsel in this litigation,  
15 therefore, support their requested fees. As the Court predicted in PTO 7, a PSC of this size and  
16 experience was required by the demands of the case, and Lead Counsel took advantage of the  
17 authority granted in PTO 7 to enlist additional firms to perform the necessary common benefit  
18 work, which was then tracked pursuant to the protocol set forth in PTO 11. Cabraser Decl. ¶ 7.

19 **3. Customary Fees in Similar Cases Exceed Those Requested Here.**

20 Comparing the requested fees to awards in similar cases spotlights the reasonableness of  
21 the application. As explained herein, and detailed in the Declaration of Professor Rubenstein, the  
22 fees requested are well below the benchmark in this Circuit, and depending on the valuation—at  
23 or below the mean and median awards in super mega-fund cases like this one. This factor  
24 strongly supports the reasonableness of Class Counsel’s request.

25 **4. The Litigation Was Complex, and Class Counsel Carried Considerable**  
26 **Financial Burden and Risk.**

27 The Court’s orders appointing the PSC and providing a protocol for common benefit work  
28 and expenses establish that this matter is purely contingent with all fees and expenses subject to

1 approval by the Court. Dkts. 1084, 1254. All PSC members were required to regularly  
 2 contribute to the litigation fund (they have advanced millions of dollars in common benefit  
 3 assessments to date) and devoted thousands of hours to this litigation without any guarantee that  
 4 they would be reimbursed for their time and efforts. Cabraser Decl. ¶ 6. And, while Plaintiffs’  
 5 case was strong, the demands of the case were high, and Settlement was far from a foregone  
 6 conclusion—even more so, in fact, than for the 2.0-liter litigation. This factor, too, supports Class  
 7 Counsel’s request. Class Counsel made the breakneck speed of this case their priority, the Court  
 8 directed it, and the case deserved it.

9 **5. A Lodestar Cross-Check Confirms the Reasonableness of the**  
 10 **Requested Fees.**

11 The pure lodestar method of evaluating attorneys’ fees is not favored. Courts that do  
 12 employ the lodestar analysis as a “cross-check employ a “streamlined” analysis to “cross-check”  
 13 the reasonableness of a requested award. Here, a lodestar cross-check results in a multiplier of  
 14 2.01, which is modest in cases of this magnitude, as the Rubenstein analysis confirms. It  
 15 therefore supports Class Counsel’s request. The current application is, importantly, consistent  
 16 with the Court’s previous fee awards for other work in this case. Dkts. 3053, 3148, 3231.

17 In this case, in PTOs 7 and 11, the Court established a protocol for identifying,  
 18 categorizing, and recording common benefit time. Class Counsel have followed those directions,  
 19 as described in the declaration of Elizabeth J. Cabraser, and collected and reviewed common  
 20 benefit time submissions from all 21 PSC firms and many others that were designated by Lead  
 21 Counsel to perform common benefit work. Cabraser Decl. ¶¶ 11-12. The hours worked and rates  
 22 billed are summarized in the Declaration of Elizabeth Cabraser.<sup>5</sup> *Id.* at ¶¶ 14-16. In short, the  
 23 total number of hours worked to advance the common benefit is 130,093.5, which includes 9,676

24 <sup>5</sup> Providing more than hours worked and billing rates is unnecessary, given the Court’s Orders  
 25 and the limited nature of the lodestar cross-check. *See Winterrowd v. Am.Gen.Annuity Ins. Co.*,  
 26 556 F.3d 815, 827 (9th Cir. 2009) (quoting *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (Cal. Ct.  
 27 Appl. 1986) (“Testimony of an attorney as to the number of hours worked on a particular case is  
 28 sufficient evidence to support an award of attorney fees, even in the absence of detailed time  
 records.”)); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015) (“[t]he  
 lodestar cross-check calculation need entail neither mathematical precision nor bean counting . . .  
 [courts] may rely on summaries submitted by the attorneys and need not review actual billing  
 records.” (citation omitted) (internal quotation marks omitted)).

1 hours of reserved time to implement, defend, and protect the settlement on appeal, among other  
2 things. *Id.* The aggregate lodestar is \$60,063,332.60. *Id.* The average billing rate is  
3 approximately \$461.69 per hour. *Id.* at ¶ 17.

4 The rates billed (customary rates, as PTO 11 directed) are reasonable. Hourly rates should  
5 be guided by the prevailing market rates for similar work performed by attorneys of comparable  
6 skill, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Hajro v. U.S.*  
7 *Citizenship & Immigration Servs.*, 900 F. Supp. 2d 1034, 1054 (N.D. Cal. 2012). Here, the  
8 blended average rate is \$461.69. This is even less than the rate this Court approved in the context  
9 of the 2.0-liter fee motion (\$529.00) and Bosch fee motion (\$472.05). Dkts. 3053, 3231. It is  
10 justified here, too, given the skill, experience, and reputation of Class Counsel—who were  
11 selected by the Court, after written submissions and oral presentations, from a pool of over 150  
12 applicants and who were directed by the Court to devote their personal attention to this case, Dkt.  
13 1084 at ¶ 5.

14 The time expended was also necessary. As explained above, the Court and the Class  
15 expected counsel to prosecute this case aggressively and on many fronts. Doing so required  
16 extraordinary dedication and time commitment. These efforts were necessary to achieve this  
17 historic settlement. *See* Rubenstein Decl. ¶¶ 23-27.

18 Finally, the facts of this case, and the law in this Circuit, support a reasonable lodestar  
19 multiplier. Indeed, courts frequently adjust lodestar figures upward to reflect a number of  
20 “reasonableness factors,” including the quality of representation and the benefit obtained for the  
21 class. *In re Bluetooth*, 654 F.3d at 941-42. Those factors are discussed at length above, and  
22 justify the modest multiplier of 2.01 requested here. Indeed, the mean and median multipliers in  
23 settlements of a comparable size to this one are 3.36 and 2.7, respectively. *See* Rubenstein Decl.  
24 ¶ 37. Class Counsel’s requested multiplier falls well below both and finds strong support in the  
25 extraordinary result achieved for the Class. It is also less than or consistent with the multipliers  
26 awarded by the Court in other fee awards for other work in this litigation.

27 **B. Class Counsel’s Expenses are Reasonable and Appropriate.**

28 “Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses.”

1 *Wakefield v. Wells Fargo & Co.*, No. 3:13-cv-05053 LB, 2015 WL 3430240, at \*6 (N.D. Cal.  
2 May 28, 2015); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). Expenses that are  
3 reasonable, necessary, directly related to the litigation, and normally charged to a fee-paying  
4 client are recoverable. *See, e.g., Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL  
5 3863625, at \*7 (N.D. Cal. June 22, 2015); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-  
6 LHK, 2011 WL 3348055, at \*2 (N.D. Cal. June 30, 2011).

7 As with the common benefit time, PTO 11 outlines the Court-approved procedure for  
8 identifying, categorizing, recording, and reviewing expenses. Class Counsel complied with that  
9 Order. Cabraser Decl. ¶¶ 18-19. The total amount of reimbursable expenses pursuant to PTO 11  
10 is \$4 million. *Id.* That covers \$3,417,572.26 in relevant costs already expended to advance the  
11 common benefit by Lead Counsel, all 21-PSC firms, and numerous other firms designated by lead  
12 counsel to perform common benefit work. *Id.* Examples of such expenses include hiring  
13 numerous experts to strengthen Plaintiffs' litigation and settlement positions; establishing and  
14 maintaining a sophisticated document review platform and support team to facilitate the review  
15 and analysis of millions of pages of documents; and advancing half of the costs of the Court-  
16 appointed Settlement Master, among many other things. Each expenditure falls into one of the 19  
17 categories sanctioned by the Court. The reimbursable expenses also include \$582,427.74 in  
18 anticipated future costs associated with implementing the Settlement for nearly 90,000 Class  
19 Members over the next 30 months. *Id.* The total costs expended and projected are well within  
20 the customary range of costs associated with litigation of this scope and recoveries of this  
21 magnitude. In fact, as with the fees, the costs for which Class Counsel seek reimbursement fall  
22 below both the median and mean costs awarded in super-mega-fund cases. The costs are  
23 therefore reasonable and should be reimbursed.

#### 24 **IV. CONCLUSION**

25 For the foregoing reasons, Class Counsel respectfully request that the Court grant Class  
26 Counsel's Motion and award \$121 million in attorneys' fees and \$4 million in costs related to the  
27 3.0-liter TDI Settlement, to be paid in addition to the Class benefits.  
28

1 Dated: June 30, 2017

Respectfully submitted,

2 LIEFF CABRASER HEIMANN &  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 30, 2017, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Elizabeth J. Cabraser  
Elizabeth J. Cabraser

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

10

SAN FRANCISCO DIVISION

11

12 IN RE: VOLKSWAGEN "CLEAN DIESEL"  
13 MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL 2672 CRB (JSC)

14

This Document Relates to:

**DECLARATION OF ELIZABETH J.  
CABRASER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES AND COSTS  
UNDER FED. R. CIV. P. 23(H) AND  
PRETRIAL ORDER NOS. 7 RELATING  
TO THE 3.0-LITER CONSUMER AND  
RESELLER DEALER SETTLEMENT**

15

16 ALL CONSUMER AND RESELLER  
ACTIONS

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The Honorable Charles R. Breyer

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1 I, ELIZABETH J. CABRASER, declare:

2 1. I am an attorney admitted to the Bars of the State of California and the Northern  
3 District of California. I am counsel of record for Plaintiffs in these proceedings, and serve,  
4 pursuant to Pretrial Order No. 7: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering  
5 Committee, and Government Coordinating Counsel (Dkt. 1084) ("PTO 7") as Lead Plaintiffs'  
6 Counsel.

7 2. I also serve, pursuant to this Court's Orders Granting Preliminary and Final  
8 Approval of Settlement (Dkts. 2919, 3229), as Lead Settlement Class Counsel for the 3.0-liter  
9 TDI Consumer and Reseller Settlement Class.

10 3. The Volkswagen "Clean Diesel" claims were predominantly asserted in the form  
11 of class action complaints. Within weeks of the revelations regarding Defendants' use of "defeat  
12 devices" in diesel vehicles, hundreds of class action complaints had been filed in or removed to  
13 federal courts. These cases were coordinated and centralized by the Judicial Panel on  
14 Multidistrict Litigation under 28 U.S.C. § 1407 and assigned to Hon. Charles R. Breyer by  
15 Transfer Order dated December 8, 2015 (Dkt. 1). To date, more than 1,200 actions, most styled  
16 as class actions, have become a part of these MDL proceedings. They have been managed,  
17 pleaded, prosecuted, discovered, and, as to the 3.0-liter claims against the Volkswagen  
18 Defendants, certified and settled as a Rule 23 class action, with the PSC tasked with conducting  
19 common discovery, preparing for trial, and negotiating settlement for the 3.0-liter class. Pursuant  
20 to this authority, Settlement Class Counsel negotiated the Amended Consumer Class Action  
21 Settlement Agreement and Release (Dkt. 2894) (the "Settlement"), which the Court approved on  
22 May 17, 2017.

23 4. In PTO 7, the Court appointed counsel to lead these MDL proceedings and set  
24 forth their responsibilities. From 150 leadership applications received, the Court appointed 21  
25 attorneys to the PSC, and the undersigned as Plaintiffs' Lead Counsel, noting that "this is an  
26 appropriate number given the amount of work this litigation may entail and the need for an  
27 expeditious resolution of this matter." Dkt. 1084 at ¶ 7. The Court also vested Plaintiffs' Lead  
28 Counsel with "the authority to retain the services of any attorney not part of the PSC to perform

1 any common benefit work, provided the attorney so consents and is bound by the PSC’s  
2 compensation structure.” *Id.* at ¶ 2.

3 5. In Pretrial Order No. 11: Protocol for Common Benefit Work and Expenses (“PTO  
4 11”) (Dkt. 1254), the Court defined “Compensable Common Benefit Work and Common  
5 Expenses” and set forth the Court-ordered “Protocols for Submission of Time and Expenses” and  
6 for reimbursement of common benefit work.

7 6. To date, all PSC members have participated actively in the prosecution of the 3.0-  
8 liter Class claims, by performing work on a priority basis as assigned and authorized by the  
9 undersigned, by incurring the necessary and appropriate out-of-pocket travel and administrative  
10 costs to do so, and additionally by contributing millions of dollars in assessments to a common  
11 benefit fund. This fund has been used to retain experts (including liability, technical, and  
12 procedural experts) to fund the massive document analysis and expedited trial preparation effort,  
13 and to pay one half of the services of the Court-appointed Settlement Master and his team,  
14 pursuant to Pretrial Order No. 6: Appointment of Robert S. Mueller III as Settlement Master (Dkt.  
15 973 at ¶ 4).

16 7. An ongoing effort has been made to include and involve interested counsel in the  
17 common benefit work of the MDL, to an extent practicable and commensurate with the Court’s  
18 directive for dispatch in the prosecution and resolution of the “clean diesel” claims. All of these  
19 firms were asked to submit their time for this effort under PTO 11.

20 8. Section 14.1 of the operative Amended Consumer Class Action Settlement  
21 Agreement and Release (Dkt. 2894) provides that Volkswagen shall pay the reasonable attorneys’  
22 fees and costs for work performed by Class Counsel related to the prosecution and resolution of  
23 the 3.0-liter claims, as well as such work performed by other attorneys designated by Class  
24 Counsel, in an amount to be negotiated by the parties and approved by the Court. There were no  
25 attorneys’ fee negotiations until after the Settlement was submitted to the Court and granted  
26 preliminary approval. Class Counsel thereafter filed their Statement describing the maximum  
27 fees to be sought. Dkt. 2970. Negotiations with Volkswagen then resulted in a total fees and  
28 costs amount (\$125 million) that Volkswagen agreed not to oppose and to pay if awarded. These

1 fees and costs are the subject of the instant Motion. Whatever fees the Court approves, if any,  
2 will not be deduced from the compensation available to the Class.

3 9. The work of these MDL proceedings, and of the 3.0-liter Settlement, is unfinished.  
4 The Settlement must be administered, implemented, defended and enforced until its benefits have  
5 been delivered to all successful claimants. The fee request thus includes an amount reserved to  
6 compensate PSC and additional firms who are authorized by the undersigned under PTOs 7 and  
7 11 to perform this prospective and necessary work.

8 10. In the Order Granting Preliminary Approval of Settlement (Dkt. 2919), the Court  
9 set forth the procedure for requesting an award of fees, as well as the requirements of for such a  
10 request. Settlement Class Counsel complied with that Order by filing a Statement of Additional  
11 Information Regarding Prospective Request for Attorneys' Fees and Costs (Dkt. 2970) and, now  
12 that the Settlement has received Final Approval and the Parties have negotiated an agreed-upon  
13 fee/cost aggregate, by filing the instant Motion.<sup>1</sup>

14 11. Pursuant to the procedures outlined in PTO 11, attorneys and staff working at my  
15 direction and under my supervision collected and reviewed submissions of 3.0-liter related  
16 common benefit time and reimbursable costs and expenses submitted by the PSC and other law  
17 firms from whom I and other PSC members requested common benefit work per PTO 11. The  
18 database maintaining the submissions has been meticulously maintained and updated weekly.

19 12. Only time and expenses that inured to the benefit of the 3.0-liter TDI Consumer  
20 and Reseller Dealership Class and that advanced the claims resolved in the Amended Consumer  
21 Class Action Settlement Agreement and Release (Dkt. 2894) have been included in the time  
22 presented, and the costs submitted, in Class Counsel's accompanying fee motion. It excludes all  
23 time and expenses directed towards prosecution or resolution of the claims based on 2.0-liter  
24 vehicles and against the Bosch defendants that was previously submitted in the 2.0-liter and  
25 Bosch applications.

26 \_\_\_\_\_  
27 <sup>1</sup> Although the Court's Orders, including PTO 11, establish the required contents for this fee  
28 request, the Motion also complies with N.D. Cal. Civil Local Rule 54-5 by reporting on the  
quantum and categories of work performed pursuant to PTO 11—the specific protocol on time  
and costs adopted by the Court for these MDL proceedings.

1           13. As with the claims for the 2.0-liter vehicles, the PSC pursued claims for the 3.0-  
2 liter vehicles simultaneously, in parallel litigation and settlement tracks. This dual effort required  
3 the PSC to prepare for an expedited jury trial in the event that a settlement could not be reached.  
4 As a result, the PSC and the additional firms that were authorized to perform common benefit  
5 work continued to review, translate, and analyze over 15 million pages of documents that  
6 Defendants produced on an ongoing basis.

7           14. The total number of common benefit hours associated with the prosecution and  
8 resolution of the 3.0-liter TDI claims against the Volkswagen Defendants is approximately  
9 130,093.5. The total number of common benefit hours results in a combined lodestar of  
10 \$60,063,332.60. That includes the hours worked and associated lodestar broken down by the  
11 Court-approved categories outlined in PTO 11,<sup>2</sup> as shown in Table 1 below. The total fees  
12 requested—\$121 million—represent a 2.015 multiplier of the \$60,063,332.60 combined lodestar.

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26 \_\_\_\_\_  
27 <sup>2</sup> These task codes are: 1. Lead Counsel Calls/Meetings; 2. PSC Calls/Meetings; 3. Lead Counsel/PSC  
28 Duties; 4. Administrative; 5. MDL Status Conf.; 6. Court Appearance; 7. Research; 8. Discovery; 9.  
Doc. Review; 10. Litigation Strategy & Analysis; 11. Dep. Prep/Take/Defend; 12. Pleadings/Briefs/pre-  
trial Motions/Legal; 13. Science; 14. Experts/Consultants; 15. Settlement; 16. Trial Prep/Bellwether; 17.  
Trial; 18. Appeal; 19. Miscellaneous.

Table 1

Category Breakdown		
PTO 11 Category	Total Hours	Total Lodestar
1	731.7	\$568,385.00
2	454.0	\$313,817.90
3	5,085.5	\$2,561,856.30
4	1,901.0	\$604,634.75
5	256.3	\$178,945.15
6	334.4	\$239,107.00
7	1,288.8	\$604,690.80
8	3,347.3	\$2,043,982.65
9	83,360.9	\$34,497,453.35
10	2,216.3	\$1,601,926.90
11	1,255.9	\$743,679.50
12	1,720.1	\$1,083,522.15
13	10.7	\$9,065.00
14	564.4	\$364,820.25
15	17,334.6	\$9,354,980.90
16	302.3	\$166,610.00
17	-	-
18	-	-
19	253.3	\$125,855.00
Reserved	9,676	\$5,000,000.00
<b>Total</b>	<b>130,093.5</b>	<b>\$60,063,332.60</b>

15. As shown above, the total includes 9,676 hours of reserved time (\$5 million in reserved lodestar), to cover the work necessary to complete the following tasks, among others: (1) guide the nearly 90,000 Class Members through the remaining 30 months of the Settlement Claims Period; (2) assist in the implementation and supervision of the Settlement, including by participating in the Claims Review Committee, as outlined in the Final Approval Order (Dkt. 3229 at 43); and, if necessary, (3) take further action on behalf of class members with Generation Two vehicles in the event that the Environmental Protection Agency and California Air Resources Board do not timely approve an Emissions Compliant Repair for the Generation Two vehicles, or approve an Emissions Compliant Repair that results in reduced performance as provided in the settlement. The reserve will be used to compensate the PSC members and other

1 firms to be authorized by Plaintiffs' Lead Counsel to perform these prospective efforts to assure  
2 the delivery of Settlement benefits to the Class.

3 16. A similar process of projecting reserved time was outlined in my Declaration in  
4 support of the 2.0-liter fee application, Dkt. 2175-1 at ¶¶ 16-17, which the Court approved. Dkt.  
5 3053. To calculate the projected hours and lodestar for the 3.0-liter settlement, Settlement Class  
6 Counsel used the already modest calculations from the 2.0-liter context as a starting place. Class  
7 counsel then cut the number of reserved hours and resulting lodestar by more than half. This  
8 reduction accounts for the fact that the administration of this Settlement, while complex, will  
9 likely not require as much labor as was required to reserve to oversee the repair and buyback of  
10 the almost 500,000 cars in the 2.0-liter settlement. Nevertheless, given the many other tasks that  
11 Settlement Class Counsel will have to perform, outlined above, and given the potential for further  
12 involvement of Class Counsel and the Court in the event that an Emissions Compliant Repair is  
13 not approved or requires further relief from the Court, this is an appropriately conservative  
14 estimate.

15 17. The range of hourly rates of those I authorized to perform 3.0-liter common  
16 benefit work necessarily varied considerably given the diversity of lawyers and law firms tasked  
17 to perform this work, since this group includes some of the most qualified and experienced  
18 lawyers in the country who the Court appointed to the PSC. The hourly billing rates ranged from  
19 \$250 to \$1650 for partners; from \$185 to \$850 for associates; and from \$65 to \$390 for  
20 paralegals. These are the customary billing rates of the submitting lawyers and paralegals,  
21 reflecting their experience and the economies of their law practices from around the country. My  
22 customary hourly rate, for example, as awarded by federal courts in this District and elsewhere is  
23 \$1,000 per hour. The average hourly billing rate for all common benefit work performed and  
24 projected per PTO 11 is much lower: \$461.69 per hour. This reasonable "blended" rate results  
25 from an ongoing effort to assign tasks cost-effectively, and to put the myriad talents and skills of  
26 the lawyers assigned, to the best use for the class. Throughout, I made every effort to manage  
27 assignments such that assignments matched the skills and experience necessary to perform them  
28 effectively under the time constraints and quality demands of this litigation.

18. The aggregate costs and expenses incurred for the benefit of the 3.0-liter Class is \$4 million. This total includes the costs already expended, which are broken down by Court-approved category in PTO 11<sup>3</sup> in Table 2 below, and which equal \$3,417,572.26.

**Table 2**

<b>Category Breakdown</b>	
<b>PTO 11 Category</b>	<b>Common Benefit Costs</b>
1	\$2,228,570.21
2	\$60,653.59
3	\$512.85
4	\$65.53
5	\$18,282.75
6	\$33,139.25
7	\$9,095.48
8	\$252,419.22
9	\$60,052.63
10	\$1,603.87
11	\$452,646.04
12	\$641.25
13	\$32,232.79
14	\$6,952.08
15	\$37,979.59
16	\$19,776.86
17	\$7,412.63
18	\$72,397.13
19	\$123,138.51
Reserved	\$582,427.74
<b>Total</b>	<b>\$4,000,000.00</b>

19. As shown above, the total requested costs per PTO 11 also include \$582,427.74 in projected costs, which Settlement Class Counsel is responsibly reserving to cover expenses associated with the on-the-ground enforcement and assistance efforts this Settlement will take, as class members across the country go to Volkswagen, Audi, and Porsche dealerships for buybacks

<sup>3</sup> The cost categories are: 1. Assessment Fees; 2. Federal Express / Local Courier, etc.; 3. Postage Charges; 4. Facsimile Charges; 5. Long Distance; 6. In-House Photocopying; 7. Outside Photocopying; 8. Hotels; 9. Meals; 10. Mileage; 11. Air Travel; 12. Deposition Costs; 13. Lexis/Westlaw; 14. Court Fees; 15. Witness / Expert Fees; 16. Investigation Fees / Service Fees; 17. Transcripts; 18. Ground Transportation (i.e. Rental, Taxis, etc.); and 19. Miscellaneous

1 or emissions modifications/repairs, and all other costs associated with the implementation and  
2 defense of the Settlement.

3 20. Plaintiffs thus seek an award of \$121 million in fees and \$4 million in costs  
4 pursuant to Federal Rule of Civil Procedure 23(h), to be allocated by Plaintiffs' Lead Counsel  
5 among the PSC firms and additional counsel performing work under PTOs 7 and 11.

6 I declare under penalty of perjury that the forgoing is true and correct. Executed in San  
7 Francisco, California, this 30th day of June 2017.

8 /s/ Elizabeth J. Cabraser  
9 Elizabeth J. Cabraser

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# **EXHIBIT B**

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

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IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

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This Document Relates to:

ALL CONSUMER AND RESELLER ACTIONS

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:  
: MDL 2672 CRB (JSC)  
:  
: **DECLARATION OF WILLIAM B.  
: RUBENSTEIN IN SUPPORT OF  
: PLAINTIFFS’ MOTION FOR 3.0-  
: LITER ATTORNEYS’ FEES AND  
: COSTS**  
:  
:  
: The Honorable Charles R. Breyer

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law and practice. The Plaintiffs' Steering Committee ("PSC") has retained me to provide my expert opinion as to five factual issues pertinent to its pending petition for attorney's fees and costs. After setting forth my qualifications to serve as an expert (Part I, *infra*),<sup>1</sup> I provide the Court with quantitative empirical data to support the following five opinions relevant to analysis of the reasonableness of the PSC's fee request:

- ***The PSC's fee approach is the most widely used.*** (Part II, *infra*). The PSC seeks a fee based on the percentage method with a lodestar cross-check. This is the approach that courts most frequently use to assess the reasonableness of fee requests in common fund class action cases. It improves on the percentage approach standing alone (which could lead to a windfall for counsel) by making a rough comparison of the fee sought to counsel's time in the case. Simultaneously, it improves on the lodestar approach standing alone (which could bog the court down in review of counsel's time records) by enabling a check on the percentage approach without requiring an extensive audit of counsel's hours and rates.
- ***The PSC's requested percentage is reasonable.*** (Part III, *infra*). The PSC seeks a fee that is the equivalent of about 9.89% of the roughly \$1.22 billion gross amount made available to the class by this settlement. Three sets of data support the reasonableness of this request: it is below the mean for large settlements reported in the two leading empirical analyses of class action fee awards and it is below the mean for a comparison group of \$1-2 billion settlements that my research assistants compiled for purposes of this Declaration. If the fee is expressed as a percentage of the net value of the funds made available to the class (that is, subtracting out the value of the cars that will be traded in) it is about 13.42%, which remains within the range of reasonable percentages for funds of this size.
- ***The PSC's hours are reasonable.*** (Part IV, *infra*). The total number of hours the PSC expended producing a billion dollar settlement is consistent with, and indeed far below the mean of, our comparison set of 16 other cases with settlements of \$1 billion or more. A back-of-the-envelope calculation confirms this. The PSC's lodestar encompasses about 120,000 hours in the 20 months between the EPA's notice in September 2015 and the entry of final judgment in May 2017. That number implies that 24 lawyers have worked full-time (3,000 hours/year) to generate this settlement throughout those 20 months. Given the magnitude of this case, the size of the PSC, the understandable speed upon which the Court insisted on proceeding, and the Court's requirement that the PSC simultaneously seek to settle and prepare for trial as

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<sup>1</sup> I typically provide a short synopsis of the litigation in my expert reports, but given the depth of the Court's involvement in, and understanding of, this matter, I saw no need to do so here.

quickly as possible, the 120,000 hour figure seems reasonable. Moreover, concerns about lodestar padding largely fall away in this case given its short lifespan.

- ***The PSC's rates are reasonable.*** (Part V, *infra*). An empirical analysis of 40 recent class action settlements in the Northern District of California shows that the PSC's blended billing rate in this case (\$461.69) is about 12.5% below the mean (\$528.11) for class actions approved by courts in this District in the past few years. This is particularly remarkable because the staffing in this case was necessarily top-heavy given the Court's appointment of a 22-lawyer leadership team comprised of some of the highest-paid attorneys in the country and because much of the work in this case involved relatively high-level negotiations, coordination with other enforcers, and preparations for trial. The below-average blended billing rate demonstrates that Lead Counsel appropriately assigned tasks among partners, associates, non-partnership track attorneys, and paralegals. There is therefore no factual support for any concern that Lead Counsel erred in not relying more extensively on low-paid non-partnership track attorneys. Moreover, to the extent that the PSC did employ such attorneys, my empirical analysis demonstrates that the rates charged for the work these attorneys undertook is entirely consistent with the rates charged for "contract attorney" or "staff attorney" work in court-approved class action fee petitions.
- ***The PSC's proposed multiplier is reasonable.*** (Part VI, *infra*). The PSC seeks a multiplier of approximately 2 (2.01-2.02). Three sets of data support the reasonableness of this request: it is below the mean for large settlements reported in the leading empirical analyses of class action fee awards; it is below the mean of our comparison group of settlements of \$1 billion or more; and a review of the facts of the case show that the risks the PSC shouldered and the results that it achieved support a multiplier at this level.

I am a strong supporter of a lodestar cross-check as I believe it is the single best means of ensuring that a fee is not an unwarranted windfall. That is so because it measures the fee award in terms of the time that counsel devoted, isolates the bonus they are receiving, enables an assessment of whether the risks and achievement of the case warrant that bonus, and uniquely permits comparisons across cases.<sup>2</sup> Here, the cross-check demonstrates that the fee award the PSC seeks is quite normal, while the work in a case of this magnitude is anything but.

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<sup>2</sup> For a discussion of these points, see 6 William B. Rubenstein, *Newberg on Class Actions* § 15:86 (5th ed.) (hereafter *Newberg on Class Actions*).

**I.**  
**BACKGROUND AND QUALIFICATIONS<sup>3</sup>**

2. I am the Sidley Austin Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

3. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my c.v., which is attached as Exhibit A). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. For five years (2007–2011), I published a regular column entitled “Expert’s Corner” in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

4. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting

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<sup>3</sup> My full c.v. is attached as Exhibit A.

advice and educational training programs. For this and the past seven years, the Judicial Panel on Multidistrict Litigation has invited me to give a presentation on the current state of class action law at the annual MDL Transferee Judges Conference. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

5. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my teaching activities, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the 2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

6. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout

the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

7. I have been retained as an expert witness in roughly 70 cases and as an expert consultant in about another 25 cases. These cases have been in state and federal courts throughout the United States, most have been complex class action cases, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification to the reasonableness of settlements and fees. I have been retained by counsel for plaintiffs, for defendants, for objectors, and by the judiciary: in 2015, the United States Court of Appeals for the Second Circuit appointed me to brief and argue for affirmance of a district court order that significantly reduced class counsel's fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal. *See In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom. Berman DeValerio v. Olinsky*, 673 F. App'x 87 (2d Cir. 2016).

8. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation was in no way contingent upon the content of my opinion.

9. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this and related litigations, a list of which is attached

as Exhibit B. I have also reviewed the applicable case law and scholarship on the topics of this Declaration.

10. Additionally, my research assistants, under my direction, have compiled three sets of data relevant to my analysis and ultimate opinions: (a) a data set of 40 cases reflecting billing rates that judges in the Northern District of California have approved in ruling on class action fee requests in 2016 and 2017 (Exhibit C); (b) a data set of 22 class action settlements in which the aggregate settlement value equaled or exceeded \$1 billion (Exhibit D); and (c) a data set of 13 class action cases in which courts throughout the country have approved fee petitions that contain billing rates for “contract lawyers” or “staff attorneys” (Exhibit E). In generating these data sets, we utilized all cases that fit our search criteria without selection bias.

## **II. THE PSC’S PROPOSED FEE APPROACH IS THE MOST WIDELY USED**

11. The PSC seeks a fee using the percentage approach with a lodestar cross-check. Empirical evidence shows that this is the most common approach courts take to fees.<sup>4</sup>

12. Specifically, the most fine-grained data of fee awards demonstrates that courts use a pure lodestar approach in 9.6% of cases, a pure percentage approach in 37.8% of cases, and a

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<sup>4</sup> I note to provide context – not to testify as to the content of the law – that the Ninth Circuit approves this approach. Specifically, the Ninth Circuit gives district courts the discretion to employ a lodestar or percentage approach, *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (“The district court may exercise its discretion to choose between the lodestar and percentage method in calculating fees.”), and has explicitly approved utilization of the lodestar cross-check. *Glass v. UBS Fin. Servs., Inc.*, 331 Fed. Appx. 452, 456 (9th Cir. 2009) (“[T]he district court properly performed an informal lodestar cross-check.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”).

mix of the two (typically, a percentage approach with a lodestar cross-check) in 42.8% of cases, with another 9.8% of cases employing some other method or not specifying which method.<sup>5</sup>

13. I note in the *Newberg* treatise that courts have moved from a pure percentage approach to a percentage and lodestar cross-check approach over time. In cases from 1993–2002, 56.4% of courts used the pure percentage, while in cases from 2003–2008 cases, only 37.8% did.<sup>6</sup> This is about a one-third decrease in the use of the pure percentage approach. The big gain was in courts’ use of the mixed approach—it shot up about 75% from the first period to the second, growing from 24.3% of cases to 42.8% of cases.

14. Not surprisingly, therefore, courts in billion-dollar cases almost invariably utilize this mixed approach. In the data set of \$1 billion class action settlements that I generated for purposes of this opinion, 21 of 22 courts utilize a percentage approach with a lodestar cross-check.

15. This approach is favored because it improves on either approach standing alone.<sup>7</sup> The percentage approach without a lodestar cross-check could lead to counsel securing a windfall. This is especially true in a case of this magnitude, where the standard benchmark fee of 25% seems inapplicable and the decision about what percentage to award is therefore somewhat ad hoc. A lodestar approach standing alone could engross the court in an unnecessary

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<sup>5</sup> See 5 *Newberg on Class Actions*, *supra* note 2, at § 15:67 (reporting on data from Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 272 (2010) (hereafter “Eisenberg and Miller II”).

<sup>6</sup> *Id.* (reporting on data from *Eisenberg and Miller II* and Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27, 52 (2004) (hereafter “Eisenberg and Miller I”).

<sup>7</sup> For a defense of the lodestar cross-check method, and a discussion of the points in this paragraph, see 5 *Newberg on Class Actions*, *supra* note 2, at § 15:86.

audit of counsel's hours and rates, as the entire fee turns on the specific time billed. By contrast, using a lodestar cross-check enables a court to make a rough estimate of counsel's lodestar for the sole purpose of ensuring against a windfall.<sup>8</sup> A review of counsel's lodestar is appropriate, but over-emphasis on it – especially in a case of this magnitude, involving so many counsel throughout the country – could bog the court down in unnecessary details.

### III. THE PSC'S REQUESTED PERCENTAGE IS REASONABLE

16. The PSC requests a fee of \$121 million. That amounts to 9.89%<sup>9</sup> of a \$1.22 billion gross settlement valuation,<sup>10</sup> assuming no buy backs of Generation 2 vehicles.<sup>11</sup> That

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<sup>8</sup> Many courts have noted the summary nature of the lodestar cross-check. *See id.* (collecting cases, including cases from this Court) (citing, *inter alia*, *Young v. Polo Retail, LLC*, 2007 WL 951821, \*6 (N.D. Cal. 2007) (“In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours.”)).

<sup>9</sup> If counsel's fee (and costs) are seen as part of the class's recovery – as I believe they should be – the percentage sought is actually lower. That is the case because if the Court grants counsel their fee and cost request, the PSC would receive \$125 million; when that is added to the class's \$1.22 billion in possible relief, there is \$1.345 billion in total available relief. The PSC's requested \$121 million fee is roughly 9% of that amount.

<sup>10</sup> In a claims-made settlement like this one, courts have debated whether counsel should receive a percentage of the funds made available by a settlement or of the funds actually received by the class. *See 5 Newberg on Class Actions, supra* note 2, at § 15.70. The Ninth Circuit has expressed a preference for the funds available approach, *Williams v. MGM-Pathe Comm'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (“We conclude that the district court abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar.” (footnote omitted)). The debate is somewhat immaterial in this case, however, as the PSC informs me that the class will likely claim most if not all of the available relief. For that reason, I proceed on the assumption that the \$1.22 billion in available relief is roughly equivalent to the class's actual recovery.

<sup>11</sup> If there is a buy back of Generation 2 vehicles, the value of the settlement to the class will increase significantly and the PSC's fee, expressed as a percentage of that value, will accordingly decrease significantly. As the following points demonstrate the reasonableness of a 9.89% fee, they would obviously support the reasonableness of the lower percentage that the PSC's fee would constitute in the presence of a Gen 2 buy back.

percentage is consistent with percentages that courts award in cases of this magnitude. Three sets of data support that conclusion.

17. *First*, the largest empirical study of class action fee awards – reviewing cases over a 16 year period from 1993-2008 – broke down the roughly 700 cases in its study into ten tranches according to the size of the underlying fund. For the tranche of funds with the largest class recovery (68 cases with recoveries over \$175.5 million), the mean fee award was 12.0%.<sup>12</sup> The PSC’s requested 9.89% fee is well below that mean.

18. *Second*, a more recent and highly respected study of all federal class action settlements over a two year period (2006-2007) similarly divided its roughly 450 total cases into ten tranches according to the size of the underlying fund. For the tranche of funds with the largest class recovery (45 cases with funds ranging from \$72.5 million to \$6.6 billion), the mean fee award was 18.4%. This study then took that highest set of cases and broke it down further into five tranches by fund size. This enabled the author to isolate a set of nine cases with recoveries ranging from \$1 billion to \$6.6 billion. In those nine cases, the mean fee award was 13.7%.<sup>13</sup> The PSC’s requested 9.89% fee is well below that mean.

19. *Third*, in the data set of 22 class action cases with recoveries of \$1 billion class or more that I generated for purposes of this opinion, the settlements range in size from \$1 billion to \$13 billion. Because fee percentages decrease as fund sizes increase,<sup>14</sup> I had my research assistants isolate a sub-set of those cases involving settlements ranging from \$1-2 billion in total.

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<sup>12</sup> Eisenberg and Miller II, *supra* note 5, at 265 tbl. 7.

<sup>13</sup> Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 839 tbls. 10-11 (2010) (hereafter “Fitzpatrick”).

<sup>14</sup> For a discussion of this point, see 5 *Newberg on Class Actions*, *supra* note 2, at § 15:81.

There were 11 comparison cases in that sub-set, with fees ranging from a low of 2.89% to a high of 33.33%, with the mean being 14.5%. The PSC's requested 9.89% fee is well below that mean.

20. These three independent data points all support the conclusion that a 9.89% fee in a settlement over \$1 billion is fully consistent with the percentages courts award in cases of this magnitude.

21. The above analysis is based on the *gross* amount of the settlement and does not account for the fact that for the class to receive \$1.22 billion, it will have to trade in automobiles worth hundreds of millions of dollars. It is therefore appropriate to consider counsel's fee as a percentage of the *net* value of the settlement. To do so requires reducing the \$1.22 billion figure by the aggregate value of returned cars. The PSC's economist, Edward M. Stockton, undertook that calculation and I accept his analysis to ascertain the net value of the settlement. Stockton's calculations show that if all owners traded in their cars at the start of the trade-in period (July 2017), the net value of the settlement would be roughly \$843 million and if all owners traded in their cars at the end of the class period (September 2019) the net value of the settlement would be roughly \$960 million. The mid-point of these numbers (which assumes class members will trade in their cars throughout the period) is \$901.5 million. If the PSC's \$121 million fee request is expressed as a portion of that *net* settlement value, it amounts to 13.4%.<sup>15</sup> That fee is slightly above the 12% mean in the first empirical study discussed above, even more slightly above the

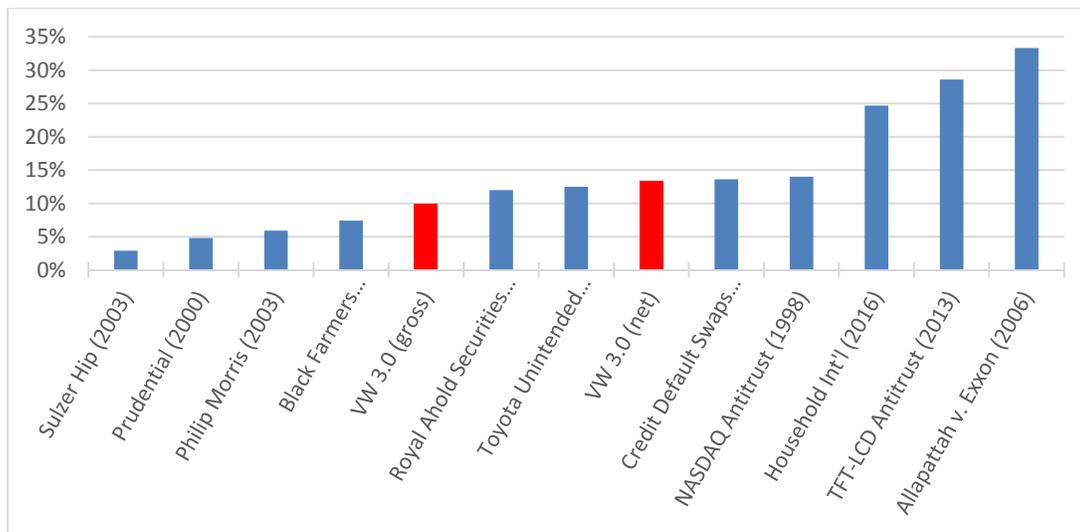
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<sup>15</sup> If fees and costs are conceptualized as part of the class's relief, *see* note 9, *supra*, the net settlement value (\$901.5 million) together with the fees and costs (\$125 million) generate a total net fund of \$1,026,500,000. The PSC's \$121 million fee would be 11.79% of that fund, which is below all of the means discussed in the text.

12.9% mean that the second empirical study finds for settlements of \$500 million-\$1 billion,<sup>16</sup> but below the 14.5% mean of my 11 \$1-2 billion case set.

22. In short, the PSC's fee constitutes a comparably low percentage of the gross settlement fund and an entirely normal percentage even of the *net* settlement fund. These conclusions are made visually clear in Graph 1, below, which charts the gross and net fee amounts against the 11 cases in my data set involving class action settlements of \$1-2 billion.

**GRAPH 1  
PERCENTAGE AWARDS IN SETTLEMENTS OF \$1B-\$2B SIZE**



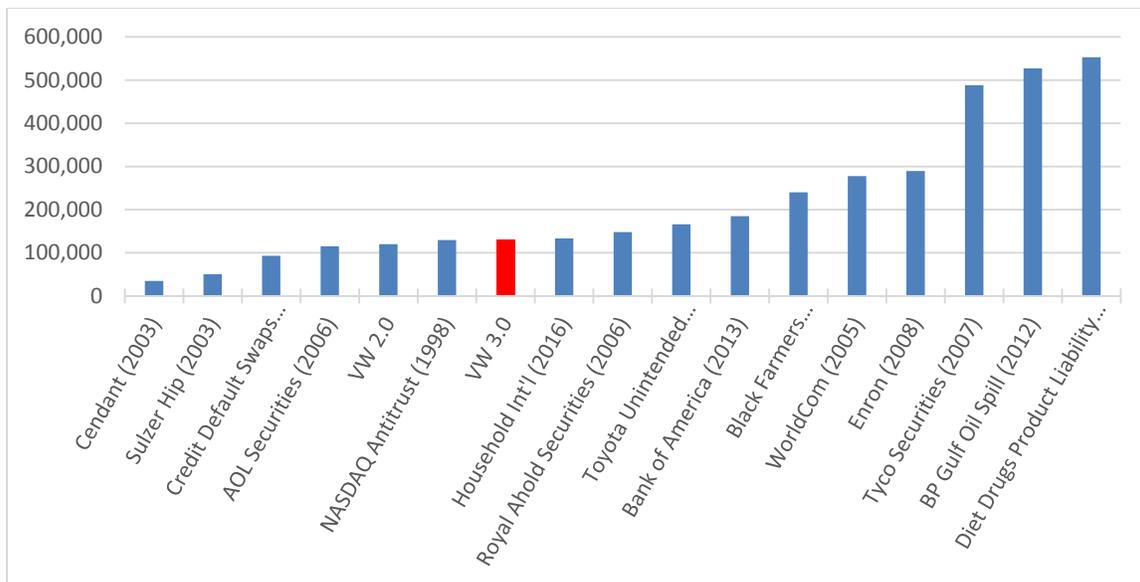
#### **IV. THE PSC'S HOURS ARE REASONABLE**

23. The PSC informs me that the total number of hours billed to this settlement is approximately 120,000 to date, with an estimated 9,676 hours projected to administer the settlement going forward, for a total of about 130,000. Quantitative and qualitative analyses of these numbers suggest their reasonableness in the context of this case.

<sup>16</sup> Fitzpatrick, *supra* note 13, at 839 tbls. 11.

24. Quantitatively, the PSC’s 130,000 total hours can be compared to the number of hours class counsel typically expend in billion-dollar cases.<sup>17</sup> As noted above, my research assistants compiled a set of 22 cases with settlements of \$1 billion or more. My research assistants were able to identify a “total-hours” figure (or approximation thereof) in 16 of those 22 cases. Graph 2, below, shows the total number of hours in each of those 16 cases, from smallest to largest, with the PSC’s 130,000 hours in this case highlighted in red.

**GRAPH 2**  
**TOTAL HOURS BILLED IN \$1 BILLION CASES**



As is visually evident, the roughly 130,000 hours the PSC expended to generate this billion dollar settlement is well below the median of just under 150,000 for billion-dollar settlements and is also about half (58%) of the average number of total hours expended in the other 16 cases.

<sup>17</sup> The use of billion-dollar cases as a comparison set is reasonable in the circumstances of this settlement. The PSC estimates the gross value of the settlement to be at least \$1.22 billion. Even if the value of the trade-in cars is netted out, the settlement is still worth about \$900 million to the class, as discussed above. Moreover, if there ends up being a Gen 2 buyback, the gross and net value of the settlement will run into the multiple billions.

25. Several caveats are worth noting. A skeptic might argue that the hours should have been lower here because there was less engaged litigation over the defendant's liability, but that fact characterizes a number of the cases in the comparison set as well. Further, the fact that this case transpired over a shorter time period than most might lead one to assume that the case would entail fewer lawyer hours. But this Court insisted that the case *go to trial* quickly if it did not settle, meaning that the PSC performed many of the tasks of an entire case in a shortened time period – yet with fewer than half the hours of the average case.

26. Qualitatively, the PSC's roughly 120,000 hours in 20 months to date<sup>18</sup> is the equivalent of 6,000 hours/month or 72,000 hours/year; the latter number equates to 24 lawyers working full-time (3,000 hours/year). That is the equivalent of a medium-sized law firm doing nothing but this case for 20 months. It strikes me as reasonable that 24 lawyers could have worked on this case full-time for 20 months, given the scope of the litigation and the Court's insistence that the PSC be prepared to try the case quickly. Indeed, if this settlement were a stand-alone settlement, I would be astonished to learn that the PSC had accomplished this complex billion dollar (potentially multi-billion dollar) settlement with this few hours. But this settlement does not entirely stand alone and I am cognizant of the fact that I previously testified that it was reasonable for the PSC to have expended 120,000 on the 2.0-liter settlement.<sup>19</sup> Given

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<sup>18</sup> The Judicial Panel on Multidistrict Litigation noted that “this litigation began on September 18, 2015 when the U.S. Environmental Protection Agency issued a Notice of Violation of the Clean Air Act to Volkswagen AG, Audi AG and Volkswagen Group of America, Inc., that detailed the unauthorized use of a software-based defeat device in approximately 480,000 diesel automobiles manufactured since 2009.” Transfer Order, ECF No. 82 at 2 (Dec. 8, 2015). This Court granted final approval to the 3.0-liter settlement on May 17, 2017, or almost exactly 20 months later.

<sup>19</sup> Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Orders Nos. 8 and 11, ECF No. 2786-3 at 8-9.

that earlier settlement, I make four more specific observations about the hours expended on this settlement:

1. As one would expect, with the material exception of one task discussed below, the PSC expended about 50% fewer hours in total on this settlement than it did on the 2.0-liter settlement.<sup>20</sup> This comports with one's expectation that there would be some economies of scale: for instance, the structure and some of the provisions of the 3.0-liter settlement agreement itself mirror those of the 2.0-liter settlement agreement.
2. At the same time, the additional hours attributable to securing this settlement are surely justified by the fact that the 3.0-liter settlement is a unique, distinct, and separate settlement with its own sets of factual and legal issues. A simple review of those parts of the 3.0-liter settlement agreement that are *not* borrowed from the 2.0-liter settlement agreement demonstrates the complexity and relative novelty of the later settlement. The sheer size and scope of the 3.0-liter settlement support the conclusion significant additional time was required to investigate, assess, litigate, prepare for trial, and settle this independent, billion-dollar deal.
3. The only tranche of time in this case that meaningfully exceeded that of the 2.0-liter settlement is the time devoted to document review – and it exceeded that earlier time by a significant margin. Moreover, the document review time in this settlement constitutes nearly two-thirds of all the hours in the settlement. At first blush, these facts are surprising. But upon closer scrutiny, several factors make them less so: (a) the PSC received about 15 million pages of documents and reviewing that quantity of material has been an on-going process since the inception of the case; (b) at the time of the 2.0 settlement, document review had been on-going but not all the document review hours as of that time could be attributed to the 2.0 settlement alone – some had to be attributed to the 3.0 (and Bosch) cases and held in abeyance for later fee petitions (if any); this means that the document review hours in the present lodestar are not just hours expended since completion of the 2.0-liter settlement, but hours expended since the case's inception; (c) assuming that document review was not completed as of the time that the 2.0 settlement was reached, the PSC could not stop reviewing documents: the 3.0-liter case remained live, with the real possibility that no settlement would be reached and the case would proceed to trial quickly. When these facts are synthesized, it is less surprising that the total document review time attributed to the lodestar of this settlement exceeds the document review time in the 2.0-liter settlement. It remains somewhat surprising that the document review times exceeds the aggregate of the two earlier settlements by about 50%, but the PSC deserves some deference in terms of the apportionment of document review time among the cases. That task is surely more art than science in this context and it is, of

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<sup>20</sup> The PSC spent less time in each lodestar category in this case than on the 2.0-liter settlement with two exceptions: document review, which is discussed in the text, and Dep. Prep/Take/Defend. The difference in the latter category (1,255.9 hours to 91.3 hours) is relatively immaterial in the context of the total hours. Net of document review hours, the PSC spent 92,160.8 hours on the 2.0-liter settlement and 46,732.6 hours (or 50.7% as many) on this settlement.

course, easy to Monday-morning quarterback those decisions – which is why the lodestar cross-check aims at a general analysis, not a line-by-line audit.

4. Perhaps most importantly, given the wholly normal (indeed modest) number of total hours invested in the case considering its settlement size and scope, even a meaningful downward adjustment of the document review hours would not make the pending fee request unreasonable. For instance, if 30,000 of the 83,360.9 document review hours (or 36%) are slashed out of the PSC's lodestar, its total lodestar would drop to \$47.65 million<sup>21</sup> and its lodestar multiplier would go from its present value of 2 to 2.54,<sup>22</sup> which remains entirely normal for a case of this magnitude (as discussed in Part V, below).

27. In sum, the PSC's hours quantitatively compare favorably to the total hours expended in other billion-dollar settlements, and a qualitative review of the specific numbers devoted to various tasks does not suggest anything untoward. Indeed, given the very short shelf life of this case, lodestar padding is less, rather than more, likely to have occurred in that there simply was not a long enough trajectory for lawyers to bill out hours for years in the certainty that they would get paid in the end. Nor, given the Court's quick trial date, was there time for such idleness. The PSC's hours demonstrate that a lot of lawyers dropped what they were doing to throw themselves into this case, in the hopes of meeting the Court's goal of trying or settling it expeditiously.

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<sup>21</sup> The average billing rate for document review hours is \$413.83. Removing 30,000 such hours reduces the total lodestar (\$60,063,332.60) by \$12,414,900, to \$47,648,432.60.

<sup>22</sup> A fee of \$121,000,000 divided by a lodestar of \$47,648,432.60 renders a multiplier of 2.54.

**V.**  
**THE PSC'S RATES ARE REASONABLE**

28. The PSC did not provide me with specific hourly rates for each timekeeper in their lodestar but rather with a blended billing rate for the entire case of \$461.69. A quantitative analysis of this blended billing rate<sup>23</sup> confirms its reasonableness.

29. To assess the reasonableness of the blended billing rate, I directed my research assistants to create a database of fee rates contained in class action fee petitions that federal courts in the Northern District of California have approved in the past, roughly, 1.5 years (2016, 2017 to date). Their efforts identified 40 cases that contained information sufficient to generate a blended billing rate for the case (listed in Exhibit C).<sup>24</sup> We adjusted all hourly rates to 2017 dollars using the U.S. Bureau of Labor CPI Inflation Calculator.<sup>25</sup> The blended billing rate (again adjusted to 2017 dollars) in these cases ranged from a low of \$372.22/hour to a high of \$733.88/hour. The mean rate for these 40 cases is \$528.11. The complete range of blended billing rates is reflected in Graph 3, below, with the blended billing rate in this case highlighted in red.

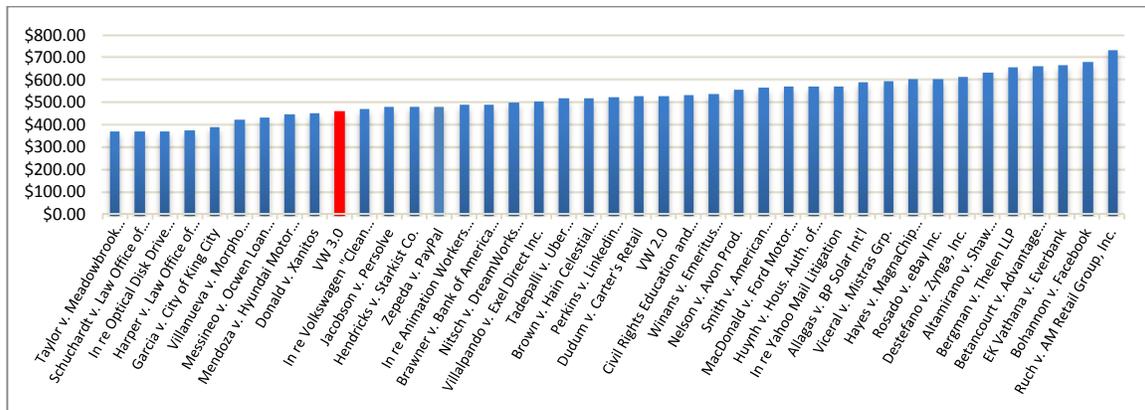
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<sup>23</sup> A blended billing rate is captured by simply dividing the total fee sought by the total number of hours worked, thus providing the average hourly billing rate for the case across all timekeepers ranging from high-end partners to paralegals.

<sup>24</sup> No cases were discarded from the dataset for any reason other than not meeting the criteria: explicit judicial approval of class counsel's hourly rates and hours. In some of these 40 cases, counsel sought an award lower than their total lodestar and/or the court made an award lower than the total lodestar. So long as the court did not express concern about counsel's proposed billing rates or hours in affirming the fee request, we coded these rates as affirmed, or judicially-approved, rates and hours and included them in the dataset. If a court explicitly lowered a specific billing rate or the number of hours, we utilized the lower numbers in the dataset.

<sup>25</sup> This calculator can be found at this hyperlink: <http://data.bls.gov/cgi-bin/cpicalc.pl>. The calculator showed that \$1,000.00 in January of 2016 was equivalent to \$1,025.00 in January of 2017. Accordingly, we multiplied all 2016 rates by 1.025 to adjust them to 2017 values.

**GRAPH 3**  
**BLENDED BILLING RATES IN RECENT NORTHERN DISTRICT**  
**OF CALIFORNIA CLASS ACTION FEE APPROVALS**



As the Court can see, the blended billing rate in this case (\$461.69) falls far to the left of the middle of the pack – 12 cases below the median in the graph – and it is about 12.5% below the mean, demonstrating its normalcy.

30. The reasonableness of the PSC's blended billing rate supports several further conclusions. The blended billing rate reflects the distribution of time between partners, associates, and paralegals. If only partners did this work, the blended billing rate would be very high, whereas if only paralegals billed, the blended billing rate would be very low. The fact that the blended billing rate in this case is well below average means that Lead Counsel distributed work among partners, associates, non-partnership track attorneys, and paralegals in an appropriate fashion. This is a remarkable fact in these circumstances. I would have expected to see a far higher blended billing rate for three separate reasons: (1) the Court's appointment of a 22-person PSC consisting of some of the highest-paid lawyers in the United States; (2) the speed at which the PSC had to prepare for trial, rather than wallowing in discovery for multiple years; and (3) the high-level work that was needed to settle a case of this size and complexity, in

conjunction with important collateral governmental litigation, in such a short time frame. That Lead Counsel achieved a normal blended billing rate is a testament to her remarkable management of this unique litigation team.

31. The PSC employed non-partnership track attorneys to undertake some aspects of the class’s legal work, particularly the review of documents. I have reviewed the rates at which these non-partnership track attorneys are included in the lodestar for cross-check purposes and make three factual observations about those rates, two empirical, one policy-oriented.

32. *First*, these are skilled attorneys. They are referred to as “contract” or “staff” attorneys solely by virtue of the fact that they are not on a partnership track at the relevant law firms, but are hired on more of an ad hoc basis.<sup>26</sup> The fact that they work on an ad hoc basis, standing alone, says nothing about their qualifications or skills. For purposes of another case, I have had the opportunity to review the qualifications and skills of the contract attorneys that Lead Counsel’s firm uses and can testify that these attorneys are very well qualified for the tasks that they perform: many graduated from top law schools, have significant experience at the tasks to which they are assigned, and often work on a non-partnership track as a personal choice about how they wish their careers to proceed, not because they are unqualified for top level jobs.

33. *Second*, the rates at which counsel included non-partnership track attorneys in their lodestar for cross-check purposes are consistent with rates that courts have explicitly or implicitly affirmed in approving fee petitions in class action cases. Specifically, my research assistants compiled a database of 13 class action cases in which approved fee petitions have

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<sup>26</sup> While different firms call these attorneys different names – e.g., “contract attorneys” or “staff attorneys” – the defining characteristic of them is that they are not on a partnership track. Commentators often make the incorrect assumption that these attorneys are necessarily “temps.” Many are salaried employees of the firms and work at these firms over many years.

contained billing rates for so-called “contract” or “staff attorneys” (Exhibit E); those 13 cases provided 138 different data points of rates for these attorneys. The rates in those cases ranged from \$132.64 to \$743.01, with a mean of \$386.75. In this case, the PSC has not broken down fee rates by job title. However, it is highly likely that non-partnership track attorneys generally undertook document review work, and the PSC shows a blended billing rate for document review in this case to be \$413.83. As set forth in Graph 4, below, this document review rate is but 7% above the mean billing rate for contract attorneys in our comparison group.

**GRAPH 4**  
**CONTRACT ATTORNEY RATES IN APPROVED CLASS ACTION FEE PETITIONS**  
**COMPARED TO RATES FOR DOCUMENT REVIEW IN THIS CASE**



The fact that the rate for document review here is slightly higher than the normal billing rate for contract attorneys courts have approved in other cases is unsurprising for several reasons: (a) the blended document review rate here would pick up time of both the non-partnership track

attorneys and their supervising attorneys' work on document review – hence the rate attributable to the non-partnership track attorneys alone is likely fully consistent with the comparison set; (b) the work here was undertaken in a pressured time frame, (c) in a market with higher attorney billing rates, and (d) encompassed many documents in foreign languages. In short, there is nothing remarkable about the rates reported for document review here, the work likely primarily undertaken by non-partnership track attorneys.

34. *Third*,<sup>27</sup> the policy question of how to bill non-partnership track attorneys has arisen regularly in class suits as class counsel will often hire such lawyers to perform discrete functions in a particular case. Class counsel typically pay these attorneys at a lower hourly rate than the hourly rate they assign to them in the lodestar analysis in their fee petitions. To put numbers on this idea: a firm may hire contract lawyers for a particular case at \$50/hour, then bill these attorneys at \$350/hour in the lodestar calculation based, for example, on the contract attorneys' number of years out of law school, their experience, and the type of work they performed. It is my expert opinion that several policy arguments support this approach:

- This is precisely the way in which firms bill legal services – including those of partners, associates, and contract attorneys – to clients in the private market. For instance, a firm may pay a first-year associate a \$150,000 annual salary and expect 3,000 hours of billable time in return. That means that the associate's salary breaks down to \$50/hour. The associate likely costs the firm more than \$50/hour because the firm has spent time recruiting and training the associate and because it pays for overhead, perhaps benefits, and other expenses associated with her work. Consequently, the associate who is receiving a \$50/hour salary may actually cost the firm, say, \$75/hour. But the firm then bills its clients, maybe, \$375/hour for that associate's time, realizing a \$300/hour, or 400%, profit for the associate's work. Regardless of the precise numbers that attach to the practice, the point is that law firms are in the business of making their partners a profit by having the partners bill the work done by their associates and paralegals to their clients at higher rates than they pay them. So long as a contract attorney is providing legal services to a client, a firm is entitled to bill her time to the client in the same manner.

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<sup>27</sup> The language and citations in this and the following paragraphs are taken from 5 *Newberg on Class Actions*, *supra* note 2, at § 15:41.

- The ABA reached this conclusion nearly two decades ago, *see* ABA Formal Opinion 00-420, and I note as a matter of policy that courts have often cited to the ABA's guidance in concluding that class action firms "may charge a markup to cover overhead *and profit* if the contract attorney charges are billed as fees for legal services.<sup>28</sup> It makes sense that courts have so held because a contingent fee class action firm's lodestar operates in the same way as a private law firm's bill to its client: it embodies this basic profit for its partners and, in doing so, brings the lodestar in line with market rates.<sup>29</sup>
- Permitting class counsel to bill non-partnership track attorneys at market rates is cost-efficient: it encourages the firms to delegate work to attorneys who are likely billed at lower costs than are associates or partners. If class action firms could only bill non-partnership track attorneys at cost, they would likely transfer the work required to associates.

35. In sum, quantitative analysis of both the PSC's blended billing rate and of the rates paid non-partnership track attorneys shows that these rates are indistinguishable from the rates regularly approved by courts in this District (for the blended rate) and by courts throughout the country (for the contract rates); further, public policy strongly supports the manner in which the PSC billed non-partnership track attorneys.

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<sup>28</sup> *In re AOL Time Warner S'holder Derivative Litig.*, No. 02 Civ. 6302(CM), 2010 WL 363113, at \*26 (S.D.N.Y. Feb. 1, 2010) (emphasis added).

<sup>29</sup> The lodestar *multiplier* is meant to reward the class action firm over and above the market rate for undertaking a case on a contingency fee basis. Without such a multiplier, no firm would undertake contingent cases, as it would be far safer to simply reap the normal profit embodied in the lodestar but reflected, in a non-contingent case, in the bill to the client. *See, e.g., Ketchum v. Moses* 17 P.3d 735, 742 (Cal. 2001) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. . . . A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (internal quotation marks and citations omitted)).

V.

**THE PSC'S REQUESTED MULTIPLIER IS REASONABLE**

36. The PSC seeks a fee that embodies a lodestar multiplier of approximately 2. (A \$121 million fee would be 2.015 times greater than the PSC's total lodestar of approximately \$60 million; I use 2 for simplicity.)

37. Quantitatively, a 2 multiplier is consistent with multipliers that courts have previously approved in similar circumstances:

- Three leading empirical studies of class action attorney's fees found the mean multipliers in all cases to be 1.42,<sup>30</sup> 1.65,<sup>31</sup> and 1.81,<sup>32</sup> while an older study found the mean multiplier to be 4.97.<sup>33</sup>
- These studies also show that multipliers are higher in cases with larger returns, with the mean multipliers rising to 2.39 (in cases with recoveries over \$44.6 million) in one study;<sup>34</sup> to 3.18 (in cases with recoveries over \$175.5 million) in another study;<sup>35</sup> and to 4.5 (in cases with recoveries over \$100 million) in a third study.<sup>36</sup>
- Indeed, my research assistants discerned the approved multipliers in our data set of settlements of \$1 billion or greater. In this set of 15 settlements, the approved multipliers ranged from 1.80 to 6.19, with the mean being 3.36 and the median being 2.70. The proposed 2 multiplier in this case is therefore well below the norm for billion-dollar cases, as demonstrated in Graph 5, below.

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<sup>30</sup> 5 *Newberg on Class Actions*, *supra* note 2, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

<sup>31</sup> Fitzpatrick, *supra* note 13, at 833–34.

<sup>32</sup> Eisenberg & Miller II, *supra* note 5, at 272.

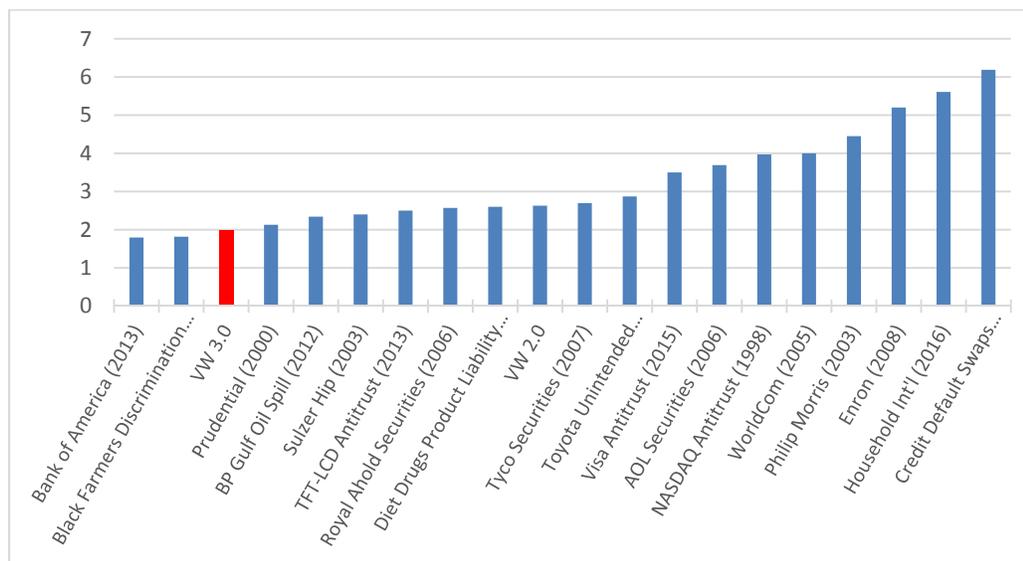
<sup>33</sup> Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 *Class Action Rep.* 167, 169 (2003) (hereafter “Logan”).

<sup>34</sup> 5 *Newberg on Class Actions*, *supra* note 2, at § 15:89 (reporting on data from William B. Rubenstein and Rajat Krishna, *Class Action Fee Awards: A Comprehensive Empirical Study* (draft on file with author)).

<sup>35</sup> Eisenberg & Miller II, *supra* note 5, at 274.

<sup>36</sup> Logan, *supra* note 33, at 167.

**GRAPH 5**  
**COURT-APPROVED MULTIPLIERS IN BILLION-DOLLAR CASES**



- Beyond these bare statistics, case reports demonstrate that, in appropriate circumstances, courts have often approved percentage awards embodying lodestar multipliers far above the 2 sought here. In the leading Ninth Circuit opinion on point, the Court established 25% as the benchmark percentage fee and approved a multiplier of 3.65, writing that this number “was within the range of multipliers applied in common fund cases”<sup>37</sup> and appending a list of such cases to its decision. Similarly, in Exhibit F, I provide a list of 54 cases with multipliers over 3.5, 48 of which have multipliers of 4.00 or higher, and 31 of which have multipliers of 5.00 or higher. This list is not meant to be either exhaustive or representative of all multipliers. Rather, it demonstrates that courts approve percentage awards that embody multipliers well above the multiplier sought here in appropriate circumstances.

The requested multiplier is therefore above the mean for *all* cases but well below the mean for *large* cases, and it falls securely within the range of multipliers that courts have approved in appropriate circumstances in the past.

<sup>37</sup> *Vizcaino*, 290 F.3d at 1051; *see also Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate.” (citation omitted)).

38. As courts will clearly approve a fee award that embodies a 2 multiplier in appropriate circumstances, the sole question is whether the PSC's work in *this* case justifies this multiplier. A factual analysis of the risks that the PSC took and the results that it achieved helps explain the reasonableness of a 2 multiplier.<sup>38</sup>

39. **Risk.** Skeptics may argue that the PSC's risk in this case was low because the defendants' liability was a given from the outset, government agencies were undertaking parallel enforcement actions and hence assisted in establishing the defendants' ultimate liability, and because the PSC was able to share the costs of this endeavor across a broad spectrum of firms with vast resources. In these senses, it may be alleged that the action lacks some of the conventional characteristics of risk. That allegation is exaggerated: the risk framework of this case is not that different than many large class actions, which often follow on the heels of public events, and the defendant in this case did not simply concede liability at its outset. For example, in response to certain requests for admission (including admissions about the 3.0-liter engines), defendants filed a 94-page document in May of 2016 – just two months before the proposed trial of the 2.0-liter case – explicitly (and in great lawyering detail) refusing to concede liability. *See* Responses and Objections of Defendants Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, and Audi of America, LLC to Plaintiffs' First Requests for Admissions to VW Defendants (attached to my 2.0-liter Declaration, ECF Doc. No. 2786-3, as Exhibit E). More

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<sup>38</sup> The points that follow mirror the conclusions that I reached in my Declaration in support of the 2.0-liter settlement's proposed fee award. I repeat them here not out of a rote exercise undertaken without consideration but after having reviewed the 3.0-liter settlement and having reached the independent conclusion that it shares these characteristics with the 2.0-liter settlement.

importantly, the structure and pursuit of this MDL produced a handful of specific, identifiable risks unique to the circumstances of this case that put significant pressure on the PSC:

- ***Speed.*** Because this case involved polluting cars, this Court took the position from the outset that a primary goal of the litigation was to get the cars off the roads as quickly as possible. To that end, the Court established a time frame for the litigation that put enormous pressure on the PSC to move the case along toward trial quickly. While all involved parties hoped that the case would settle and not proceed to trial, none could assume that outcome and the PSC had to prepare for trial. This required an extraordinary investment of resources and time.
- ***Internal coordination.*** To accomplish the tasks assigned in the time frame established by the Court, the PSC had to employ all of its resources quickly and efficiently. Yet the PSC was essentially an ad hoc law firm, established solely for purposes of this suit, and consisting of 22 different lawyers from firms scattered throughout the United States. Moreover, these lawyers are all high-priced stars. It is, frankly, difficult to underestimate Lead Counsel’s task in corralling this team, getting it up and running on all of the various aspects of a huge case like this on a short track for trial, and doing so in an efficient, cost-saving manner.
- ***External coordination.*** This MDL involves four separate sets of actions: (1) the private class actions; (2) the DOJ’s actions on behalf of the EPA; (3) the FTC’s actions; and (4) actions by state governments. In turn, the entities behind these actions have been involved in a 2.0 liter settlement, the Bosch settlement, the 3.0 liter settlement, and (some) the franchise dealers settlement. The PSC was forced to coordinate all of its activities across these various cases with these other law enforcers in pursuing relief for the class. Skeptics may view this coordination task as un-burdening the PSC from undertaking work, but that position fails to explore the situation adequately. There are in fact some class actions that *follow* on the coattails of government enforcement actions, enabling the later attorneys to take advantage of non-mutual offensive issue preclusion and to reduce their efforts accordingly.<sup>39</sup> But here there was no initial government trial and no prior judgment. Rather, the public and private enforcement actions proceeded simultaneously. Moreover, the PSC could not sit back and assume the governments’ efforts would lessen its load. On the contrary, the PSC had a fiduciary duty to represent the class in the settlement proceedings – a different clientele and duty than any government enforcer – while simultaneously preparing for trial within the year. It strikes me that coordinating this case with the government enforcement agencies likely created more work than it relieved. Thus, any “piggy-backing” argument underestimates the work the PSC was

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<sup>39</sup> See, e.g., *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979).

forced to do and fails to consider the PSC's additional burden of working in this complex, high-pressure, multi-faceted litigation framework.

- **Novelty.** While skeptics are quick to allege that liability was something of a given in this case, they fail to appreciate that the context of the case was relatively novel. A search for the term “defeat device” in Westlaw’s federal and state databases returns a total of 66 cases, only six of which pre-date the cases in this MDL. That means that there were but a handful of cases prior to this situation involving the whole concept of a defeat device. Thus, this was neither the PSC’s 1,000th asbestos case nor 100th tobacco case, nor was it a standard securities or antitrust class action. The underlying facts – intertwining aspects of the Clean Air Act, federal and state automobile regulations, international manufacturing and importing of automobiles, engineering devices, EPA testing, German manufacturing, etc. – presented a sufficiently new problem that preparing for trial within a year would be challenging. As one small example: firms doing repeat work in complex matters (such as antitrust lawyers) may rely on the same expert witnesses from case to case. But here, defeat device experts would have to be identified, screened, interviewed, and vetted for the first time – all on a short fuse.

40. **Results.** Beyond these risk factors, five components of this case’s outcome speak to the exceptional results the PSC obtained in this matter:

- **Counsel obtained significant relief for the class.** The structure of this settlement is unique in that many class members have the option of returning their car for money – beyond the value of the car itself – or keeping the car and awaiting a fix of the emissions device. The total value of that relief exceeds \$1 billion, making this (even were it standing alone) one of the largest consumer settlement in history. Its structure also respects class members’ autonomy by safeguarding their option to select replacement or repair of their vehicles.
- **Class members get full redress.** The quantity of relief on an individual basis is significant – the class members realize effectively complete relief for their monetary losses in that they are guaranteed either the pre-revelation value of their automobiles plus additional cash or a repair plus additional cash. Other than more intangible relief – such as monetary damages for having driven around an automobile polluting the environment under false pretenses – the class members recover the bulk (if not all) of their tangible damages.
- **100% of the class is entitled to relief.** This full relief has been made available to all class members. No portion of the class was excluded from the settlement.
- **Claiming is straightforward.** Class members can easily realize the offered relief and it is likely that the vast majority of class members will participate in the

settlement. This is an astonishing fact given the rates at which class members typically file claims.<sup>40</sup>

- ***The relief obtained compares favorably to results achieved in similar cases.*** It is rare that an automobile defect case results in replacement of the automobile (plus cash) as a “settlement.”

41. The PSC’s task in this matter was neither easy nor uncomplicated. The PSC coordinated a superb, billion-dollar deal for tens of thousands of consumers throughout the United States within about one and a half years, all the while preparing to try those consumers’ novel cases at the end of that time frame if the settlement efforts had failed. This case bore enough unique, specific risks, and the PSC delivered enough real, substantial value, to justify a fee embodying a quotidian lodestar multiplier of 2.

\* \* \*

42. I have testified that:

- The PSC’s proposed ***fee approach*** – a percentage approach with a lodestar cross-check – is the fee approach courts use most often (and, I note, one that the Ninth Circuit has explicitly approved).
- The PSC’s requested ***percentage*** is reasonable, below the mean for a \$1-2 billion settlement if expressed as a percentage of the settlement’s gross value and consistent with that mean if expressed as a percentage of the settlement’s net value.
- The PSC’s ***hours*** are a standard amount for a billion-dollar case and thus lack any sign of lodestar padding.
- The PSC’s blended hourly ***billing rate*** is lower than the average blended hourly billing rates approved in other class action settlements in this District in the past few years and the rates at which it bills non-partnership track attorneys undertaking document review work are consistent with rates in approved class action fee petitions.

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<sup>40</sup> See Nicholas M. Pace and William B. Rubenstein, *Shedding Light on Outcomes in Class Actions*, in Confidentiality, Transparency, and the U.S. Civil Justice System 20–59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008).

- The PSC's proposed 2 *multiplier* is well below the mean for settlements over \$1 billion and entirely reasonable given the unique risks that it shouldered and the superb results that it achieved for the class.

Executed this 30th day of June, 2017, in Los Angeles, California.

A handwritten signature in black ink, appearing to read "William B. Rubenstein", written in a cursive style.

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William B. Rubenstein

# **EXHIBIT A**

**PROFESSOR WILLIAM B. RUBENSTEIN**

Harvard Law School - AR323  
 1545 Massachusetts Avenue  
 Cambridge, MA 02138

(617) 496-7320  
 rubenstein@law.harvard.edu

ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Sidley Austin Professor of Law	2011-present
Professor of Law	2007-2011
Bruce Bromley Visiting Professor of Law	2006-2007
Visiting Professor of Law	2003-2004, 2005-2006
Lecturer in Law	1990-1996
<i>Courses:</i>	Civil Procedure; Class Action Law; Remedies
<i>Awards:</i>	2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence
<i>Membership:</i>	American Law Institute; American Bar Foundation Fellow

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law	2002-2007
Acting Professor of Law	1997-2002
<i>Courses:</i>	Civil Procedure; Complex Litigation; Remedies
<i>Awards:</i>	2002 Rutter Award for Excellence in Teaching Top 20 California Lawyers Under 40, <i>Calif. Law Business</i> (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law	1995-1997
<i>Courses:</i>	Civil Procedure; Federal Litigation
<i>Awards:</i>	1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law	1994, 1995
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BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor	Summer 2005
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LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel	1987-1995
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Litigated impact cases in federal and state courts throughout the US. Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country, and coordinated work with private cooperating counsel nationwide. Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk	1986-87
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PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern	Summer 1985
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EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA  
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT  
B.A., 1982, *magna cum laude*  
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

*Professional Service and Highlighted Activities*

- ◇ *Sole Author*, NEWBERG ON CLASS ACTIONS (sole author of Fourth Edition updates and Fifth Edition since 2008)
- ◇ *Invited Speaker*, Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law and related topics (2010, 2011, 2012, 2013, 2014 (invited), 2015, 2016, 2017)
- ◇ *Special counsel*, Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom.*, *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))
- ◇ *Author, Amicus* brief filed in the United States Supreme Court on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ *Amicus curiae*, *Amicus* brief filed in – and approvingly cited by – California Supreme Court on proper approach to attorney’s fees in common fund cases (*Laffitte v. Robert Half Int'l Inc.*, 376 P.3d 672, 687 (Cal. 2016))
- ◇ *Adviser*, American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania
- ◇ *Advisory Board*, *Class Action Law Monitor* (Strafford Publications), 2008-
- ◇ *Co-Chair*, ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007
- ◇ *Planning Committee*, American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007
- ◇ “*Expert’s Corner*” (Monthly Column), *Class Action Attorney Fee Digest*, 2007-2011

*Expert Witness*

- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case 3:15-md-02672-CRB, MDL 2672, U.S. Dist. Ct., N.D. Cal. (2017))
- ◇ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re: Modafinil Antitrust Litigation*, Civ. Action No. 2-06-cv-01797 (E.D. Pennsylvania (2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Aranda v. Caribbean Cruise Line, Inc.*, Case No. 1:12-cv-04069, U.S. Dist. Ct., N.D. Ill. (2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (CRC), U.S. Dist. Ct., D.D.C. (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC*, Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.*, Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company*, Case No. 11 Civ. 3487 (KFB), U.S. Dist. Ct., S.D.N.Y. (2015))
- ◇ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter that settled before trial (*Johnson v. Caremark RX, LLC*, Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, relied upon by court in awarding fees, *In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730, at \*9-\*13 (N.D. Cal. Sept. 2, 2015)
- ◇ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.*, Case No. 1:09-cv-00554, U.S. Dist. Ct., D.R.I. (2015))

- ◇ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees and incentive awards (*Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, relied on by the court in awarding fees, *Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462, at \*43-\*44 (C.D. Cal. May 29, 2015)
- ◇ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation*, 08-CV-4772-LTS-DCF, U.S. Dist. Ct., S.D.N.Y. (2015))
- ◇ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation*, MDL 13-02424, U.S. Dist. Ct., C.D. Cal. (2014))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))
- ◇ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.*, Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))
- ◇ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC*, Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))
- ◇ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation*, Civil Action No. 04-10981, MDL 1629, U.S. Dist. Ct., D. Mass. (2014))
- ◇ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.*, Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))
- ◇ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems*, Case No. BC448383, California Superior Court, Los Angeles County (2013))
- ◇ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck*, No. 2:09-cv-07218, MDL Docket

- No. 1657 (*In re Vioxx Products Liability Litigation*), U.S. Dist. Ct., E. D. La. (2013))
- ◇ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.*, Case No. 3:12-cv-00589-REP, U.S. Dist. Ct., E.D. Va. (2013))
  - ◇ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel (*White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070, U.S. Dist. Ct., C.D. Cal. (2013))
  - ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of “net expected value” of settlement benefits (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))
  - ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney’s fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))
  - ◇ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC*, Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))
  - ◇ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.*, Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))
  - ◇ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order, *CVS Caremark Corp. v. Lauriello*, 175 So. 3d 596, 609-10 (Ala. 2014)
  - ◇ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung*, Case No. BC 460783, California Superior Court, Los Angeles County (2012))
  - ◇ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP*, Case No. BC484090, California Superior Court, Los Angeles County (2011))
  - ◇ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.*, Case No. CIV-2008-1008-W, U.S. Dist. Ct., W.D. Ok. (2011))
  - ◇ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*, Case No. 3:10-CV-02269-O-BK, U.S. Dist. Ct., N.D. Tex. (2011))
  - ◇ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR, U.S. Dist. Ct., N.D. Cal. (2011))

- ◇ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation*, Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))
- ◇ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657, U.S. Dist. Ct., E.D. La. (2010))
- ◇ Submitted expert witness declaration concerning fee application in securities case (*In re Amicas Inc. Shareholder Litigation*, Civil Action No. 10-412BLS2, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement, relied upon by the court in *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010)
- ◇ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.*, Case No. CV-05-3222, U.S. Dist. Ct., C.D. Cal. (2010))
- ◇ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the court in *Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013)
- ◇ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in *Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))
- ◇ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811, U.S. Dist. Ct., E.D. Mo. (2009))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No.1735, U.S. Dist. Ct., D. Nev. (2009))
- ◇ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, MDL Docket No. 1796, U.S. Dist. Ct., D. D.C. (2009))
- ◇ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No.

- 1842, U.S. Dist. Ct., D. R.I. (2009))
- ◇ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))
  - ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))
  - ◇ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869, U.S. Dist. Ct., D. D.C. (2008))
  - ◇ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))
  - ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))
  - ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))
  - ◇ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif*, Case No. KC034700, California Superior Court, Los Angeles County (2008))
  - ◇ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB, U.S. Dist. Ct., E.D. Ky. (2008))
  - ◇ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.*, JAMS Arbitration No. 1220026252 (2007))
  - ◇ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.*, Civil Action No. 06-11033 PBS, U.S. Dist. Court, D. Mass. (2007))
  - ◇ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al.*, No. 07-39 (WOB) U.S. Dist. Court, E. D. Ky. (2007))
  - ◇ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.*, No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))
  - ◇ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO

(2007))

- ◇ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))
- ◇ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL, U.S. Dist. Court, C.D. Cal. (2006))
- ◇ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))
- ◇ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.*, Missouri Circuit Court, St. Louis, MO (2005))
- ◇ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Joann Methodist Church* (2002))
- ◇ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City*, Case No. Civ. 2001-1827-C, U.S. Dist. Ct., W.D. Ok. (2002))
- ◇ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

#### *Expert Consultant*

- ◇ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)
- ◇ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)
- ◇ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389, U.S. Dist. Ct., S.D.N.Y. (2015))
- ◇ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)
- ◇ Retained by a Fortune 100 Company as an expert consultant on class certification issues
- ◇ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. #: 2:13-cv-00074-ABJ, U.S. Dist. Ct., D. Wy. (2013))
- ◇ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693, U.S. Dist. Court, C.D. Cal. (2013))

- ◇ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))
- ◇ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*, No. 2:13-cv-00192-JAK-MRW, U.S. Dist. Ct., C. D. Cal. (2013))
- ◇ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179, U.S. Dist. Court, E.D. La. (2012))
- ◇ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation*, MDL No. 2323, Case No. 2:12-md-02323-AB, U.S. Dist. Ct., E.D. Pa. (2012))
- ◇ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXR D Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102, U.S. Dist. Court, S.D. N.Y. (2009))
- ◇ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733, U.S. Dist. Court, S.D. Iowa (2008))
- ◇ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 CAS (VBKx), U.S. Dist. Court, C.D. Cal. (2008))
- ◇ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.*, Civil No. 8-04194, U.S. Dist. Court, E.D. Pa. (2008))
- ◇ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit)
- ◇ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))
- ◇ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))
- ◇ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))
- ◇ Retained as an expert consultant on complex preclusion questions in petition for review to

California Supreme Court (*Mooney v. Caspari*, Supreme Court of California (2006))

- ◇ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation*, U.S. Dist. Court, E. D. Pa. (2006))
- ◇ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))
- ◇ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, Case No. CV-98-00402-CBM, U.S. Dist. Ct., C.D. Cal.)
- ◇ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)
- ◇ Served as an expert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, U.S. Dist. Ct., C.D. Cal., *appeal dismissed as moot*, 199 F.3d 1331 (9th Cir. 1999))

#### *Ethics Opinions*

- ◇ Retained to provide expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2011))
- ◇ Provided expert opinion on issues of professional ethics implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))
- ◇ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

#### *Publications on Class Actions & Procedure*

- ◇ NEWBERG ON CLASS ACTIONS (sole author of supplements to 4th edition since 2008 and of 5th edition (2011-2017))
- ◇ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)
- ◇ *Procedure and Society: An Essay for Steve Yeazell*, 61 U.C.L.A. REV. DISC. 136 (2013)

- ◇ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)
- ◇ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)
- ◇ *Class Action Fee Award Procedures*, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)
- ◇ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)
- ◇ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)
- ◇ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)
- ◇ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle*, 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)
- ◇ *The Puzzling Persistence of the “Mega-Fund” Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)
- ◇ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)
- ◇ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)
- ◇ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)
- ◇ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)
- ◇ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney’s Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)
- ◇ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)
- ◇ *On What a “Common Benefit Fee” Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)
- ◇ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)
- ◇ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)
- ◇ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

- ◇ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)
- ◇ *Supreme Court Round-Up*, 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)
- ◇ *Fee-Shifting For Wrongful Removals: A Developing Trend?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)
- ◇ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel*, 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)
- ◇ *Why The Percentage Method?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)
- ◇ *Reasonable Rates: Time To Reload The (Laffey) Matrix*, 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)
- ◇ *The "Lodestar Percentage: "A New Concept For Fee Decisions?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)
- ◇ *Class Action Practice Today: An Overview*, in ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)
- ◇ *Shedding Light on Outcomes in Class Actions*, in CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)
- ◇ *Finality in Class Action Litigation: Lessons From Habeas*, 82 N.Y.U. L. REV. 791 (2007)
- ◇ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)
- ◇ *The American Law Institute's New Approach to Class Action Attorney's Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)
- ◇ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)
- ◇ *Supreme Court Round-Up*, 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)
- ◇ *On The Difference Between Winning and Getting Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)
- ◇ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)
- ◇ *On Plaintiff Incentive Payments*, 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

- ◇ *Percentage of What?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)
- ◇ *Lodestar v. Percentage: The Partial Success Wrinkle*, 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007)(with Alan Hirsch)
- ◇ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))
- ◇ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)
- ◇ *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).
- ◇ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)
- ◇ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)
- ◇ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)
- ◇ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) (excerpted in COMPLEX LITIGATION 120-123 (1998))

*Selected Presentations*

- ◇ *Class Action Update*, MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017
- ◇ *Class Action Update*, MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016
- ◇ *Judicial Power and its Limits in Multidistrict Litigation*, American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016
- ◇ *Class Action Update & Attorneys' Fees Issues Checklist*, MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015
- ◇ *Class Action Law*, 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013
- ◇ *Class Action Remedies*, ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013
- ◇ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda*, Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013
- ◇ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013
- ◇ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell*, UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013
- ◇ *Litigation’s Mirror: The Procedural Consequences of Social Relationships*, Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012
- ◇ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012
- ◇ *Recent Developments in Class Action Law and Impact on MDL Cases*, MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010
- ◇ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010
- ◇ *Unpacking The “Rigorous Analysis” Standard*, ALI-ABA 12<sup>th</sup> Annual National Institute on Class Actions, New York, New York, November 7, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

- ◇ *Current CAFA Consequences: Has Class Action Practice Changed?*, ALI-ABA 11<sup>th</sup> Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007
- ◇ *Using Law Professors as Expert Witnesses in Class Action Lawsuits*, ALI-ABA 10<sup>th</sup> Annual National Institute on Class Actions, San Diego, California, October 6, 2006
- ◇ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006
- ◇ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006
- ◇ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006
- ◇ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005
- ◇ ALI-ABA 9<sup>th</sup> Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005
- ◇ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005
- ◇ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005
- ◇ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005
- ◇ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005
- ◇ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

## SELECTED OTHER LITIGATION EXPERIENCE

*United States Supreme Court*

- ◇ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct.1893 (2015))
- ◇ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))
- ◇ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against

constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

- ◇ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

#### *Attorney's Fees*

- ◇ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom.*, *Berman DeValerio v. Olinsky*, No. 15-1310-cv, 2016 WL 7323980 (2d Cir. Dec. 16, 2017))
- ◇ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases, relied on by the court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016).

#### *Consumer Class Action*

- ◇ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.*, 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)
- ◇ Co-class counsel in \$8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation*, 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

#### *Disability*

- ◇ Co-counsel in successful ADA challenge (\$500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

#### *Employment*

- ◇ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); (*Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

#### *Equal Protection*

- ◇ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))
- ◇ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (en banc))
- ◇ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11<sup>th</sup> Cir. 1997))

*Fair Housing*

- ◇ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

*Family Law*

- ◇ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Svcs.*, 656 So.2d 902 (Fla. 1995))
- ◇ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

*First Amendment*

- ◇ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding for university student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))
- ◇ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

*Landlord / Tenant*

- ◇ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

*Police*

- ◇ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2<sup>nd</sup> Cir. 1994))

*Racial Equality*

- ◇ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 (*Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

*Editorials*

- ◇ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
- ◇ *Play It Straight*, NEW YORK TIMES, October 16, 2004
- ◇ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004
- ◇ *Toward More Perfect Unions*, NEW YORK TIMES, November 20, 2003 (with Brad Sears)

- ◇ *Don't Ask, Don't Tell. Don't Believe It*, NEW YORK TIMES, July 20, 1993
- ◇ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

- ◇ Massachusetts (2008)
- ◇ California (2004)
- ◇ District of Columbia (1987) (inactive)
- ◇ Pennsylvania (1986) (inactive)
- ◇ U.S. Supreme Court (1993)
- ◇ U.S. Court of Appeals for the First Circuit (2010)
- ◇ U.S. Court of Appeals for the Second Circuit (2015)
- ◇ U.S. Court of Appeals for the Fifth Circuit (1989)
- ◇ U.S. Court of Appeals for the Ninth Circuit (2004)
- ◇ U.S. Court of Appeals for the Eleventh Circuit (1993)
- ◇ U.S. Court of Appeals for the D.C. Circuit (1993)
- ◇ U.S. District Courts for the Central District of California (2004)
- ◇ U.S. District Court for the District of the District of Columbia (1989)
- ◇ U.S. District Court for the District of Massachusetts (2010)
- ◇ U.S. District Court for the Northern District of California (2010)

# **EXHIBIT B**

*In re: Volkswagen 'Clean Diesel'*  
*Marketing, Sales Practices, and Products Liability Litigation*  
MDL No. 2672 CRB (JSC)  
Expert Declaration of William B. Rubenstein

**EXHIBIT B**

Partial List of Documents Reviewed by Professor Rubenstein  
(other than case law and scholarship on the relevant issues)

1. Transfer Order to Northern District of California, ECF No. 82
2. Brief of Amicus Curiae of the Competitive Enterprise Institute's Center for Class Action Fairness, ECF No. 576
3. Pretrial Order No. 6: Appointment of Robert S. Mueller III as Settlement Master, ECF No. 973
4. Pretrial Order No. 7: Order Appointing Plaintiffs' Lead Counsel, Plaintiffs' Steering Committee, and Government Coordinating Counsel, ECF No. 1084
5. Pretrial Order No. 8: Initial Case Management, ECF No. 1087
6. Consolidated Consumer Class Action Complaint, ECF No. 1230
7. Pretrial Order No. 9: Discovery Schedule, ECF No. 1252
8. Pretrial Order No. 13: Coordination Order, ECF No. 1256
9. Transcript of Proceedings on February 25, 2016, ECF No. 1270
10. Pretrial Order No. 15: Preservation of Documents and Electronically Stored Information, ECF No. 1379
11. Transcript of Proceedings on March 24, 2016, ECF No. 1384
12. Transcript of Proceedings on April 21, 2016, ECF No. 1439
13. Transcript of Proceedings on May 24, 2016, ECF No. 1535
14. Supplemental Declaration of Shannon R. Wheatman, Ph.D., on Amended Notices and Class Notice Program, ECF No. 1680
15. Amended Order Granting Preliminary Approval of Settlement, ECF No. 1698
16. Settlement Class Counsel's Statement of Additional Information Regarding Prospective Request for Attorneys' Fees and Costs, ECF No. 1730
17. Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealer Class Action Settlement, ECF No. 1784
18. Declaration of Edward M. Stockton, ECF No. 1784-1
19. Expert Report of Andrew Kull, ECF No. 1784-2
20. Proposed Order and Judgment Granting Final Approval of 2.0-Liter Consumer and Reseller Dealer Class Action Settlement and Certifying Settlement Class, ECF No. 1784-3
21. Julian Kangas' Objection to the Proposed Settlement, Objection and Opposition to Class Counsel's Attorney Fee Award, and Notice to Appear by Counsel at the Fairness Hearing to Speak, ECF No. 1826
22. Objections of Christopher D'Angelo to Class Settlement, ECF No. 1862
23. Objections of Marcia Weese to Proposed Class Action Settlement, ECF No. 1864
24. Objection of Marc Chechik to Proposed Settlement, ECF No. 1869
25. Objection of Jessica Grace Li and Alexander D. Birner to Class Action Settlement, ECF No. 1871

26. Class Members' (Andrianos et al.) Objections to Consumer Class Action Settlement Agreement, ECF No. 1876
27. Objections of Scott Siewert to Proposed Settlement and Proof of Membership in Class, ECF No. 1877
28. Objection of Wheels, Inc. to Proposed Settlement, ECF No. 1882
29. Objection of John Labudde and Jing Labudde to Class Action Settlement, ECF No. 1887
30. Objection of Robert A. Collins to Motion for Approval of Class Settlement, ECF No. 1889
31. Objection of Matthew Comlish to the 2.0-Liter TDI Consumer and Reseller Dealer Class Action Settlement, ECF No. 1891
32. Exhibit 1: Declaration of Theodore H. Frank, ECF No. 1891-1
33. Exhibit 3: 2007 Fee Ethics Letter, ECF No. 1891-3
34. Objection of Ronald Clark Fleshman, Jr. to Approval of the Proposed Class Action Settlement, ECF No. 1893
35. Objections of Greg Siewert to Proposed Settlement and Proof of Membership in Class, ECF No. 1895
36. Daniel Ancona Notice of Objection, Objection to Motion for Final Approval of Class Action Settlement, and Notice of Intent to Appear and Argue, ECF No. 1905
37. Class Members' (Brittain et al.) Objections to Proposed Consumer Class Action Settlement Agreement, ECF No. 1913
38. Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealer Class Action Settlement, ECF No. 1976
39. Exhibit 1: Declaration of Robert H. Klonoff Addressing Objections by Class Members to the Proposed Volkswagen "Clean Diesel" Settlement, ECF No. 1976-1
40. Order Granting Final Approval of the 2.0-Liter TDI Consumer and Reseller Dealership Class Action Settlement, ECF No. 2102
41. Plaintiffs' Notice of Motion and Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11; Memorandum of Points and Authorities in Support Thereof, ECF No. 2175
42. Exhibit A: Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2175-1
43. Exhibit B: Declaration of Brian T. Fitzpatrick in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2175-2
44. Proposed Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2175-3
45. Julian Kangas' Objection and Opposition to Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2479
46. Matthew Comlish's Objection to Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2518
47. Order Partially Dismissing the Consolidated Securities Class Action Complaint, ECF No. 2636
48. Class Members' (Barrera et al.) Objections to Proposed Consumer Class Action Settlement Agreement
49. Consumer Class Action Settlement Agreement and Release (Amended), ECF No. 1685
50. Plaintiffs' Reply in Support of Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11, ECF No. 2786

51. Exhibit A: Supplemental Declaration of Brian T. Fitzpatrick in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2786-1
52. Exhibit B: Declaration of Edward M. Stockton in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2786-2
53. Exhibit C: Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2786-3
54. Exhibit D: Declaration of Sharon Nelles in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 2786-4
55. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 316165 (N.D. Cal. Jan. 23, 2017)
56. Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Preliminary Approval of the Bosch Class Action Settlement Agreement and Release and Approval of Class Notice, ECF No. 2838
57. Exhibit 1: Settlement Class Representatives, ECF No. 2838-1
58. Exhibit 2: Declaration of Cameron R. Azari on Proposed Bosch Class Notice Program, ECF No. 2838-2
59. Proposed Order Granting Preliminary Approval of the Bosch Class Action Settlement, Provisionally Certifying Class, Directing Notice to the Class, and Scheduling Fairness Hearing, ECF No. 2838-3
60. Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Preliminary Approval of the 3.0-Liter TDI Class Action Agreement and Approval of Class Notice, ECF No. 2840
61. Exhibit 1: Settlement Class Representatives, ECF No. 2840-1
62. Exhibit 2: Settlement Payment Ranges, ECF No. 2840-2
63. Exhibit 3: Declaration of Shannon B. Wheatman, Ph.D. on Proposed 3.0-Liter Class Notice Program, ECF No. 2840-3
64. Proposed Order Granting Preliminary Approval of 3.0-Liter Class Action Settlement, Provisionally Certifying Class, Directing Notice to the Class, and Scheduling Fairness Hearing, ECF No. 2840-3
65. Consumer and Reseller Dealership 3.0-Liter Class Action Settlement and Release, ECF No. 2841
66. Plaintiff J. Bertolet, Inc.'s Notice of Motion and Motion for Attorneys' Fees; Memorandum of Points and Authorities in Support Thereof, ECF No. 2886
67. Proposed Order Granting Plaintiffs J. Bertolet, Inc.'s Motion for Attorneys' Fees, ECF No. 2886-1
68. Declaration of Brian T. Fitzpatrick, ECF No. 2888
69. Volkswagen's Omnibus Opposition to Non-Class Counsel's Applications for Attorneys' Fees and Reimbursement of Costs, ECF No. 2903
70. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 672727 (N.D. Cal. Feb. 16, 2017)
71. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 672820 (N.D. Cal. Feb. 16, 2017)
72. Supplemental Declaration of Steve W. Berman in Support of Plaintiff J. Bertolet, Inc.'s Motion for Attorneys' Fees, ECF No. 2962

73. Settlement Class Counsel's Statement of Additional Information Regarding Prospective Request for Attorneys' Fees and Costs Relating to the 3.0-Liter Class Action Settlement, ECF No. 2970
74. Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Final Approval of the Bosch Class Action Settlement, ECF No. 3086
75. Plaintiffs' Notice of Motion and Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11 Re: Bosch Class Action Settlement; Memorandum of Points and Authorities in Support Thereof, ECF No. 3087
76. Exhibit A: Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Attorneys' Fees and Costs Re: Bosch Class Action Settlement, ECF No. 3087-1
77. Exhibit B: Declaration of Brian T. Fitzpatrick in Support of Plaintiffs' Motion for Attorneys' Fees and Costs, ECF No. 3087-2
78. Proposed Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs Re: Bosch Class Action Settlement, ECF No. 3087-3
79. Plaintiffs' Notice of Motion, Motion, and Memorandum in Support of Final Approval of the 3.0-Liter TDI Class Action Agreement and Final Certification of the Settlement Class, ECF No. 3088
80. Exhibit A: Declaration of Edward M. Stockton, ECF No. 3088-1
81. Proposed Order Granting Final Approval of the 3.0-Liter TDI Class Action Settlement and Certifying Settlement Class, ECF No. 3088-2
82. Declaration of Settlement Master Robert S. Mueller, III on Settlements of Claims Regarding 3.0-Liter Vehicles' and Robert Bosch GmbH and Robert Bosch LLC, ECF No. 3089
83. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 1352859 (N.D. Cal. Apr. 12, 2017)
84. Class Member Julian Kangas' Objection to the Proposed Bosch Settlement, Objection and Opposition to Class Counsel's Attorney Fee Award, and Notice to Appear by Counsel at the Fairness Hearing to Speak, ECF No. 3159
85. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 1474312 (N.D. Cal. Apr. 24, 2017)
86. Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of the Bosch Class Action Settlement, ECF No. 3188
87. Exhibit A: Declaration of Elizabeth J. Cabraser Regarding Bosch Settlement Class Communications, Objections, and Opt-Outs, ECF No. 3188-1
88. Exhibit B: Declaration of Cameron R. Azari, Esq., on Implementation and Adequacy of Bosch Class Notice Program, ECF No. 3188-2
89. Plaintiffs' Reply in Support of Motion for Attorneys' Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11 Re: Bosch Class Action Settlement, ECF No. 3189
90. Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, ECF No. 3190
91. Exhibit A: Declaration of Elizabeth J. Cabraser Regarding 3.0-Liter Settlement Class Communications, Objections, and Opt-Outs, ECF No. 3190-1
92. Exhibit B: Declaration of Robert H. Klonoff Addressing Objections by Class Members to the Proposed Volkswagen 3.0-Liter "Clean Diesel" Settlement and the Proposed Robert Bosch GmbH and Robert Bosch, LLC Settlement, ECF No. 3190-2

93. Exhibit C: Declaration of Shannon R. Wheatman, Ph.D. on the Implementation and Adequacy of the 3.0-Liter Class Notice Program, ECF No. 3190-3
94. Exhibit D: Declaration of Jason M. Stineheart Re: Notification to Class Members, ECF No. 3190-4
95. Second Partial Consent Decree, ECF No. 3226
96. Amended Second Partial Stipulated Order for Permanent Injunction and Monetary Judgment, ECF No. 3227
97. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 2214655 (N.D. Cal. May 17, 2017)
98. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 2212783 (N.D. Cal. May 17, 2017)
99. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 2212780 (N.D. Cal. May 17, 2017)
100. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 2178787 (N.D. Cal. May 17, 2017)

# **EXHIBIT C**

*In re: Volkswagen 'Clean Diesel'*  
*Marketing, Sales Practices, and Products Liability Litigation*  
MDL No. 2672 CRB (JSC)  
Expert Declaration of William B. Rubenstein

**EXHIBIT C**

List of Northern District of California Cases  
Affirming Class Action Fee Awards  
2016-2017

1. *Allagas v. BP Solar Int'l, Inc.*, No. 314CV00560SIEDL, 2016 WL 9114162 (N.D. Cal. Dec. 22, 2016)
2. *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2016 WL 1271046 (N.D. Cal. Mar. 31, 2016)
3. *Bergman v. Thelen LLP*, No. 3:08-CV-05322-LB, 2016 WL 7178529 (N.D. Cal. Dec. 9, 2016)
4. *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14-CV-01788-JST, 2016 WL 344532 (N.D. Cal. Jan. 28, 2016)
5. *Bohannon v. Facebook, Inc.*, No. 12-CV-01894-BLF, 2016 WL 3092090 (N.D. Cal. June 2, 2016)
6. *Brawner v. Bank of Am. Nat'l Ass'n*, No. 3:14-CV-02702-LB, 2016 WL 161295 (N.D. Cal. Jan. 14, 2016)
7. *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880 (N.D. Cal. Feb. 17, 2016)
8. *Civil Rights Educ. & Enft Ctr. v. Ashford Hosp. Trust, Inc.*, No. 15-CV-00216-DMR, 2016 WL 1177950 (N.D. Cal. Mar. 22, 2016)
9. *Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016 WL 537946 (N.D. Cal. Feb. 11, 2016)
10. *Donald v. Xanitos, Inc.*, No. 3:14-CV-05416-WHO, 2017 WL 1508675 (N.D. Cal. Apr. 27, 2017)
11. *Dudum v. Carter's Retail, Inc.*, No. 14-CV-00988-HSG, 2016 WL 7033750 (N.D. Cal. Dec. 2, 2016)
12. *EK Vathana v. Everbank*, No. 09-CV-02338-RS, 2016 WL 3951334 (N.D. Cal. July 20, 2016)

13. *Garcia v. City of King City*, No. 14-CV-01126-BLF, 2017 WL 363257 (N.D. Cal. Jan. 25, 2017)
14. *Harper v. Law Office of Harris & Zide LLP*, No. 15-CV-01114-HSG, 2017 WL 995215 (N.D. Cal. Mar. 15, 2017)
15. *Hayes v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2016 WL 6902856 (N.D. Cal. Nov. 21, 2016)
16. *Hendricks v. Starkist Co*, No. 13-CV-00729-HSG, 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016)
17. *Huynh v. Hous. Auth. of Cty. of Santa Clara*, No. 14-CV-02367-LHK, 2017 WL 1050539 (N.D. Cal. Mar. 17, 2017)
18. *In re Animation Workers Antitrust Litig.*, No. 14-CV-4062-LHK, 2016 WL 6663005 (N.D. Cal. Nov. 11, 2016)
19. *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 7364803 (N.D. Cal. Dec. 19, 2016)
20. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017)
21. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2178787 (N.D. Cal. May 17, 2017)
22. *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612 (N.D. Cal. Aug. 25, 2016)
23. *Jacobson v. Persolve, LLC*, No. 14-CV-00735-LHK, 2016 WL 7230873 (N.D. Cal. Dec. 14, 2016)
24. *MacDonald v. Ford Motor Co.*, No. 13-CV-02988-JST, 2016 WL 3055643 (N.D. Cal. May 31, 2016)
25. *Mendoza v. Hyundai Motor Co., Ltd*, No. 15-CV-01685-BLF, 2017 WL 342059 (N.D. Cal. Jan. 23, 2017)
26. *Messineo v. Ocwen Loan Servicing, LLC*, No. 15-CV-02076-BLF, 2017 WL 733219 (N.D. Cal. Feb. 24, 2017)
27. *Nelson v. Avon Prod., Inc.*, No. 13-CV-02276-BLF, 2017 WL 733145 (N.D. Cal. Feb. 24, 2017)

28. *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-CV-04062-LHK, 2017 WL 2423161 (N.D. Cal. June 5, 2017)
29. *Perkins v. LinkedIn Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255 (N.D. Cal. Feb. 16, 2016)
30. *Rosado v. Ebay Inc.*, No. 5:12-CV-04005-EJD, 2016 WL 3401987 (N.D. Cal. June 21, 2016)
31. *Ruch v. AM Retail Grp., Inc.*, No. 14-CV-05352-MEJ, 2016 WL 5462451 (N.D. Cal. Sept. 28, 2016)
32. *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal. 2016)
33. *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 2909429 (N.D. Cal. May 19, 2016)
34. *Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ, 2016 WL 1622881 (N.D. Cal. Apr. 25, 2016)
35. *Taylor v. Meadowbrook Meat Co., Inc.*, No. 3:15-CV-00132-LB, 2016 WL 4916955 (N.D. Cal. Sept. 15, 2016)
36. *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2017 WL 661352 (N.D. Cal. Feb. 17, 2017)
37. *Villalpando v. Exel Direct Inc.*, No. 3:12-CV-04137-JCS, 2016 WL 7740854 (N.D. Cal. Dec. 12, 2016)
38. *Villanueva v. Morpho Detection, Inc.*, No. 13-CV-05390-HSG, 2016 WL 1070523 (N.D. Cal. Mar. 18, 2016)
39. *Winans v. Emeritus Corp.*, No. 13-CV-03962-HSG, 2016 WL 107574 (N.D. Cal. Jan. 11, 2016)
40. *Zepeda v. PayPal, Inc.*, No. C 10-1668 SBA, 2017 WL 1113293 (N.D. Cal. Mar. 24, 2017)

# **EXHIBIT D**

*In re: Volkswagen 'Clean Diesel'*  
*Marketing, Sales Practices, and Products Liability Litigation*  
MDL No. 2672 CRB (JSC)  
Expert Declaration of William B. Rubenstein

**EXHIBIT D**

Class Action Settlements with Funds of at Least \$1 Billion

1. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006)
2. *Deloach v. Philip Morris Companies*, No. 1:00CV01235, 2003 WL 23094907 (M.D.N.C. Dec. 19, 2003)
3. *In re AOL Time Warner, Inc. Sec.*, No. 02 CIV. 5575 (SWK), 2006 WL 3057232 (S.D.N.Y. Oct. 25, 2006)
4. *In re Bank of Am. Corp. Sec., Derivative, & Employee Ret. Income Sec. Act (ERISA) Litig.*, No. 09 MDL 2058 (PKC), 2013 WL 12091355 (S.D.N.Y. Apr. 8, 2013)
5. *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82 (D.D.C. 2013)
6. *In re Cendant Corp. Litig.*, 243 F. Supp. 2d 166 (D.N.J. 2003)
7. *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)
8. *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prod. Liab. Litig.*, 553 F. Supp. 2d 442 (E.D. Pa. 2008)
9. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008)
10. *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465 (S.D.N.Y. 1998)
11. *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, No. 2179, 2016 WL 6215974 (E.D. La. Oct. 25, 2016)
12. *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 106 F. Supp. 2d 721 (D.N.J. 2000)
13. *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383 (D. Md. 2006)
14. *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003)
15. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013)

16. *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, 978 F. Supp. 2d 1053 (C.D. Cal. 2013), ECF No. 3802
17. *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007)
18. *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003)
19. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834 (N.D. Cal. Mar. 17, 2017)
20. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319 (S.D.N.Y. 2005)
21. *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2016 WL 374132 (N.D. Ill. 2016), ECF No. 2265
22. *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942 (E.D. Tex. 2000)

# **EXHIBIT E**

*In re: Volkswagen 'Clean Diesel'*  
*Marketing, Sales Practices, and Products Liability Litigation*  
MDL No. 2672 CRB (JSC)  
Expert Declaration of William B. Rubenstein

**EXHIBIT E**

Class Action Cases Approving Fee Petitions  
Containing Billing Rates for Contract or Staff Attorneys

1. *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014)
2. *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880 (N.D. Cal. Feb. 17, 2016)
3. *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494 (S.D.N.Y. May 9, 2014)
4. *Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728 (D. Mass. Jan. 8, 2015)
5. *In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, No. CIV.A. 08-11064-NMG, 2012 WL 6184269 (D. Mass. Dec. 10, 2012)
6. *In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015)
7. *In re Merrill Lynch & Co., Inc., Sec., Derivative & Erisa Litig.*, No. 07CV9633 JSR DFE, 2009 WL 2407551 (S.D.N.Y. Aug. 4, 2009)
8. *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013)
9. *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163-MAP, 2014 WL 6968424 (D. Mass. Dec. 9, 2014)
10. *Johnson v. Gen. Mills, Inc.*, No. SACV 10-00061-CJC, 2013 WL 3213832 (C.D. Cal. June 17, 2013)
11. *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, No. 2:10-CV-00302 MRP, 2013 WL 6577020 (C.D. Cal. Dec. 5, 2013)
12. *Moore v. Verizon Commc'ns Inc.*, No. C 09-1823 SBA, 2014 WL 588035 (N.D. Cal. Feb. 14, 2014)
13. *Rose v. Bank of Am. Corp.*, No. 5:11-CV-02390-EJD, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014)

# **EXHIBIT F**

*In re: Volkswagen 'Clean Diesel'*  
*Marketing, Sales Practices, and Products Liability Litigation*  
MDL No. 2672 CRB (JSC)  
Expert Declaration of William B. Rubenstein

**EXHIBIT F**

List of Exemplary Cases With Multipliers Over 3.5

1. In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000) (19.6 multiplier)
2. Stop & Shop Supermarket Co. v. SmithKline Beecham Corp., NO. CIV.A. 03-457, 2005 WL 1213926, at \*17-18 (E.D. Pa. May 19, 2005) (15.6 multiplier)
3. Kuhnlein v. Department of Revenue, 662 So.2d 309, 315 (Fla. 1995) (15 multiplier reduced to 5)
4. In re Doral Fin. Corp. Sec. Litig., No. 05-md-1706 (S. D. N.Y. July 17, 2007) (10.26 multiplier)
5. Weiss v. Mercedes-Benz, 899 F. Supp. 1297 (D. N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995) (9.3 multiplier)
6. Doty v. Costco Wholesale Corp., No. 05-3241 (C. D. Cal. May 14, 2007) (9 multiplier)
7. Conley v. Sears, Roebuck & Co., 222 B.R. 181 (D. Mass. 1998) (8.9 multiplier)
8. Cosgrove v. Sullivan, 759 F. Supp. 1667, 167 n.1 (S. D. N.Y. 1991) (8.74 multiplier)
9. New England Carpenters Health Benefits Fund v. First Databank, Inc., Civil Action No. 05-11148-PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (8.3 multiplier)
10. Newman v. Caribiner Int'l, Inc., No. 99 Civ. 2271 (S.D. N.Y. Oct. 19, 2001) (7.7 multiplier)
11. Hainey v. Parrott, No. 02-733 (S. D. Ohio Nov. 6, 2007) (7.47 effective multiplier)
12. In re Rite Aid Corp. Sec. Litigation, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (6.96 multiplier)
13. Steiner v. Amer. Broadcasting Co., Inc., 248 Fed. Appx. 780, 783 (9th Cir. 2007) (6.85 multiplier)

14. In re UnitedHealth Group, Inc. PSLRA Litig., No. 06-1691 (D. Minn. Aug. 10, 2009) (6.49 multiplier)
15. The Music Force, LLC v. Viacom, Inc., No. 04-8239 (C.D. Cal. Aug. 8, 2007) (6.43 multiplier)
16. In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A., 778 F.2d 890 (1st Cir. 1985) (6 multiplier)
17. In re Cardinal Health Inc. Securities Litigations, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (6 multiplier)
18. In re Krispy Kreme Doughnuts, Inc. Sec. Litig., No. 04-416 (M.D. N.C. Feb. 15, 2007) (6 multiplier)
19. In re RJR Nabisco, Inc. Securities Litigation, No. 88 Civ. 7905(MBM), 1992 WL 210138, at \*5-6 (S.D. N.Y. Aug. 14, 1992) (6 multiplier)
20. Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., No. 03-2141 (D. S.C. Aug. 15, 2006) (6 multiplier)
21. In re Cardinal Health, Inc. Sec. Litig., No. 04-575, 2007 U.S. Dist. LEXIS 95127 (S. D. Ohio Dec. 31, 2007) (5.85 multiplier)
22. Dutton v. D&K Healthcare Res., Inc., No. 04-147 (E. D. Mo. June 5, 2007) (5.6 multiplier)
23. In re Charter Communications, Inc., Securities Litigation, No. MDL 1506, 2005 WL 4045741, at \* 22 (E.D. Mo. June 30, 2005) (5.6 multiplier)
24. Roberts v. Texaco, Inc., 979 F. Supp. 185, 198 (S.D. N.Y. 1997) (5.5 multiplier)
25. Warner v. Experian Info. Solutions, Inc., No. BC362599 (Cal. Super. Ct. Los Angeles Co. Feb. 26, 2009) (5.48 multiplier)
26. Davis v. J.P. Morgan Chase & Co., 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (5.3 multiplier)
27. Di Giacomo v. Plains All American Pipeline, No. Civ.A.H-99-4137, 2001 WL 34633373, \* at 11-12 (S.D. Tex. Dec. 19, 2001) (5.3 multiplier)
28. Craft v. County of San Bernardino, 624 F. Supp. 2d 1113, 1123-25 (C.D. Cal. 2008) (5.2 multiplier)

29. In re Enron Corp. Securities, Derivative & ERISA Litigation, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (5.2 multiplier)
30. In re Beverly Hills Fire Litig., 639 F. Supp. 915, 924 (E. D. Ky. 1986) (5 multiplier to attorney who performed the bulk of work on the case)
31. In re Fernald Litigation, No. C-1-85-149, 1989 WL 267038, at \*4-5 (S.D. Ohio Sept. 29, 1989) (5 multiplier)
32. In re Cendant Corp. Securities Litigation, 404 F.3d 173, 183 (3d Cir. 2005) (multiplier in “mid-single digits”)
33. In re United Rentals, Inc. Sec. Litig., No. 04-1615 (D. Conn. May 26, 2009) (4.79 multiplier)
34. Castillo v. General Motors Corp., No. 07-2142 (E. D. Cal. April 19, 2009) (4.77 multiplier)
35. Meijer, Inc. v. 3M, No. 04-5871, 2006 WL 2382718 (E. D. Pa. Aug. 14, 2006) (4.77 multiplier)
36. In re Xcel Energy, Inc., Securities, Derivative & “ERISA” Litigation, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (4.7 multiplier)
37. Maley v. Del Global Technologies Corp., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier)
38. Teeter v. NCR Corp., No. 08-297 (C.D. Cal. Aug. 6, 2009) (4.61 multiplier)
39. Holleran v. Rita Medical Sys., Inc., No. RG06302394 (Cal. Super. Ct. Alameda Co. Aug. 1, 2007) (4.57 multiplier)
40. Rabin v. Concord Assets Group, Inc., No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) (4.4 multiplier)
41. Agofonova v. Nobu Corp., No. 07-6926 (S. D. N.Y. Feb. 6, 2009) (4.34 multiplier)
42. Buccellato v. AT & T Operations, Inc., No. C10-00463-LHK, 2011 WL 3348055, at \*2 (N.D. Cal. Jun. 30, 2011) (4.3 multiplier)
43. In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier)

44. Shannon v. Hidalgo County Board of Comm’r, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier)
45. Simmons v. Andarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct. Caddo Co. Dec. 23, 2008) (4.17 multiplier)
46. In re OSI Pharm., Inc. Sec. Litig., No. 04-5505 (E.D. N.Y. Aug. 22, 2008) (4.11 multiplier)
47. Blackmoss Inv., Inc. v. Gravity Co., No. 05-4804 (S. D. N.Y. Nov. 20, 2007) (4.0 multiplier)
48. In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2003) (4.0 multiplier)
49. In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 489 (S.D. N.Y. 1998) (3.97 multiplier)
50. Karpus v. Borelli (In re Interpublic Secs. Litig.), No. 02 Civ. 6527, 2004 WL 2397190, at \*12 (S.D. N.Y. Oct. 26, 2004) (3.96 multiplier)
51. Vizcaino v. Microsoft Corp., 290 F.3d 1045, 1050-51 (9th Cir. 2002) (3.65 multiplier)
52. Donkerbrook v. Title Guar. Escrow Servs., Inc., No. 10-00616 LEK-RLP, 2011 WL 3649539, at \*10 (D. Haw. Aug. 18, 2011) (3.6 multiplier)
53. Turner v. Murphy Oil USA, Inc., 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (3.5 multiplier)
54. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005) (3.5 multiplier)

# **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL"  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

This Document Relates to:  
  
ALL CONSUMER AND RESELLER  
ACTIONS

No. 3:15-md-02672-CRB

**DECLARATION OF EDWARD M.  
STOCKTON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES AND COSTS  
UNDER FED. R. CIV. P. 23(H) AND  
PRETRIAL ORDER NOS. 7 AND 11  
RELATING TO THE 3.0-LITER  
CONSUMER AND RESELLER DEALER  
SETTLEMENT**

The Honorable Charles R. Breyer

**DECLARATION OF EDWARD M. STOCKTON**

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2           1.       My name is Edward M. Stockton. I am the Vice President and Director of  
3 Economics Services of The Fontana Group, Inc. (“Fontana”), a consulting firm located at 3509  
4 North Campbell Avenue, Tucson, Arizona 85719. I also serve on the Board of Directors of  
5 Fontana and its parent company, Mathtech, Inc. Fontana provides economic consulting services  
6 and expert testimony regarding the retail motor vehicle industry and other industries throughout  
7 the United States and Canada.

8           2.       My C.V. as well as my relevant experiences are provided in my Declaration in  
9 Support of Final Approval of the 3.0-Liter TDI Consumer and Reseller Dealer Class Action  
10 Settlement, Dkt. No. 1784-1 (“Settlement Approval Declaration”).

11           3.       I was initially retained by attorneys for the Plaintiff Steering Committee (“PSC”)  
12 in this case to evaluate the economic effects on consumers of the allegedly deceptive marketing  
13 and sale of certain purported clean diesel engines, or, “TDI” vehicles by Volkswagen AG, Audi  
14 AG, and Volkswagen Group of America, Inc., Porsche AG, and Porsche Cars North America,  
15 Inc. (collectively “Volkswagen” or “VW”). Additionally, I assisted the PSC in its efforts to  
16 assess, develop, and ultimately agree to settlement terms for certain claims filed on behalf of  
17 consumers relating to the 2.0 and 3.0 Liter TDI vehicles, which are enumerated in my Settlement  
18 Approval Declaration. Based on this work and my ongoing research, I am familiar, on a VIN-  
19 specific level, with the values of all vehicles included in the 2.0 and 3.0 Liter settlements.

20           4.       In this matter, I was retained by attorneys for the PSC to provide an economic  
21 analysis of the “net value” theory of the settlement funding pool advanced by an objector in the  
22 2.0 Liter context. That objector posits that, for fee setting purposes, the value of the settlement’s  
23 funding pool should be reduced by the value of the vehicles that Class Members must surrender  
24 to obtain the buyback payments. This Declaration should not be interpreted as my endorsement  
25 of the use of “net value” to evaluate the aggregate economic benefit of the settlement.

26           5.       To begin this analysis, I first identified the portions of the Settlement monies  
27 dedicated to buyback compensation, which are the only funds for which Class Members must  
28 “give up” their cars, and thus the only funds which implicate the “net value” analysis.

1           6.       These starting numbers depend on whether Emissions Compliant Repairs  
2 (“ECRs”) are approved for Generation 2 vehicles. Volkswagen committed to pay Class Members  
3 up to \$1.22 billion if ECRs are approved for all Generation 2 vehicles, and up to \$4.04 billion if  
4 no ECRs are approved for Generation 2 vehicles, and other conditions are satisfied.

5                   **Net Value if ECRs are Timely Approved for All Generation 2 Vehicles**

6           7.       Of the \$1.22 billion committed to the Settlement if ECRs are approved,  
7 approximately \$433,680,000 is reserved to compensate Class Members with Generation 2  
8 vehicles. Because no buyback is available to those Class Members in this scenario—and,  
9 therefore, because Class Members need not give up their vehicles in order to obtain their  
10 Settlement benefits—no “net value” analysis applies to those funds.

11           8.       The remaining \$789,663,305 has been reserved for Class Members with  
12 Generation 1 vehicles. But \$10,112,778 is apportioned for Lessee Restitution, Service/Warranty,  
13 and the loan pool, which also do not implicate a “net value” analysis.

14           9.       The remaining \$779,550,527 is reserved for Gen 1 buyback compensation. I have  
15 calculated the “net value” of those funds using the steps described below.

16           Step One: I calculated the aggregate NADA Clean Trade and Average Trade values of the  
17 Class Vehicles in September 2015, the last public valuation prior to either the announcement of  
18 the 2.0 liter or 3.0 liter diesel emissions Notice of Violations (“NOV”). These values are actual  
19 mileage and option-adjusted September 2015 values at the VIN level.

20           Step Two: In order to take into account the possibility that VW’s alleged misconduct and  
21 the September 2015 NOV had some effect upon class vehicle values, I use November 2015  
22 NADA Clean Trade and Average Trade values as the starting points for “net value” calculations.  
23 The November 2015 values are based upon the median depreciation rates that occurred between  
24 September 2015 and November 2015, with those depreciation rates tied to the vehicle-specific  
25 mileage and option-adjusted values customized for Class Members. In order to estimate vehicle  
26 values for dates *after* November 2015, I apply a 1.4% monthly depreciation rate from the  
27 November 2015 base values. The 1.4% depreciation rate is well within historical industry ranges  
28 and is the same as the base forecasting rate used for normal depreciation during analysis of the

1 2.0 and 3.0 Liter settlement process.

2 Following this approach, I calculated the projected Clean Trade and Average Trade  
3 aggregate values for the Class Vehicles in July 2017 and September 2019. These dates reflect the  
4 earliest executed buyback date for 3.0 liter vehicles and the end of the buyback program for  
5 Generation 1 vehicles. Those figures are reflected in attachments 1 and 2 to this declaration. The  
6 figures shown in attachment 1 are based on the option and mileage adjusted vehicles (at the VIN)  
7 level used in the settlement. The ratios of Average Trade to Clean Trade values shown in  
8 attachment 2 are calculated at the VIC level. This upward adjustment in vehicle value to the VIC  
9 values results in a downward adjustment to “net value” estimates.

10 Step Three: To determine the difference between the buyback payments and the value of  
11 the surrendered Generation 1 vehicles, I subtracted the values calculated in Step Two from the  
12 \$779,550,527 portion of the committed money reserved for buyback payments for Generation 1  
13 vehicles.

14 Step Four: I then added to figures calculated in Step Three the portions of the funding  
15 pool that do not require class members to surrender anything of value. That includes \$10,010,000  
16 in additional service and warranty benefits and a pool for underwater loans, in addition to  
17 compensation of lessees of \$102,778 [total = \$10,112,778] for Generation 1 and corresponding  
18 amounts of \$40,050,000 and \$78,968,938 for Generation 2 vehicles [total = \$119,018,938]. *See*  
19 *Settlement Agreement*.

20 10. After combining the steps above, I am able to conclude that the approximate “net  
21 value” of the Generation 1 buyback portion of the settlement, assuming 100% buyback and using  
22 Average Trade vehicle valuation, is \$526,316,574 if all eligible Class Members sell back their  
23 vehicles when the buyback ends in September 2019, and \$409,711,822 if all eligible Class  
24 Members sell back their vehicles when the buyback begins in July 2017.

25 11. Using Clean Trade vehicle valuation, the “net value” of the Generation 1 buyback  
26 portion of the settlement is \$383,298,083 in July 2017 and \$508,009,047 in September 2019.

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12. To obtain the total “net value” of the settlement, I then added the \$433,680,000 in payments reserved for Class Members with Generation 2 vehicles, if there is no buyback option for them. These values are reflected in the table below.

<b>Generation 1 Settlement Buyback Funds</b>	\$779,550,525	
<b>Lessee Restitution + Service/Warranty + Loan Forgiveness Pool</b>	\$10,112,778	
	<b>Average Trade</b>	<b>Clean Trade</b>
<b>September 2015</b>	\$538,335,742	\$575,760,152
<b>November 2015</b>	\$503,720,754	\$538,738,774
<b>July 2017</b>	\$379,951,483	\$406,365,222
<b>September 2019</b>	\$263,346,731	\$281,654,258
<b>July 2017 “Net Value” of Gen 1 Buyback</b>	\$409,711,822	\$383,298,083
<b>July 2017 “Net Value” of Total Settlement</b>	\$843,391,822	\$816,978,083
<b>September 2019 “Net Value” of Gen 1 Buyback</b>	\$526,316,574	\$508,009,047
<b>September 2017 “Net Value” of Total Settlement</b>	\$959,996,574	\$941,689,047

**Net Value if No ECRs are Timely Approved for Generation 2 Vehicles**

13. If no ECRs are timely approved for Generation 2 vehicles, the settlement reserves \$3,249,583,428 for Class Members with Generation 2 vehicles. In this case, I would apply the same 4-step “net value” analysis described above for Generation 1 vehicles, except that the values would be determined at the beginning and end of the potential Generation 2 vehicles, which—with some simplification involved—is January 2018 and April 2020, respectively.

14. I have personal knowledge of the subject matter referenced in this document. If called upon I will testify to the contents of this Declaration.

Executed on June 29, 2017

  
Edward M. Stockton

# **ATTACHMENT 1**

**NADA Clean Trade-In and Average Trade-In Values After Options  
Depreciated to 7/2017 and 9/2019  
3.0L TDI Generation 1 Retail Vehicles**

	<u>9/2015 Summary</u>	<u>11/2015 Summary*</u>	<u>7/2017 Based on 1.4% Monthly Depreciation from 11/2015</u>	<u>9/2019 Based on 1.4% Monthly Depreciation from 7/2017</u>
<b>Clean Trade-In</b>	\$575,760,152	\$538,738,774	\$406,365,222	\$281,654,258
<b>Average to Clean Trade-In Ratio</b>	0.935			
<b>Average Trade-In</b>	\$538,335,742	\$503,720,754	\$379,951,483	\$263,346,731

\* Based on -6.43% Depreciation from 9/2015 to 11/2015 Clean Trade-In for VICs with known values as of 9/2015.

SOURCE: The Fontana Group, Inc.  
DATA: NADA Used Data Files (Magnetic Media), 9/2015 and 11/2015.  
VW 3L Allocation Document, 1/29/2017.  
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# **ATTACHMENT 2**

**NADA Clean Trade-In Depreciation from 9/2015 to 11/2015**  
**3.0L TDI Generation 1 VICs with Known Values as of 9/2015**

<u>VIC</u>	<u>Model</u>	<u>9/2015</u>	<u>11/2015</u>	<b>Average Monthly Depreciation from 9/2015 to 11/2015</b>	<b>Depreciation from 9/2015 to 11/2015</b>
652009231Y	Q7 TDI	\$21,850	\$20,375	-3.43%	-6.75%
652009232J	Q7 TDI	\$24,775	\$22,875	-3.91%	-7.67%
652009234J	Q7 TDI	\$22,925	\$21,450	-3.27%	-6.43%
652009234K	Q7 TDI	\$23,950	\$22,303	-3.50%	-6.88%
652009234L	Q7 TDI	\$25,775	\$23,750	-4.01%	-7.86%
652010231Y	Q7 TDI	\$25,338	\$23,615	-3.46%	-6.80%
652010232A	Q7 TDI	\$29,038	\$26,765	-3.99%	-7.83%
652010234J	Q7 TDI	\$26,988	\$24,940	-3.87%	-7.59%
652010234K	Q7 TDI	\$28,113	\$26,065	-3.71%	-7.28%
652010234L	Q7 TDI	\$30,138	\$27,890	-3.80%	-7.46%
652011231Y	Q7 TDI	\$29,663	\$29,363	-0.51%	-1.01%
652011234J	Q7 TDI	\$30,138	\$29,838	-0.50%	-1.00%
652011234K	Q7 TDI	\$31,813	\$31,388	-0.67%	-1.34%
652011234L	Q7 TDI	\$33,838	\$33,263	-0.85%	-1.70%
652012231Y	Q7 TDI	\$34,788	\$32,813	-2.88%	-5.68%
652012234J	Q7 TDI	\$35,263	\$33,288	-2.84%	-5.60%
652012234K	Q7 TDI	\$37,088	\$34,863	-3.05%	-6.00%
652012234L	Q7 TDI	\$39,413	\$36,888	-3.26%	-6.41%
9720090H6W	Touareg TDI	\$17,705	\$16,715	-2.84%	-5.59%
9720100H6W	Touareg TDI	\$18,850	\$17,915	-2.51%	-4.96%
9720110HBX	Touareg TDI	\$31,025	\$29,478	-2.53%	-4.99%
9720110HCP	Touareg TDI	\$27,750	\$25,980	-3.24%	-6.38%
9720110HCR	Touareg TDI	\$25,925	\$24,178	-3.43%	-6.74%
9720120HBX	Touareg TDI	\$35,405	\$33,180	-3.19%	-6.28%
9720120HCP	Touareg TDI	\$31,530	\$29,180	-3.80%	-7.45%
9720120HCQ	Touareg TDI	\$29,705	\$27,333	-4.08%	-7.99%
9720120HCR	Touareg TDI	\$29,005	\$26,630	-4.18%	-8.19%
			<b>Median:</b>	<b>-3.27%</b>	<b>-6.43%</b>

## Ratio of NADA Average Trade-In to Clean Trade-In

### 3.0L TDI Generation 1 VICs with Known Trade-In Values as of 9/2015

<u>VIC</u>	<u>Model</u>	<u>Average Trade-In</u>	<u>Clean Trade-In</u>
652009231Y	Q7 TDI	\$20,100	\$21,850
652009232J	Q7 TDI	\$22,950	\$24,775
652009234J	Q7 TDI	\$21,150	\$22,925
652009234K	Q7 TDI	\$22,150	\$23,950
652009234L	Q7 TDI	\$23,950	\$25,775
652010231Y	Q7 TDI	\$23,513	\$25,338
652010232A	Q7 TDI	\$27,138	\$29,038
652010234J	Q7 TDI	\$25,138	\$26,988
652010234K	Q7 TDI	\$26,238	\$28,113
652010234L	Q7 TDI	\$28,238	\$30,138
652011231Y	Q7 TDI	\$27,763	\$29,663
652011234J	Q7 TDI	\$28,238	\$30,138
652011234K	Q7 TDI	\$29,888	\$31,813
652011234L	Q7 TDI	\$31,888	\$33,838
652012231Y	Q7 TDI	\$32,813	\$34,788
652012234J	Q7 TDI	\$33,288	\$35,263
652012234K	Q7 TDI	\$35,088	\$37,088
652012234L	Q7 TDI	\$37,388	\$39,413
9720090H6W	Touareg TDI	\$16,055	\$17,705
9720100H6W	Touareg TDI	\$17,175	\$18,850
9720110HBX	Touareg TDI	\$29,100	\$31,025
9720110HCP	Touareg TDI	\$25,875	\$27,750
9720110HCR	Touareg TDI	\$24,100	\$25,925
9720120HBX	Touareg TDI	\$33,430	\$35,405
9720120HCP	Touareg TDI	\$29,605	\$31,530
9720120HCQ	Touareg TDI	\$27,805	\$29,705
9720120HCR	Touareg TDI	<u>\$27,105</u>	<u>\$29,005</u>
Sum		\$727,169	\$777,794

Average to Clean Trade-In Ratio:      93.5%

SOURCE: The Fontana Group, Inc.  
 DATA: NADA Used Data Files (Magnetic Media), 9/2015.  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

No. 3:15-md-02672-CRB

This Document Relates to:

ALL CONSUMER AND RESELLER  
ACTIONS

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS’ MOTION FOR  
ATTORNEYS’ FEES AND COSTS  
UNDER FED. R. CIV. P. 23(H) AND  
PRETRIAL ORDER NOS. 7 AND 11  
RELATING TO THE 3.0-LITER  
CONSUMER AND RESELLER DEALER  
SETTLEMENT**

The Honorable Charles R. Breyer

Before the Court is Plaintiffs’ Motion for Attorneys’ Fees and Costs Under Fed. R. Civ. P. 23(h) and Pretrial Order Nos. 7 and 11 Relating to the 3.0-liter Consumer and Reseller Dealer Settlement (the “Motion”). The Motion is **GRANTED** for the reasons stated therein, and the Court awards \$121 million in fees and \$4 million in costs in connection with the 3.0-liter TDI Settlement, to be paid by Volkswagen, and to be allocated by Plaintiffs’ Lead Counsel among the PSC firms and additional counsel performing work under Pretrial Order Nos. 7 and 11.

**IT IS SO ORDERED.**

Dated:

\_\_\_\_\_  
CHARLES R. BREYER  
United States District Judge