**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

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| **SOKOL GJONBALAJ, JOSEPH CAMPBELL, JESSICA COLE, KAREN WERNER, AUSTIN BARDEN, MARY GOVAN, ANTONIO CABEZAS, RICK HORNICK, LISA and STEVEN DELPRETE, and KRZYSZTOF ZIARNO,** individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>**VOLKSWAGEN GROUP OF AMERICA, INC.,** a New Jersey corporation, **and VOLKSWAGEN AG,** a foreign corporation,<br><br>Defendants. | **CASE NO. 2:19-cv-07165-BMC** |

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno (collectively, "Plaintiffs"), by counsel and on behalf of themselves and the putative Class Members, submit this Unopposed Motion for Preliminary Approval of Settlement Agreement.

Plaintiffs and Defendants Volkswagen Group of America, Inc. and Volkswagen AG ("Defendants"), by counsel, have reached a proposed settlement (the "Settlement") in this class action. Plaintiffs request the Court enter an Order:

1. Preliminarily approving the Settlement;

2. Preliminarily certifying the Settlement Class;

3. Appointing proposed Class Counsel as Class Counsel and Plaintiffs as Class Representatives;

4. Approving the form and content of the Notices attached as Exhibit 2 to the Settlement Agreement, which is attached as Exhibit A to Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Settlement Agreement;

5. Finding that the proposed procedures for dissemination of the Notices constitute the best notice practicable under the circumstances, and comply with due process and Fed. Rule Civ. P. 23;

6. Setting a date and time for the Final Approval Hearing, at which the Court will consider final approval of the Settlement, Class Certification, and Class Counsel's application for attorneys' fees and expenses and Class Representatives' application for service awards.

In support of this Motion, Plaintiffs submit herewith: (1) Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Settlement Agreement ("Memorandum"); (2) the Declaration of Mitchell Breit in Support of Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; (3) the Settlement Agreement, which is being submitted as Exhibit A to the Declaration of Mitchell Breit; and (4) a [Proposed] Preliminary Approval Order, which is being submitted as Exhibit 3 to the Settlement Agreement, which is attached as Exhibit A to the Declaration of Mitchell Breit.

For the reasons set forth more particularly in the accompanying Memorandum and supporting exhibits, Plaintiffs request that the Court grant this Motion.

Dated: April 18,2023

/s/Mitchell M. Breit

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2023 I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

*/s/Mitchell M. Breit*
Mitchell M. Breit
**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC**
*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

**SOKOL GJONBALAJ, JOSEPH CAMPBELL, JESSICA COLE, KAREN WERNER, AUSTIN BARDEN, MARY GOVAN, ANTONIO CABEZAS, RICK HORNICK, LISA and STEVEN DELPRETE, and KRZYSZTOF ZIARNO,** individually and on behalf of all others similarly situated,

Plaintiffs,

v.

**VOLKSWAGEN GROUP OF AMERICA, INC.,** a New Jersey corporation, **and VOLKSWAGEN AG,** a foreign corporation,

Defendants.

**CASE NO. 2:19-cv-07165-BMC**

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno (collectively "Plaintiffs" or "Class Representatives"), on behalf of themselves and all other members of the proposed Settlement Class, respectfully submit this memorandum in support of their unopposed motion for preliminary approval of the proposed class settlement ("Settlement").

## 7. INTRODUCTION

In this putative class action, Plaintiffs allege that the sunroofs in the following Settlement Class Vehicles are potentially prone to leakage and water ingress into the vehicles' interiors: (a) any model year 2018, 2019, 2020 and 2021 Volkswagen Atlas vehicle, (b) any model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicle, (c) any model year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicle, (d) any model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicle, (e) any model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicle, (f) any model year 2018, 2019, 2020 and 2021 Volkswagen Tiguan vehicle, (g) any model year 2019, 2020 and 2021 Audi Q3 vehicle, (h) any model year 2019, 2020 and 2021 Audi Q8 vehicle, and (i) any model year 2019, 2020 and 2021 Audi e-tron vehicle, that were imported and distributed by Defendant Volkswagen Group of America, Inc. ("VWGoA") for sale or lease in the United States and Puerto Rico (hereinafter, the "Settlement Class Vehicles"). There are approximately 707,188 Settlement Class Vehicles.

Plaintiffs, individually and on behalf of the putative class of all persons and entities who purchased or leased a Settlement Class Vehicle in the United States, and VWGoA, have entered into a Settlement Agreement and Release (the "Settlement Agreement" or "Settlement") to resolve Plaintiffs' claims on a class-wide basis that provides very significant benefits including a warranty extension, reimbursement of certain out-of-pocket expenses paid for a covered repair, and other

benefits. A copy of the executed Settlement is attached as Exhibit A to the accompanying Declaration of Mitchell Breit in support of Plaintiffs' unopposed preliminary approval motion ("Breit Decl.").

The Settlement is the result of: (1) significant pre-suit investigation of Plaintiffs' claims, including legal research, consultation with experts, and consumer interviews; (2) the filing of six class actions which were ultimately consolidated into the Action pending in this Court; (3) litigation of over three years, including substantial briefing on VWGoA's motion to dismiss; (4) the exchange of important, relevant information pursuant to Federal Rule of Evidence 408; (5) lengthy settlement negotiations that spanned approximately 9 months; and (6) a full-day mediation with an experienced and well-respected neutral mediator from JAMS.

The Settlement more than satisfies the Federal Rule of Civil Procedure 23(e) criteria for preliminary approval and the issuance of class notice, including each of the Rule 23(e)(2) factors and the Second Circuit factors set forth in *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). Accordingly, Plaintiffs respectfully request that the Court issue an order, in the proposed form attached as Exhibit 3 to the Settlement Agreement and agreed-to by the Parties:

1. Preliminarily approving the Settlement;

2. Preliminarily certifying the Settlement Class;

3. Preliminarily appointing proposed Settlement Class Counsel, the Plaintiffs as Settlement Class Representatives, and JND Consulting as the Settlement Claim Administrator;

4. Approving the form and content of the Class Notices, attached as Exhibit 2, respectively, to the Settlement Agreement;

5. Approving and directing the dissemination of the Class Notice in accordance with the Parties' Notice Plan as set forth in the Settlement Agreement; and

6. Setting applicable deadlines for objecting to or opting out of the Settlement, the filing of Class Counsel's application for reasonable attorneys' fees and expenses and Class

Representative service awards, the filing of other appropriate submissions including responses to any objections or requests for exclusion, and scheduling the date and time of the Final Fairness Hearing.

## 8. SUMMARY OF THE ACTION

### A. Procedural History – Consolidation of the Six Class Actions

Between December 2019 and May 2020, various Plaintiffs filed the following putative class actions against VWGoA:

(1) *Sokol Gjonbalaj v. Volkswagen Group of America, Inc., et al.*, No. 2:19-cv-07165 (E.D.N.Y.), filed on December 23, 2019 and subsequently amended on March 27, 2020 (the "*Gjonbalaj* Action");

(2) *Jessica Cole et al., v. Volkswagen Group of America, Inc., et al.*, No. 3:20-cv-02085 (N.D. Cal.), filed on March 25, 2020;

(3) *Krzysztof Ziarno v. Volkswagen Group of America, Inc., et al.*, No. 2:20-cv-03833 (D.N.J.), filed on April 8, 2020;

(4) *Dimitri Williams v. Volkswagen Group of America, Inc., et al.*, No. 2:20-cv-02553 (N.D. Ill.), filed on April 27, 2020;

(5) *Austin Barden v. Volkswagen Group of America, Inc., et al.*, No. 5:20-cv-00973 (C.D. Cal.), filed on May 5, 2020; and

(6) *Joseph Campbell v. Volkswagen Group of America, Inc., et al.*, No. 5:20-cv-00518 (N.D.N.Y.), filed on May 8, 2020.

In all six actions, Plaintiffs alleged that defects in the subject vehicles' sunroofs which could potentially result in leakage and water ingress into the vehicles' interiors, sometimes potentially damaging the certain systems, seat upholstery, carpets and roof headliners.

Pursuant to an agreement among the Parties, Plaintiffs in the above-listed actions agreed to consolidate and adjudicate their claims in the *Gjonbalaj* Action. Accordingly, each of the lawsuits, except the *Gjonbalaj* Action, were voluntarily dismissed by Plaintiffs without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). On August 28, 2020, Plaintiffs filed a Consolidated and Amended Class Action Complaint ("CACAC") in the *Gjonbalaj* Action

(hereinafter, the "Action") (ECF No. 44). VWGoA moved to dismiss the CACAC, which was fully briefed. ECF Nos. 48, 50, 53. While that motion to dismiss remained pending, certain named Plaintiffs—Plaintiffs Lisa and Steven DelPrete—entered into individual resolutions and voluntarily dismissed their claims, ECF Nos. 49, 56, as did Plaintiff Dimitri Williams thereafter. ECF No. 71.

**B. Plaintiffs' Underlying Allegations**

Plaintiffs claim that the subject vehicles' sunroofs are defective and prone to leakage due to problems with their drainage systems and/or their incorporation of defective seals. CACAC, ECF No. 44, ¶¶ 9, 49. Plaintiffs claim that this could cause or contribute to leakage and water ingress into the vehicles, and, in some instances, could also result in damage to and need for repair of the vehicles' interiors, including electrical systems, audio systems, seat upholstery, carpets and roof headliners. *Id.* ¶¶ 10-12, 50, 51, 77. Plaintiffs claimed that Defendants knew of but failed to disclose the allege defects, and asserted claims for fraudulent concealment, unjust enrichment, breach of express and implied warranties, and violation of the consumer fraud and/or unfair business practices statutes of several states.

**C. Procedural History – Consolidated Action**

As noted above, VWGoA moved to dismiss the CACAC on numerous grounds including failure to state valid claims for relief, lack of standing, expiration of the statute of limitations, improper group pleading under Federal Rules of Civil Procedure 8 and 9(b), lack of pre-sale knowledge of a defect and/or a duty to disclose, and lack of entitlement to equitable relief. The motion to dismiss was fully briefed and submitted to the Court. ECF Nos. 48, 50, 53. The Parties also negotiated and entered into a Stipulated Protective Order, which was entered by the Court on August 29, 2022, ECF. No. 63. The motion to dismiss was pending when the Parties advised the

Court that they were engaging in negotiations for a potential class settlement, whereupon, based upon the Parties' request, the Court deferred a decision on the motion to dismiss pending the outcome of the settlement negotiations. The Parties engaged in targeted confirmatory discovery as part of the settlement negotiation, and, in several scheduled telephonic conferences, kept the Court apprised of the status. The Parties ultimately advised the Court that, following lengthy, protracted and vigorous arms-length negotiations, and a successful mediation before an experienced and well-respected neutral mediator from JAMS, the Parties were able to reach agreement on the material terms of the Class Settlement herein, and that those terms were going to be embodied in a formal Settlement Agreement. The Settlement Agreement has now been executed and is respectfully submitted herewith and presented to this Court for preliminary approval.

## 9. THE SETTLEMENT

The Parties believe that the terms of the Settlement are fair, reasonable, and adequate, and more than satisfy the legal criteria for preliminary approval.

### a. Available Benefits Under the Settlement and the Claims Process

Plaintiffs' counsel and VWGoA's counsel negotiated a proposed Settlement that, if approved, will provide substantial benefits to the following Settlement Class:

> "All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in Section I.X. of this Agreement, in the United States of America and Puerto Rico."[1]

[1] Settlement Class Vehicles are defined as "(a) any model year 2018, 2019, 2020 and 2021 Volkswagen Atlas vehicle, (b) any model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicle, (c) any model year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicle, (d) any model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicle, (e) any model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicle, (f) any model year 2018, 2019, 2020 and 2021 Volkswagen Tiguan vehicle, (g) any model year 2019, 2020 and 2021 Audi Q3 vehicle, (h) any model year 2019, 2020 and 2021 Audi Q8 vehicle, and (i) any model year 2019, 2020 and 2021 Audi e-tron vehicle, which was/were imported and distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico." Breit Decl., Ex. A, Section I.X.)

*Id.*, Section I.V. Excluded from this Settlement Class are: (a) all Judges who have presided over the Actions and their spouses; (b) all current employees, officers, directors, agents and representatives of VWGoA, and their family members; (c) any affiliate, parent or subsidiary of VWGoA and any entity in which VWGoA has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released VWGoA or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class. *Id.*

**i. Warranty Extension Benefits**

The Settlement makes available valuable benefits that squarely address the issues raised in the litigation. Pursuant to the terms of the Settlement Agreement, VWGoA has agreed, *inter alia*, to cover a percentage of the cost of Covered Repairs (parts and labor) by an authorized Volkswagen or Audi dealer, during a period of up to 7 years or 80,000 miles (whichever occurs first) from the vehicle's In-Service Date for the following Settlement Class Vehicles: (a) model year 2018, 2019, 2020 and 2021 Volkswagen Atlas and Tiguan vehicles, (b) model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicles, (c) model year 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicles, (d) model year 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicles, (e) model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles, and (f) model year 2019, 2020 and 2021 Audi Q3, Q8 and e-tron vehicles (the "Warranty

Extension"). Settlement Agreement, Section II.A. The percentage of coverage under the Warranty Extension will be determined by a "sliding scale" of coverage percentages which are based upon the age and mileage of the Class Vehicle at the time of the Covered Repair and the time/mileage durations of the particular Settlement Class Vehicle's original NVLW as detailed in Table I of the Settlement Agreement. Further, the warranty, as extended, is fully transferable to subsequent owners to the extent that its time or mileage limitations has not expired. *Id.*

A Covered Repair is defined as repair or replacement (parts and labor) of (a) the Sunroof of a Settlement Class Vehicle to address a diagnosed condition of leakage and liquid ingress into the vehicle's interior from the Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged, and if applicable, (b) to address a diagnosed condition of liquid damage to a Settlement Class Vehicle's interior seats, carpets/floor mats, interior ceiling, and failure of electrical components, directly caused by a diagnosed condition of leakage and liquid ingress into the vehicle's interior from said vehicle's Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged. (S.A. Sec. I.K). The Warranty Extension will not apply if the need for the Covered Repair resulted from abuse; misuse; alteration or modification; a collision or crash; vandalism and/or other impact; failure to properly or fully close the Sunroof; broken, cracked or damaged Sunroof glass or other components; improper maintenance; and/or an outside source or factor including a prior repair performed by a non-dealer. *Id.*[2]

[2] If the applicable Settlement Class Vehicle was, or as a result of the settlement, is currently, subject to a previously-released Service Action, *infra* Section III.A.3, then the Settlement Class Member is required to have had the Service Action performed on said Settlement Class Vehicle prior to the occurrence of leakage or liquid ingress giving rise to the Covered Repair in order to be eligible for coverage under the Warranty Extension. Settlement Agreement, Section II.A.

**ii. Reimbursement Benefits**

The Settlement also provides reimbursement of a percentage of certain out-of-pocket expenses paid for a past Covered Repair (parts and labor) that was performed prior to the Notice Date[3] and within 7 years or 80,000 miles (whichever occurs first) from the Class Vehicle's In-Service Date, with the percentage of reimbursement determined by the same "sliding scale" of coverage percentages that are set forth in Table I of the Settlement Agreement. The submission of a Claim for Reimbursement is easy and requires only the timely mailing, to the Claim Administrator, of a completed, signed, and dated Claim Form, together with the required Proof of Repair Expense documentation and any other proof as required by Section II.B of the Settlement Agreement. *Id.*[4] The Proof of Repair Expense documentation consists merely of basic documentation, standard in judicially approved automotive class settlements, demonstrating that the Settlement Class Member paid for a past paid Covered Repair which complies with the Settlement terms, conditions and durational time/mileage period for a Claim for Reimbursement.

The Claim Administrator will review all timely claims submitted by Settlement Class Members. The Parties retain the right to audit and review the Claims handling by the Claim Administrator, and the Claim Administrator shall report to both parties jointly. In addition, the Settlement provides that Claimants whose claims are incomplete/deficient with respect to the Claim Form and/or supporting documentation will receive a letter or notice of same from the Claim Administrator, and an opportunity to cure the incompleteness/deficiency(ies) within 30 days after

[3] The Settlement Agreement establishes the Notice Date as the date ordered by the Court by which the Claim Administrator shall mail Class Notice to the Settlement Class Members, which date shall be up to 120 days after the Court preliminarily approves the Settlement. Settlement Agreement, Section II.R.

[4] As delineated in the Settlement Agreement and Class Notice, reimbursement is subject to certain limitations and conditions, including but not limited to having had any applicable previously-released Service Action performed or attesting that you were not notified of the Service Action prior to the Covered Repair and VWGoA's records do not show otherwise, and first attempting to have the Covered Repair performed by an authorized Volkswagen or Audi dealer before having had such repair performed by a non-dealer.

the date of that letter or notice. As an additional benefit, while the Claim Administrator's denial of any Claim, in whole or in part, will be binding and non-appealable, Class Counsel and Defense Counsel may meet and confer to attempt to resolve any disputed claim denials in good faith, and the Claimant will be afforded 15 days from the date of the Claim Administrator's denial letter to request an "attorney review" of that denial. Settlement Agreement, Section III.B.

**iii. Extension of Service Actions Benefits**

In addition to the Settlement benefits discussed above, the Settlement provides yet a further benefit that, effective on the Notice Date, VWGoA will extend the following previously-released Service Actions in the United States relating to certain free specified Sunroof related services, by authorized Volkswagen dealers, for current owners and lessees of certain Volkswagen Settlement Class Vehicles as specified below:

- Service Action 60E2 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2018 and 2019 Volkswagen Atlas and Atlas Cross Sport vehicles, will be extended for a period of six (6) months from the Notice Date; and

- Service Action 60E5 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagon vehicles, some model year 2016, 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles, and some model year 2018 and 2019 Volkswagen Tiguan vehicles, will be extended for a period of six (6) months from the Notice Date.

*Id.*, Section III.C.

**iv. Updated Maintenance Recommendation and Schedule Benefits**

Finally, the Settlement also provides an updated sunroof maintenance recommendation and schedule, effective on the Notice Date, for certain Volkswagen Settlement Class Vehicles, as follows:

Involved Settlement Class Vehicles:

Model Year 2018 and 2019 Volkswagen Atlas

Model Year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI

Model Year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen

Model Year 2017, 2018 and 2019 Volkswagen Golf Alltrack

Model Year 2018 and 2019 Volkswagen Tiguan

Updated Maintenance Recommendation and Schedule:

Every 2 years or 20,000 miles (whichever comes first) – Check sunroof function, clean guide rails and lubricate with grease (if equipped), check water drainage (if equipped).

*Id.*, Section III.D. The aforementioned update is provided to the Settlement Class in the Class Notices.

Clearly, the Settlement provides very substantial benefits that more than satisfy the fair, reasonable, and adequate standard of Rule 23.

**b. Notice to Settlement Class Members**

The Settlement Agreement also provides for a robust plan for dissemination of Notice to the Settlement Class (the "notice Plan"). The Claim Administrator will provide direct Class Notice by first-class mail, in substantially the same form as that attached as Exhibit 2 to the Settlement Agreement, to the current or last known addresses of all reasonably identifiable Settlement Class Members. *Id.*, Section IV.B. Class Notice will include a Claim Form to be included with the Class Notice subject to the Court's approval. *Id.* The Claim Administrator will obtain from Polk/IHS Markit, or an equivalent third-party company, the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, based upon the VINs of the Settlement Class Vehicles to be provided by VWGoA. *Id.* The Claim Administrator will re-

mail any returned notices if a forwarding address appears on a returned envelope. *Id.* For any remaining undeliverable notice packets where no forwarding address is provided, the Claim Administrator will perform an advanced address search and re-mail any undeliverable notice packets if any new and current addresses are located. *Id.*

In addition to direct mail notification, the Claim Administrator will implement a dedicated settlement website, which will include the information about the Action and Settlement such as additional copies of the Class Notices and Claim Forms, a copy of the Settlement Agreement, the Settlement Class Members' rights, the benefits of the Settlement, instructions on when and how to submit a Claim for Reimbursement by mail, instructions on how to contact the Claim Administrator, Class Counsel and VWGoA's Counsel for any assistance, Copies of the Preliminary Approval Order, the motions for Final Approval and Class Counsel Fee and Expenses Application, and other pertinent orders and documents to be agreed upon by counsel for the Parties, the deadlines, requirements and procedures for objecting to the Settlement, requesting to be excluded from the Settlement, and mailing of claims, Frequently Answered Questions (FAQs) regarding the Settlement, the date, time and location of the Final Fairness Hearing, and any other relevant information agreed upon by counsel for the Parties. *Id.*

Additionally, the Claim Administrator is required to provide an affidavit to Class Counsel and Defense Counsel attesting that the Class Notice was disseminated in a manner consistent with the approved Notice Plan no later than 10 days after the Notice Date. *Id.*

VWGoA will be responsible for the Claim Administrator's reasonable costs of Class Notice and Settlement claim administration, *Id.*, Section III.A., and those costs will not reduce or in any way affect the benefits available under the Settlement. In addition, the Claim Administrator

will provide notice of this proposed Settlement to the appropriate state and federal officials consistent with the Class Action Fairness Act, 28 U.S.C. § 1715. *Id.*, Section IV.A.

**c. Released Claims**

Class Members are provided the right to request exclusion from the Settlement or object to the Settlement. Breit Decl., Ex. A, Section V. (hereafter, the "Settlement Agreement"). And, as set forth more fully in Section I.T. of the Settlement Agreement, VWGoA will obtain a release of claims relating to existing, potential or alleged sunroof leakage and that were alleged or could have been alleged in the Action, exempting, of course, claims for personal injury or property damage other than to a Class Vehicle itself. The release of claims is fair and appropriate with respect to the claims and issues in this Action. *Id.*, Section I.T.

**d. Attorneys' Fees and Costs and Service Awards**

The amount of any reasonable Attorneys' Fee and Expense Payment shall be determined by the Court. After the Court preliminarily approves the Settlement, proposed Class Counsel will submit a fee application to the Court. As discussed below, proposed Class Counsel intends to apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed the total collective amount of $2,850,000 in the aggregate. *Id.*, Section VIII.C. In addition, proposed Class Counsel intends to move for service awards of $5,000 for each of the nine named Plaintiffs (for a total of $45,000).

The enforceability of the Agreement is not contingent on the amount of attorneys' fees or costs or service awards to Plaintiffs that may be approved by the Court.

**10. LEGAL STANDARD**

Pursuant to Federal Rule of Civil Procedure 23(e), approval of a class action settlement generally occurs in two stages. At the preliminary approval stage, the Court makes an initial

evaluation of the settlement's fairness before ordering notice to class members. At the final approval stage, class members and the parties are given an opportunity to be heard before the Court approves the settlement. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (citations omitted). At the preliminary approval stage, the Court must consider whether the proposed settlement is "likely" able to be approved under Rule 23(e)(2). *Hart v. BHH, LLC*, 334 F.R.D. 74, 76 (S.D.N.Y. 2020). A court should preliminarily approve a proposed settlement which, as in this case, "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *Id*. (quoting *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)).

Importantly, "[t]he law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014); *see also*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) ("We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy.") (internal quotation marks and citation omitted). Thus, the procedural and substantive fairness of a settlement should be examined "in light of the strong judicial policy in favor of settlement of class action suits." *Aponte v. Comprehensive Health Mgmt., Inc.,* No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *2 (S.D.N.Y. Apr. 2, 2013) (internal quotation marks omitted).

The Second Circuit's settlement approval analysis generally relies on two overlapping multi-factor tests. Federal Rule of Civil Procedure 23(e)(2) supplies the first test in which the Court, in evaluating the fairness, reasonableness, and adequacy of a settlement, considers whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). Courts also supplement the Rule 23(e)(2) analysis with the *Grinnell* factors, which include:

> (1) the complexity, expense and likely duration of the litigation;
>
> (2) the reaction of the class to the settlement;
>
> (3) the stage of the proceedings and the amount of discovery completed;
>
> (4) the risks of establishing liability;
>
> (5) the risks of establishing damages;
>
> (6) the risks of maintaining the class action through the trial;
>
> (7) the ability of VWGoA to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (citing *Grinnell*, 495 F.2d at 463); *see also In Re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 29. Thus, a court should consider both the requirements of Rule 23(e)(2) and the *Grinnell* factors when evaluating whether to grant preliminary approval. *See In re GSE Bonds* at 692.

When determining whether to certify a class for purposes of settlement, the Court must also determine at the preliminary approval stage whether it will "likely be able to . . . certify the class for purposes of judgment on the proposal." *See* Fed R. Civ. P. 23(e)(1)(b). This requires a preliminary evaluation of (1) whether the proposed settlement class meets the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 249 (2d Cir. 2011) (quoting Fed. R. Civ. P. 23(a)), (2) whether the settlement class is ascertainable, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig*., 330 F.R.D. at 50, and (3) where, as here, certification of a settlement class is sought pursuant to Rule 23(b)(3), whether, preliminarily, "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

**11. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

As explained more fully below, this Settlement is eminently fair, reasonable and adequate, and in all respects satisfies the standards for granting preliminary approval. In addition, the Parties'

Notice Plan satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances.

**a. The Settlement Satisfies Federal Rule of Civil Procedure 23(e).**

**i. Plaintiffs and Proposed Class Counsel Have Adequately Represented the Class.**

Plaintiffs and proposed Class Counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently prosecuting this litigation on behalf of Plaintiffs and the Settlement Class, which included significant investigation; the filing of six class actions which were consolidated in this Court; litigation of over three years; a full-day mediation with Bradley A. Winters, Esq., an experienced and well-respected neutral mediator from JAMS; and, lengthy and vigorous arm's-length settlement negotiations that spanned approximately 9 months. Moreover, proposed Class Counsel has achieved a significant settlement which will provide immediate benefits to the proposed Settlement Class.

Plaintiffs have retained counsel—Milberg Coleman Bryson Phillips Grossman PLLC ("Milberg"), Berger Montague PC, Bryant Law Center PSC, Ahdoot & Wolfson PC and Simmons Hanly Conroy — who are qualified, experienced, and fully capable of prosecuting this litigation on behalf of the Class. Class Counsel have had extensive experience and success in litigating product liability class actions across the country *See* Breit Decl., Ex. B (Class Counsel's Firm Résumés).

The involvement of "experienced, capable counsel" gives the resulting agreement a "presumption of correctness." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 575 (S.D.N.Y. 2008) (internal quotation marks omitted).

**ii. The Proposed Settlement Was Negotiated at Arm's Length.**

Next, courts consider whether the proposed settlement is the product of an arm's-length negotiation. Fed. R. Civ. P. 23(e)(2)(B). Here, the Settlement results from extensive, arm's-length negotiations conducted by experienced counsel for all parties, over a 9 month period, and with the assistance of Bradley A. Winters, Esq., an experienced and well-respected neutral mediator from JAMS. The use of a mediator in settlement negotiations further supports the presumption of fairness and the conclusion that the Settlement achieved was free of collusion. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

**iii. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Continuing to Litigate this Action to Trial and Potential Appeal.**

In assessing the Settlement, the Court should balance the benefits afforded to Settlement Class Members, including the immediacy and availability of a recovery, against the significant costs, risks, and delay of proceeding with this litigation. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). This factor overlaps with the first (the complexity, expense, and likely duration of the litigation) and fourth (the risks of establishing liability and damages) *Grinnell* factors. Settlement is favored when the alternative—litigating the case—will be long, complex, and expensive. *See, e.g.*, *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 331-33 (E.D.N.Y. 2010).

This is a hotly contested case. While Plaintiffs are confident in their claims, they also recognize that there are significant hurdles to proving liability, to obtaining class certification in the litigation context, or even proceeding to trial. Indeed, Defendants deny all allegations of liability, strenuously contending that the subject sunroofs are not defective, that no fraudulent misrepresentation or omission has occurred nor were any express or implied warranties breached, that Plaintiffs would not prevail through summary judgment and/or trial. As the pending motion

to dismiss itself indicates, significant defenses to the various claims in this action have been asserted which could prevent or significantly reduce any potential recovery, such as the expiration of the statute of limitations; lack of standing; the inapplicability of the express warranties to Plaintiffs' claims; Plaintiffs' failure to provide the required notice under the applicable warranties; failure to adequately identify fraudulent misrepresentations or omissions with the requisite particularity; the inability to establish Defendant's pre-sale knowledge of any purported defect; failure to establish reliance, causation, or injury; failure of all equitable claims due to the existence of an adequate remedy at law; and various additional defenses specific to the laws of the individual states at issue.

Without the Settlement, Plaintiffs faced the uncertainty of successfully litigating this Action through the completion of fact discovery, class certification, expert discovery, summary judgment, trial, and potential appeals, and doing so would be complex, time-consuming, and expensive. In addition to liability issues described above, the prospects of achieving class certification in a litigation context - as opposed to a settlement context – are also uncertain for many reasons including, but not limited to the fact that that different environmental, maintenance, usage, and other factors can cause a sunroof leak to manifest; that most vehicles never experienced or will not experience a sunroof leak; that the putative class vehicles have different sunroof designs, models and configurations with varying drainage systems; that plaintiffs are not typical of the putative class; that any damages sustained by plaintiffs would be based on individualized issues not suitable for class-wide damage treatment; that plaintiffs are not adequate class representatives; and that differing laws and burdens/requirements among the various states preclude certification of a nationwide class. Such issues could preclude class certification in a litigation context although they would not preclude it in a settlement context since potentially intractable manageability issues

do not occur in a settlement. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618 (1997) ((“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems… for the proposal is that there be no trial.”); *Rodriguez v. CPI Aerostructures, Inc.*, 20-cv-982, 2023 WL 2184496, at *7 (E.D.N.Y. Feb. 16, 2023) (same, quoting *Amchem*).

Here, in sharp contrast, the Settlement provides very substantial benefits to Settlement Class Members without the substantial risks and delays of continued litigation. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (“…if a shareholder or class member was willing to assume all the risks of [Litigation]…the passage of time would introduce yet more risks…and would, in light of the time value of money, make future recoveries less valuable than this current recovery.”); *see also In re MetLife Demutualization Litig.*, 689 F. Supp. 2d at 331-33.

Plaintiffs also faced risks in establishing damages. Plaintiffs would have been forced to undertake a fact-intensive economic inquiry to show the damages claimed would compensate consumers for the value they would have received absent the alleged defect, and Defendants would have likely vigorously contested the validity and reliability of Plaintiffs’ damage model and its ability to be calculated with proof common to the class as opposed to the myriad of individualized damage-related issues of each putative class member. As with contested liability, issues relating to damages would have likely come down to an unpredictable and hotly disputed “battle of the experts” and potentially required individualized fact inquiries regarding each putative class member. Further, Plaintiffs’ case was particularly susceptible to a danger inherent in reliance on expert witness testimony; indeed, Defendants would almost certainly raise *Daubert* challenges to Plaintiffs’ experts, the results of which would be uncertain. If the Court were to determine that even one of Plaintiffs’ experts should be excluded either at the class certification stage or at trial,

Plaintiffs' case would become much more difficult to prove. If any of these arguments prevailed at class certification, summary judgment, or trial, Settlement Class Members could have recovered significantly less or, quite possibly, nothing.

**iv. The Proposed Method for Distributing Relief is Effective.**

As demonstrated below, the method and effectiveness of the proposed notice and claims administration process are effective pursuant to Fed. R. Civ. P. 23(e)(2)(C)(ii). The plan provides reasonable notice to Class Members and reasonably informs them of the claims process, as required under Rule 23. *See Wal-Mart Stores, Inc.*, 396 F.3d at 113-14 (explaining that "[t]he standard for the adequacy of a settlement notice in a class action . . . is measured by reasonableness"). The Claim Administrator will employ a well-tested protocol for the processing of claims. Namely, the Claim Administrator will obtain from Experian (or an equivalent third-party company) the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, based upon the VINs of Settlement Class Vehicles to be provided by VWGoA. Settlement Agreement, Section IV.B. Settlement Class Members will then be directly notified and sent the Claim Form by mail. The Claim Administrator will re-mail any returned notices if a forwarding address appears on a returned envelope. *Id.*, Section III.B. For any remaining undeliverable notice packets where no forwarding address is provided, the Claim Administrator will perform an advanced address search and re-mail any undeliverable notice packets if any new and current addresses are located. *Id.*, Section IV.B.

Claims for Reimbursement under the Settlement will be administered by JND Legal Administration, an experienced and respected claims administrator that has reviewed and administered claims for countless class action settlements including automotive class settlements. The claims process is very fair and reasonable, consisting of a basic and easily understandable

Claim Form and basic documentary proof requirements that are easy to satisfy and are standard in automotive class settlements. Settlement Class Members will return the Court-approved Claim Form via mail to the Claim Administrator. Based on the information provided by claimants, the Settlement Administrator will determine each claimant's eligibility to receive a reimbursement of out-of-pocket expenses related to a Covered Repair. Settlement Class Members will be notified of any deficiencies in their submitted Claim Form and be given a reasonable opportunity to cure any deficiency. *Id.*, Section III.B.

The Settlement also provides for non-monetary relief in the form of the Warranty Extension and updated maintenance recommendation and schedule, as well as extending the previously-released Service Actions. *Id.*, Sections II.A, C, and D.

**v. The Requested Attorneys' Fees and Expenses Are Reasonable.**

The terms of any proposed award of attorneys' fees under the proposed Settlement, including timing of payment, are sufficiently reasonable to warrant preliminary approval. Fed. R. Civ. P. 23(e)(2)(C)(iii). Only after the Parties reached an agreement on the material terms of the Settlement, did the Parties commence efforts to negotiate the issue of Class Counsel's fees and expenses and class representative service awards. As a result of arm's-length, good faith negotiations, the Parties agreed that Class Counsel may collectively apply to the Court ("Fee and Expense Application") for, and VWGoA will not oppose, a combined award of reasonable attorneys' fees, costs and expenses in an amount up to, but not exceeding, the total combined sum of $2,850,000. The award of reasonable Class Counsel Fees and Expenses, to the extent consistent with the agreement, will be paid by VWGoA and will not reduce or in any way affect any benefits available to the Settlement Class pursuant to the Settlement Agreement. See Settlement Agreement, Section VIII.C. Further, the Parties agreed that Class Counsel may apply to the Court

for class representative service awards for each Plaintiff in the amount of $5,000—for a total of $45,000.

**vi. Class Members Are Treated Equitably**

The final factor, Rule 23(e)(2)(D), looks at whether Class Members are treated equitably. The Settlement does not improperly grant preferential treatment to either Plaintiffs or any portion of the Settlement Class. Accordingly, Rule 23(e)(2)(D) weighs in favor of preliminary approval.

**b. The Settlement Satisfies the *Grinnell* Factors**

Consideration of the applicable *Grinnell* factors also weighs in favor of preliminarily approving the proposed Settlement Agreement.

**i. Complexity, Expense, and Likely Duration of the Litigation**

As there is considerable overlap between the Rule 23(e) factors and the *Grinnell* factors, the Court may limit its analysis to areas where the *Grinnell* factors provide additional guidance. *Gordon v. Vanda Pharms. Inc.*, No. 19 CV 1108 (FB)(LB), 2022 WL 4296092, at *5 (E.D.N.Y. Sept. 15, 2022). As discussed in more detail above, the immediacy and availability of a recovery, when balanced against the significant costs, risks, and delay of proceeding with this litigation, weigh strongly in favor of settlement. *See supra* Section V.A.3.

**ii. Reaction of the Class**

This factor cannot be evaluated until Class Notice has been disseminated and the time for objections and exclusion requests has concluded. The Court need not address this issue at this time.

**iii. Stage of the Proceedings and Information Exchanged**

Plaintiffs and proposed Class Counsel's knowledge of the merits as well as the strengths and weaknesses of their claims is certainly adequate to support the Settlement. This knowledge is based, in part, on the extensive investigation and analyses undertaken by proposed Settlement

Class Counsel in preparing the initial complaint in addition to subsequent complaints filed in other districts, including consultation with an expert. As a result of the extensive investigation, analyses and the informal exchange of information with Defendant prior to and during the settlement process, including warranty data and information, vehicle population data, and vehicle technical information, Plaintiffs and proposed Class Counsel were in a position to adequately weigh the strengths and weaknesses of their case, of the defenses that were raised and/or are available, and to engage in effective settlement discussions with VWGoA. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004) ("Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims."); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 177 (S.D.N.Y. 2014) (finding that even where "no merits discovery occurred in this case to date," lead counsel was "knowledgeable with respect to possible outcomes and risks in this matter and, thus, able to recommend the Settlement").

Indeed, the parties thoroughly discussed and vetted the facts and law, and Bradley A. Winters, an experienced neutral JAMS mediator, engaged in a critical analysis of the Parties' positions. This factor strongly supports preliminary approval of the Settlement.

**iv. Litigation Risks**

As discussed in more detail above, the risks of establishing liability and damages, in addition to the risks of not obtaining class certification and/or maintaining a class action through trial, weigh heavily in favor of preliminary approval. *See supra* Section V.A.3. Although Plaintiffs are confident in the merits of their claims, they also recognize that continued litigation of the Action presents many risks to achieving class certification and establishing both liability and damages, while in contrast, the Settlement makes available very substantial and immediate benefits to the settlement Class.

**v. Ability of VWGoA to Withstand a Greater Judgment**

A court may also consider a defendant's ability to withstand a judgment greater than that secured by settlement, although it is not generally one of the determinative factors. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). While we have no reason to believe this would be a factor here, courts generally do not find this to be an impediment to settlement when the other factors favor the settlement. *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *6 (E.D.N.Y. Oct. 23, 2012) (acknowledging that "in any class action against a large corporation, the Volkswagen entity is likely to be able to withstand a more substantial judgment, and . . . this fact alone does not undermine the reasonableness of the instant settlement").

**vi. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation**

The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). The Court need only determine whether the Settlement falls within a "range of reasonableness"—a range which "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

The benefits offered through the proposed Settlement are generous and meaningful: they include a Warranty Extension to allow for repair or replacement services as well as substantial monetary reimbursement for out-of-pocket costs associated with a Covered Repair. In addition, the Settlement provides for an updated sunroof maintenance recommendation and schedule, as well as an extension of previously-released Service Actions applicable to certain Settlement Class Vehicles' sunroofs. Given the attendant risks of continued litigation and the immediate and

meaningful relief Settlement Class Members will receive now (rather than a speculative and uncertain relief some years in the future), the Settlement is an excellent result for the Settlement Class Members.

Thus, the *Grinnell* factors favor preliminary approval of the proposed Settlement.

**12. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES**

Courts nationwide have recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). A party seeking class certification must first show that the class action satisfies the requirements of Rule 23(a)—namely, numerosity, commonality, typicality, and adequacy. The party must then demonstrate satisfaction of Rule 23(b). Here, Plaintiffs seek to certify the Settlement Class under Rule 23(b), so they must demonstrate predominance and superiority under Rule 23(b)(3). However, the manageability concerns of Rule 23(b)(3) are notably not at issue for a settlement class. *See Amchem*, 521 U.S. at 620 ("[A] district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). Each of the Rule 23(a) and Rule 23(b)(3) requirements are satisfied here for settlement purposes. As such, Plaintiffs seek the conditional certification of the Settlement Class set forth above and in the Settlement Agreement.

**D. The Rule 23(a) Requirements Are Satisfied.**

**1. Numerosity of the Settlement Class**

The numerosity requirement is satisfied when the class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Impracticable does not mean impossible." *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). Numerosity is presumed when a class consists of 40 members or more. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483

(2d Cir. 1995). Here, the Settlement involves approximately 707,188 Settlement Class Vehicles that were distributed for sale or lease throughout the United States and Puerto Rico. Therefore, numerosity is readily satisfied.

**2. Commonality of Questions of Law and Fact**

The commonality requirement is satisfied where, as here, "questions of law or fact common to the class" exist. Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). In this Action, there are common questions of law and fact, including whether the Class Vehicles contain a uniform defect, and whether VWGoA knew of and had a duty to disclose this alleged defect to Plaintiffs and putative Class Members, and failed to do so. Thus, commonality is satisfied.

**3. Typicality of Plaintiffs' Claims**

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other class members. The focus of the typicality inquiry is not the plaintiff's behavior, but rather VWGoA's actions. *See Teachers' Ret. Sys. of Louisiana v. ACLN Ltd.,* No. 01 Civ. 11814 (LAP), 2004 WL 2997957, at *4 (S.D.N.Y. Dec. 27, 2004). Here, all of Plaintiffs' claims, legal theories, and basic nucleus of facts are identical to those of other members of the Settlement Class, and Plaintiffs' claims, like all Settlement Class Members, arise out of the *same* alleged conduct of the Defendants. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

#### 4. Adequacy of Representation

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this factor, "a plaintiff must demonstrate two elements: (1) 'there is no conflict of interest between the named plaintiffs and other members of the plaintiff class' and (2) 'class counsel is qualified, experienced, and generally able to conduct the litigation.'" *Passafiume v. NRA Grp., LLC*, 274 F.R.D. 424, 429 (E.D.N.Y. 2010) (quoting *Marisol A. v. Giuliani,* 126 F.3d 372, 378 (2d Cir.1997)). Here, Plaintiffs' interests are coextensive with those of the Settlement Class, and Plaintiffs have each actively participated in the investigation of their cases and have been in constant communication with their attorneys over the course of the litigation, in an effort to fully represent the interests of the entire Settlement Class.

Plaintiffs also respectfully submit that they have retained counsel who are qualified, experienced, and fully capable of prosecuting this litigation on behalf of the Class. All Class Counsel firms have proven track records in the prosecution of complex class actions nationwide. *See* Breit Decl., Ex. A (Class Counsel's Firm Résumés). Through their efforts in this litigation, Class Counsel has obtained a substantial and meaningful result for the benefit of the Settlement Class. Plaintiffs, therefore, satisfy the Rule 23(a) adequacy requirements.

### E. The Requirements of Rule 23(b)(3) Are Satisfied.

#### 1. Common Questions Predominate

The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "Common questions of law and fact predominate when issues subject to generalized proof and applicable to the class as a whole predominate over, and are more substantial than, issues that are subject to individualized proof." *In re Dynex Capital, Inc. Sec. Litig.*, No. 05 Civ. 1897 (HB), 2011 WL 781215, at *3 (S.D.N.Y.

Mar. 7, 2011). Here, for purposes of settlement, the common questions of law and fact discussed supra, which will entail common proof, predominate over any individualized issues of the Settlement Class Members, and thus, Rule 23(b)(3)'s predominance factor is satisfied.

**2. Class Treatment of Plaintiffs' Claims Is Superior.**

Finally, Rule 23(b)(3) requires that a class action be superior to other available methods for the fair and efficient adjudication of the controversy. Rule 23(b)(3) lists several matters pertinent to this finding: (a) the class members' interests in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already begun by or against class members; (c) the desirability of concentrating the litigation of the claims in the particular forum; and (d) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). Each factor weighs in favor of finding superiority here.

As to the first two factors, the Settlement also would relieve the substantial judicial burdens that would be caused by repeated adjudication of multiple similar lawsuits by individual Settlement Class Members. Moreover, given the complex automotive, technical and other issues involved, litigating the claims of the potential Class Members on an individual basis would not be economically feasible and would likely result in "needless duplication of effort." *See Henderson v. Volvo Cars of N. Am., LLC*, No. CIV.A. 09-4146 CCC, 2013 WL 1192479, *6 (D.N.J. Mar. 22, 2013) (citing *In re Corrugated Container Antitrust Litig.,* 80 F.R.D. 244, 252-53 (S.D. Tex. 1978)). And because the parties seek to resolve this case through a settlement, any manageability issues that could have arisen at trial are marginalized. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 302-03 (3d Cir. 2011). Therefore, "class status here is not only the superior means, but probably the only feasible [way] . . . to establish liability and perhaps damages." *Augustin v. Jablonsky*, 461 F.3d 219, 229 (2d Cir. 2006) (quoting *Tardiff v. Knox County*, 365 F.3d 1, 7 (1st

Cir. 2004)).

Further, certification of the Settlement Class for the purpose of effecting the Settlement is the superior method to facilitate the resolution of the claims of the Settlement Class. Moreover, certification of a class for settlement purposes will allow the Settlement to be administered in an organized, efficient and even-handed manner. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 584 (S.D.N.Y. 2008). Resolution of the Settlement Class's claims through this Settlement is clearly superior to any other available method of resolution.

For all of the foregoing reasons, the Settlement Class meets the class certification requirements of Federal Rule of Civil Procedure 23(a) and 23(b).

**F. The Class Is Ascertainable**

Lastly, certification requires that the proposed class be ascertainable. The Second Circuit stated in *Brecher v. Republic of Argentina* that "the touchstone of ascertainability is whether the class is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." 806 F.3d 22, 24 (2d Cir. 2015) (citations and quotation marks omitted). The Second Circuit has clarified that the ascertainability element merely requires that a proposed class be definable "using objective criteria that establish a membership with definite boundaries." Here, ascertainability is met because membership in the Settlement Class is outlined with objective, definitive criteria, based on a consumer's ownership or lease of a Settlement Class Vehicle, and this is readily and feasibly be determined by Polk/IHS Markit, or an equivalent company, examining the VINs of Settlement Class Vehicles and obtaining the names and addresses of their present and former owners and lessees through the DMVs of each state and Puerto Rico —a process which is outlined in the Notice Plan. *See infra,* Section VII.

**13. THE COURT SHOULD APPOVE THE NOTICE PLAN**

Under Rule 23(e), class members who would be bound by a settlement are entitled to reasonable notice before the settlement is ultimately approved by the Court. *See* Fed. Jud. Ctr., *Manual for Complex Litig. Fourth*, § 30.212 (2004). And because Plaintiffs here seek certification of the Settlement Class under Rule 23(b)(3), "the court must direct notice in a reasonable manner to all class members who would be bound by the proposal." *Berkson v. Gogo, LLC*, 147 F. Supp. 3d 123, 130 (E.D.N.Y. 2015) (citing Rule 23(c)(2)(B)).

The Notice Plan proposed in this Action is the best notice practicable under the circumstances for reaching the Settlement Class. The names and addresses of the Settlement Class Members will be obtained by Polk/IHS Markit, or an equivalent company, based upon the VINs of Settlement Class Vehicles to be provided by VWGoA and the DMV records of each state and Puerto Rico. In addition, prior to mailing the Class Notice, the Claim Administrator will conduct an address search through the United States Postal Service's National Change of Address database to update the address information for Settlement Class Vehicle owners and lessees. SA, Section IV.B. The Claim Administrator will then administer direct notice to Settlement Class Members by mail and forward any Notices that are returned, with a forwarding address. *Id.* If an undeliverable notice packet is returned without a forwarding address, the Claim Administrator will perform an advanced address search and re-mail the notice to the extent a new address is located. *Id*.

Additionally, Notice will also be published on a dedicated settlement website which will contain, *inter alia*, copies of important documents including the Settlement Agreement, Claim Forms, Class Notices, Motions for Preliminary and Final Approval, and relevant Court orders,

information on the Settlement terms, Important Dates, responses to Frequently Asked Questions and the method to contact the Claims Administrator for more information. *Id.*

Finally, the substance of the proposed Class Notice—which is attached as Exhibit 2 to the Settlement Agreement—will provide a comprehensive explanation of the Settlement in simple, layman's terms, as well as inform Settlement Class Members of their rights including their ability to request exclusion from or object to the proposed Settlement, and the relevant deadlines, requirements and procedures for doing so and/or for mailing a Claim for Reimbursement. Accordingly, Plaintiffs respectfully request that the Court approve and order dissemination of the Class Notice and Claim Form.

**14. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

Finally, the Court should schedule a final fairness hearing to decide whether to grant final approval to the Settlement, address Class Counsel's request for attorneys' fees and costs (which will be subject to a separate motion and supported with adequate documentation) and service awards for the Class Representatives, and determine whether to dismiss this Action with prejudice. Plaintiffs respectfully propose the following schedule for the Court's review and approval, which summarizes the deadlines in the Preliminary Approval Order. If the Court agrees with the proposed schedule, Plaintiffs request that the Court schedule the Final Approval Hearing for a date _____ calendar days after the entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter.

| | |
|---|---|
| Deadline for mailing individual Notices and Claim Forms (the "Notice Date") | ***Up to 120 calendar days after entry of Preliminary Approval Order.*** |
| Deadline for filing motions in support of Proposed Class Counsel's application for fees and expenses and class representative | ***Up to 129 days after entry of the Preliminary Approval Order.*** |

| | |
|---|---|
| service awards | |
| Deadline for submission of requests for exclusion, or objections | ***Received no later than 30 days after Notice Date.*** |
| Deadline to file motion for Final Approval and Plaintiffs' responses to objections or requests for exclusion. | ***No later than 45 days after Notice Date.*** |
| Deadline for Defendants to file responses to objections or requests for exclusion, or in further support of Final Approval | ***No later than 60 days after Notice Date.*** |
| Settlement Fairness Hearing | ***At the Court's convenience, but no fewer than ___ calendar days after the entry of the Preliminary Approval Order.*** |

**15. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order: (1) preliminarily approving the Settlement; (2) preliminarily certifying the Settlement Class; (3) appointing proposed Class Counsel as Class Counsel and Plaintiffs as Class Representatives; (4) approving the form and content of the Notices attached as Exhibit 2 to the Settlement Agreement; (5) finding that the proposed procedures for dissemination of the Notices and Claim Forms constitute the best notice practicable under the circumstances, and comply with due process and Federal Rule of Civil Procedure 23; and (6) setting a date and time for the Final Approval Hearing. A proposed order is being submitted contemporaneously with this Motion.

Dated: April 18,2023

/s/Mitchell M. Breit

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2023 I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

*/s/Mitchell M. Breit*
Mitchell M. Breit
**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC**
*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

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| **SOKOL GJONBALAJ, JOSEPH CAMPBELL, JESSICA COLE, KAREN WERNER, AUSTIN BARDEN, MARY GOVAN, ANTONIO CABEZAS, RICK HORNICK, LISA and STEVEN DELPRETE, and KRZYSZTOF ZIARNO,** individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>**VOLKSWAGEN GROUP OF AMERICA, INC.,** a New Jersey corporation, **and VOLKSWAGEN AG,** a foreign corporation,<br><br>Defendants. | **CASE NO. 2:19-cv-07165-BMC** |

**DECLARATION OF MITCHELL BREIT IN SUPPORT OF PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Mitchell Breit, herby declare as follows:

1. I am counsel for Plaintiffs in this action. I make this Declaration in Support of Preliminary Approval of the Class Action Settlement Agreement reached between Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno ("Plaintiffs") and Defendant Volkswagen Group of America, Inc. ("VWGoA") (collectively, the "Parties") in this litigation. A true and accurate copy of the Settlement Agreement is attached hereto as **Exhibit A**. I have actively participated in the conduct of this litigation, have personal knowledge of the matters set forth herein, and if called to testify, could and would testify competently thereto.

2. My firm, Milberg Coleman Bryson Phillips Grossman, PLLC, along with Berger Montague PC, Bryant Law Center PSC, Ahdoot & Wolfson, PC, and Simmons Hanly Conroy LLC (collectively, "Proposed Class Counsel") have litigated this case, have extensive experience in litigating complex class actions across the country, including extensive experiences in litigating consumer fraud and defective product cases. Attached hereto as **Exhibit B are** the resumes of Proposed Class Counsel

3. Proposed Class Counsel's years of experience representing consumers in complex class action cases contributed to an awareness of Plaintiffs' settlement leverage as well as the needs of Plaintiffs and the Proposed Class. Proposed Class Counsel believed, and continue to believe, that our clients have claims that would ultimately prevail in litigation on a class wide basis. However, Proposed Class Counsel are aware that a successful outcome is uncertain and would be achieved, if at all, only after several years of prolonged and arduous litigation with the attendant risk of drawn-out appeals, during which time consumers would continue to be damaged by Defendant's conduct. In my opinion, as well as the opinion of other Proposed Class Counsel, based on our substantial experience, the Class Action Settlement warrants the Court's preliminary approval.

4. In the sections that follow, Proposed Class Counsel explains the hard-fought litigation and the negotiations that resulted in the Settlement Agreement now before the Court for preliminary approval. As described below, the Settlement Agreement provides significant relief for consumers. It is, in the opinion of the undersigned and the other Proposed Class Counsel, fair, reasonable, adequate, and worthy of preliminary approval.

## PROCEDURAL HISTORY

5. Between December 2019 and May 2020, various Plaintiffs filed the following putative class actions against Volkswagen Group of America, Inc. and Volkswagen AG: (1) *Sokol Gjonbalaj v. Volkswagen Group of America, Inc., et al.*, No. 2:19-cv-07165 (E.D.N.Y.), filed on December 23, 2019 and subsequently amended on March 27, 2020 (the "*Gjonbalaj* Action"); (2) *Jessica Cole et al., v. Volkswagen Group of America, Inc., et al.*, No. 3:20-cv-02085 (N.D. Cal.), filed on March 25, 2020; (3) *Krzysztof Ziarno v. Volkswagen Group of America, Inc., et al.*, No. 2:20-cv-03833 (D.N.J.), filed on April 8, 2020; (4) *Dimitri Williams v. Volkswagen Group of America, Inc., et al.*, No. 2:20-cv-02553 (N.D. Ill.), filed on April 27, 2020; (5) *Austin Barden v. Volkswagen Group of America, Inc., et al.*, No. 5:20-cv-00973 (C.D. Cal.), filed on May 5, 2020; and (6) *Joseph Campbell v. Volkswagen Group of America, Inc., et al.*, No. 5:20-cv-00518 (N.D.N.Y.), filed on May 8, 2020.

6. In all six actions, Plaintiffs alleged defects in the sunroofs in the following Settlement Class Vehicles which could potentially result in leakage and water ingress into the vehicles' interiors, sometimes potentially damaging certain aspects of the vehicle: (a) any model year 2018, 2019, 2020 and 2021 Volkswagen Atlas vehicle, (b) any model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicle, (c) any model year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicle, (d) any model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicle, (e) any model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicle, (f) any model year 2018, 2019, 2020 and 2021 Volkswagen Tiguan vehicle, (g) any model year 2019, 2020 and 2021 Audi Q3 vehicle, (h) any model year 2019, 2020 and 2021 Audi Q8 vehicle, and (i) any model year 2019, 2020 and 2021 Audi e-tron vehicle, that were imported and distributed by VWGoA for sale or lease in the United States and Puerto Rico (hereinafter, the "Settlement Class Vehicles").

7. Pursuant to an agreement among the Parties, the plaintiffs in the six above-listed actions agreed to consolidate and adjudicate their claims in the *Gjonbalaj* Action. Accordingly, each of the lawsuits, except the *Gjonbalaj* Action, were voluntarily dismissed by the Plaintiffs without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

8. On August 28, 2020, Plaintiffs filed a Consolidated and Amended Class Action Complaint ("CACAC") in the *Gjonbalaj* Action (hereinafter, the "Action"). ECF No. 44.

9. VWGoA moved to dismiss the CACAC, which was fully brief. ECF Nos. 48, 50, 53. While the motion to dismiss was pending, Plaintiffs Lisa and Steven DelPrete entered into individual resolutions and voluntarily dismissed their claims, ECF Nos. 49, 56, as did Plaintiff Dimitri Williams thereafter. ECF No. 71.

10. Following the voluntary dismissal of Plaintiffs Lisa and Steven DelPrete and Dimitri Williams, Plaintiffs filed a Second Consolidated and Amended Class Actions Complaint ("SCACAC") removing Plaintiffs Lisa and Steven DelPrete's and Plaintiff Dimitri Williams claims. ECF No. 70. The SCACAC asserts the following claims: breach of express warranties (count I); breach of implied warranties (count II); breach of express and implied warranties under the California Song-Beverly Consumer Warranty Act, Cal Civ. Code § 1790, *et seq.* (counts III & IV); violation of New York General Business Law §§ 349 and 350 (counts V & VI); violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (count VII); violation of California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (count VIII); violation of the Maryland Consumer Protection Act, Md. Code Ann. Law, Com. Law §§ 13-101, *et seq.* (count IX); violation of the New Jersey Consumer Fraud Act, N.J. Stat. § 56:8-2 (count X); Fraud by Omission and/or Fraudulent Concealment (count XII); and, Unjust Enrichment (count XI).

11. VWGoA denies Plaintiffs' allegations and claims and maintains that the subject vehicles' sunroofs are not defective, were properly designed, manufactured, marketed and sold, that no warranties were breached, that no applicable statutes or laws were violated, and no wrongdoing occurred with respect to the subject vehicles and their sunroofs.

**PROPOSED SETTLEMENT AGREEMENT**

12. The Settlement Agreement is the product of hard-fought litigation and a fully informed decision by Plaintiffs' Counsel after engaging in motion practice, the exchange of important, relevant information pursuant to Federal Rule of Evidence 408, in-depth factual investigation, a comprehensive evaluation of factual and legal issues underlying Plaintiffs' claims, and a detailed litigation strategy aimed at obtaining significant relief for the Settlement Class while also taking into account the potential significant risks and delays of continued litigation.

13. The Parties reached the proposed Settlement Agreement through extensive arms-length negotiations over the course of approximately 9 months, including numerous exchanges of information and settlement proposals, and a full-day mediation session with Bradley A. Winters, Esq., an experienced and well-respected neutral mediator from JAMS.

14. Only after the Class benefits were negotiated did the Parties discuss attorneys' fees/expenses and a Class Representative Service Award, and all were negotiated with the assistance of the mediator.

15. On March 30, 2023, following extensive preliminary negotiations that did not culminate in a settlement, the Parties participated in a full-day mediation session with an experienced, professional third-party neutral mediator at JAMS, Bradley A. Winters, Esq.

16. The proposed Class Representative Plaintiffs do not have any conflicts of interest with the absent Settlement Class Members, as their claims are coextensive with those of the Class Members.

17. The proposed Class Representative Plaintiffs have read and understood the basic allegations of the operative Complaint and are willing to prosecute this matter on behalf of the Class.

18. Proposed Class Counsel are qualified and have extensive experience and expertise in prosecuting complex class actions, including consumer protection class actions related to automobiles and other allegedly defective consumer products.

19. Proposed Class Counsel vigorously prosecuted this action and will continue to do so through final approval. Proposed Class Counsel identified and investigated the claims in this lawsuit and the underlying facts, and successfully negotiated this Settlement.

20. This Action was vigorously litigated before the Settlement was reached. Ultimately, Defendant disclosed substantial evidence under the settlement and mediation privilege, and thus the extent of discovery completed is more extensive than the stage of proceedings alone might suggest.

21. The Settlement provides Class Members with immediate, certain, and meaningful relief that directly addresses the issues they have experienced, or might experience, relating to the alleged claims.

22. Proposed Class Counsel fully endorse the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class.

23. Settlement negotiations occurred only *after* extensive investigation by Plaintiffs' Counsel, *after* the exchange of important, relevant information pursuant to Federal Rule of

Evidence 408, and *after* a thorough review and examination of the facts and law relating to the matters in the Action.

24. All the terms of the Settlement relating to the benefits to be provided to eligible Settlement Class Members were agreed upon by the Parties, through the assistance of an experienced skilled mediator from JAMS, prior to negotiations concerning the proposed Class Counsel fees and expenses and Class Representative Service Awards.

25. Proposed Class Counsel, along with Defendant's Counsel and the proposed Settlement Administrator, have devised a comprehensive Class Notice Plan that comports with due process and the procedural requisites of Rule 23.

26. Proposed Class Counsel believed, and continued to believe, that our clients had claims that would have ultimately prevailed at the completion of the litigation and on a class-wide basis. However, Proposed Class Counsel are aware that the outcome of this litigation was uncertain and that such outcome would have been achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

27. Based on the substantial experience as outlined above, in my opinion, the settlement warrants the Court's preliminary approval. Its terms are not only fair reasonable, and adequate, but also are a very favorable result for the Proposed Class. The Proposed Settlement Agreement provides substantial and concrete benefits to the Proposed Class. Based on all of the factors, we recommend that the court grant preliminary approval of the Proposed Settlement Agreement.

I declare under the penalty of perjury under the laws of the United States of America and the state of New York that the foregoing is true and correct.

Executed this 18th day of April, 2023

*/s/ Mitchell Breit*

Mitchell Breit
**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC**
405 East 50th Street
New York, NY 10022
Tel. 347-668-8445
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# EXHIBIT A

# CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (the "Settlement Agreement" or the "Agreement") is made and entered into as of this day of April, 2023, by and between Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno ("Plaintiffs"), individually and as representatives of the Settlement Class defined below, and Volkswagen Group of America, Inc. ("VWGoA") ("Defendant") (collectively, the "Parties").

## RECITALS

WHEREAS, on dates between December 23, 2019 and May, 6, 2020, various Plaintiffs filed the following putative class actions against VWGoA and Volkswagen AG asserting claims that alleged defects in the putative class vehicles' Sunroofs resulted in leakage and water ingress into the vehicles' interiors: (1) *Sokol Gjonbalaj, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 2:19-cv-07165-BMC, United States District Court for the Eastern District of New York, which complaint was thereafter amended ("Gjonbalaj Action"); (2) *Jessica Cole and Karen Werner, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 3:20-cv-2085-KAW, United States District Court for the Northern District of California; (3) *Krzysztof Ziarno, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 2:20-cv-03833, United States District Court for the District of New Jersey; (4) *Dimitri Williams, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 2:20-cv-02553, United States District

Court for the Northern District of Illinois; (5) *Austin Barden, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 5:20-cv-00973, United States District Court for the Central District of California; and (6) *Joseph Campbell, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc., a New Jersey corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 5:20-cv-00518, United States District Court for the Northern District of New York;

WHEREAS, pursuant to an agreement among the Parties, the Plaintiffs in the aforesaid actions all agreed to adjudicate their aforesaid claims in the Gjonbalaj Action, and, accordingly, all of the aforesaid actions except the Gjonbalaj Action were voluntarily dismissed by the Plaintiffs without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i);

WHEREAS, thereafter, on August 28, 2020, Plaintiffs filed a Consolidated and Amended Class Action Complaint in the Gjonbalaj Action, the caption of which was entitled *Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Dimitri Williams, Antonio Cabezas, Rick Hornick, Lisa and Steven DelPrete, and Krzysztof Ziarno v. Volkswagen Group of America, Inc., a New Jersey Corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 2:19-cv-07165-BMC, United States District Court for the Eastern District of New York (hereinafter, the "Action");

WHEREAS, on March 1, 2021 and August 12, 2020 respectively, former Plaintiffs Lisa and Steven DelPrete, and Dimitri Williams, filed Notices of Voluntary Dismissal With Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i);

WHEREAS, Defendant denies Plaintiffs' allegations and claims with respect to both liability and damages, and maintains, *inter alia*, that the Settlement Class Vehicles' Sunroofs are

not defective, that no applicable warranties (express or implied) have been breached, that no common law duties or applicable statutes, laws, rules or regulations have been violated, that the Settlement Class Vehicles' Sunroofs were properly designed, tested, manufactured, distributed, marketed, advertised, warranted and sold, and that this action is not suitable for class treatment if it proceeded through litigation and trial;

WHEREAS, on October 2, 2020, pursuant to permission granted by the Court at a pre-motion conference, Defendant and Volkswagen AG filed a Rule 12 motion to dismiss the Action, which motion was fully briefed by the Parties and submitted on November 9, 2020;

WHEREAS, the Parties, after investigation and careful analysis of their respective claims and defenses, and with full understanding of the potential risks, benefits, expense and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were asserted or could have been asserted in the Action by or on behalf of Plaintiffs and members of the Settlement Class;

WHEREAS, the Parties agree that neither this Settlement Agreement and exhibits, the underlying Settlement itself, nor its negotiations, documents or any filings relating thereto, shall constitute, be evidence of, or be construed as, (i) any admission of liability, damages, or wrongdoing on the part of Defendant or any Released Party and/or (ii) the existence or validity of any fact, allegation and/or claim that was or could have been asserted in the Action, all of which are expressly denied by Defendant.

WHEREAS, this Settlement Agreement is the result of vigorous and extensive arm's length negotiations of highly disputed claims, with adequate knowledge of the facts, issues and the strengths or weaknesses of the Parties' respective positions, and with the assistance of an experienced neutral Mediator from JAMS; and

WHEREAS, the Settlement is fair, reasonable, and adequate; in all respects satisfies the requirements of Fed. R. Civ. P. 23; and is in the best interests of the Settlement Class;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, the Parties hereby agree as follows:

## I. DEFINITIONS

### A. "Action" or "Lawsuit"

"Action" or "Lawsuit" means the consolidated litigation captioned *Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Dimitri Williams, Antonio Cabezas, Rick Hornick, Lisa and Steven DelPrete, and Krzysztof Ziarno. v. Volkswagen Group of America, Inc., a New Jersey Corporation, and Volkswagen AG, a foreign corporation*, Civil Action No. 2:19-cv-07165-BMC, pending in the United States District Court for the Eastern District of New York.

### B. "Agreement," "Settlement," or "Settlement Agreement"

"Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement including all terms, provisions and conditions embodied herein and all attached Exhibits (which are an integral part of, and incorporated by reference in, this Settlement Agreement).

### C. "Claim Administrator" or "Settlement Administrator"

The "Claim Administrator" or "Settlement Administrator" means JND Legal Administration.

### D. "Claim" or "Claim for Reimbursement"

"Claim" or "Claim for Reimbursement" means the timely and proper submission of the required fully completed, signed and dated Claim Form, together with all required Proof of Repair Expense documents (as defined in Section I.S. of this Agreement), in which a Settlement

Class Member seeks to claim reimbursement for a percentage of certain past paid and unreimbursed out-of-pocket expenses for a Covered Repair of a Settlement Class Vehicle prior to the Notice Date and within seven (7) years or 80,000 miles (whichever occurred first) from said vehicle's In-Service Date, pursuant to the terms, conditions and limitations set forth in Section II.B. of this Settlement Agreement.

**E. "Claim Form"**

"Claim Form" means the form that must be fully completed, signed, dated and timely submitted to the Claim Administrator, together with all required Proof of Repair Expense documentation, in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which Claim Form will be substantially in the form attached hereto as Exhibit 1.

**F. "Claim Period"**

"Claim Period" means the period of time within which a Claim for Reimbursement under this Settlement must be mailed (postmarked) to the Claim Administrator, which period shall expire sixty (60) days after the Notice Date.

**G. "Class Counsel" or "Plaintiffs' Counsel"**

"Class Counsel" or "Plaintiffs' Counsel" means, collectively, the law firms of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC and Simmons Hanly Conroy.

**H. "Class Notice"**

"Class Notice" means the Class Notice which will be substantially in the form attached hereto as Exhibit 2.

**I. "Class Notice Plan" or "Notice Plan"**

"Class Notice Plan" or "Notice Plan" means the plan for disseminating the Class Notice to the Settlement Class as set forth in Section IV of this Settlement Agreement, and includes any further notice provisions that may be agreed upon by the Parties.

**J. "Court"**

"Court" means the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, New York 11201.

**K. "Covered Repair"**

"Covered Repair" means repair or replacement (parts and labor) of (a) the Sunroof of a Settlement Class Vehicle to address a diagnosed condition of leakage and liquid ingress into the vehicle's interior from the Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged, and if applicable, (b) to address a diagnosed condition of liquid damage to a Settlement Class Vehicle's interior seats, carpets/floor mats, interior ceiling, and failure of electrical components, directly caused by a diagnosed condition of leakage and liquid ingress into the vehicle's interior from said vehicle's Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged. A Covered Repair under the Warranty Extension (Section II.A. below) must be performed by an authorized VW dealer (for Volkswagen Settlement Class Vehicles) or an authorized Audi dealer (for Audi Settlement Class Vehicles).

A Covered Repair shall not include a repair or replacement of the Sunroof to address a leakage and liquid ingress condition resulting from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair performed by a non-dealer.

**L. "Defense Counsel"**

"Defense Counsel" or "Defendant's Counsel" means Michael B. Gallub, Esq. and Homer B. Ramsey, Esq. of Shook, Hardy & Bacon, L.L.P.

**M. "Effective Date"**

"Effective Date" means the third business day after: (1) the Court enters a Final Order and Judgment approving the Settlement Agreement, substantially in the form agreed upon by counsel for the Parties, and (2) all appellate rights with respect to said Final Order and Judgment, other than those related solely to any award of attorneys' fees, costs or service/incentive payments, have expired or been completely exhausted in such a manner as to affirm the Final Order and Judgment.

**N. "Fee and Expense Application"**

"Fee and Expense Application" means Class Counsel's application for an award of reasonable attorneys' fees, costs, and expenses ("Class Counsel Fees and Expenses"), and for Class Representative service awards.

**O. "Final Fairness Hearing"**

"Final Fairness Hearing" means the hearing at or after which the Court will determine whether to grant final approval of the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).

**P. "Final Order and Judgment"**

"Final Order and Judgment" means the Final Order and Judgment granting final approval of this Settlement Agreement and dismissing the Action with prejudice, the form of which will be agreed by the Parties and submitted to the Court prior to the Final Fairness Hearing.

**Q. "In-Service Date"**

"In-Service Date" means the date on which a Settlement Class Vehicle was first delivered to either the original purchaser or the original lessee; or if the vehicle was first placed in service as a "demonstrator" or "company" car, on the date such vehicle was first placed in service.

**R. "Notice Date"**

"Notice Date" means the Court-ordered date by which the Claim Administrator shall mail the Class Notice of this Settlement to the Settlement Class. The Notice Date shall be a date that is up to one-hundred-twenty (120) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit 3.

**S. "Proof of Repair Expense"**

"Proof of Repair Expense" means all of the following: (1) an original or legible copy of a repair invoice or record for, and demonstrating, a Covered Repair as defined in Section I.K., containing claimant's name, the make, model and vehicle identification number ("VIN") of the Settlement Class Vehicle, the name and address of the authorized Audi or VW dealer or non-dealer service center that performed the Covered Repair, the date of the Covered Repair, the Settlement Class Vehicle's mileage at the time of the Covered Repair, a description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs, and the amount charged (parts and labor) for the Covered Repair; (2) records, receipts and/or invoices demonstrating that the Settlement Class member paid for the Covered Repair; and (3) proof of the Settlement Class Member's ownership or lease of the Settlement Class Vehicle at the time of the repair covered under the Settlement. If the Covered Repair for which reimbursement is sought includes repair of damage to the vehicle's interior seats, carpets/floor mats, interior ceiling, and failure of electrical components (as defined in Section I.K.(b) of this

Agreement), then the Proof of Repair Expense must also show that said damage that required repair/replacement was directly caused by leakage and water ingress from the Sunroof while it was in the fully closed position and not cracked, broken or otherwise damaged.

**T. "Released Claims" or "Settled Claims"**

"Released Claims" or "Settled Claims" means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action, costs, expenses, and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, and regardless of any legal or equitable theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members (including their successors, heirs, assigns and representatives) which, in any way, allege, arise from, or relate to any actual, potential, or claimed leakage, liquid ingress, or liquid intrusion into any Settlement Class Vehicle from its Sunroof, any consequences, damage or loss relating thereto, and any technical service bulletins, tech tips, recalls, service actions, and other campaigns and notices addressing or relating to same, including but not limited to all matters that were asserted or could have been asserted in the Action, and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, arising under any state, federal or local statute, law, rule and/or regulation including any consumer protection, consumer fraud, unfair or deceptive business or trade practices, false or misleading advertising, and/or other sales, marketing, advertising and/or consumer statutes, laws, rules and/or regulations, under any common law cause of action or theory, and under any legal or equitable causes of action or theories whatsoever, and on any basis whatsoever including tort, contract, products liability, express warranty, implied warranty, negligence, fraud, misrepresentation, concealment, false or misleading advertising or marketing, consumer protection, express or implied covenants,

restitution, quasi-contract, unjust enrichment, injunctive relief of any kind and nature, the Magnuson-Moss Warranty Act, California Song-Beverly Consumer Warranty Act, California Unfair Competition Law, California Consumers Legal Remedies Act, New York General Business Law, Illinois Consumer Fraud and Deceptive Business Practices Act, Maryland Consumer Protection Act, Florida Deceptive and Unfair Trade Practices Act, New Jersey Consumer Fraud Act, Uniform Commercial Code and any and all other or similar federal, state or local statutes, laws, rules or derivations thereof, any state Lemon Laws, secret warranty, and/or any other theory of liability and/or recovery whatsoever, whether in law or in equity, and for any and all injuries, losses, damages, remedies (legal or equitable), costs, recoveries or entitlements of any kind, nature and description, under statutory and/or common law, and including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, injunctive relief, costs, expenses and/or counsel fees, and any other legal or equitable relief or theory of relief. This Settlement Agreement expressly exempts claims for personal injuries and property damage (other than damage to the Settlement Class Vehicle itself).

**U. "Released Parties"**

"Released Parties" means Volkswagen Group of America, Inc., Volkswagen AG, Audi AG, Volkswagen Credit, Inc., Audi of America LLC, Audi of America, Inc., Volkswagen de México S.A. de C.V., Volkswagen Group of America Chattanooga Operations, LLC, all designers, manufacturers, assemblers, distributors, importers, retailers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, repairers and servicers of the Settlement Class Vehicles and each of their component parts and systems, all of their past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns and representatives, and all of the aforementioned persons' and entities'

attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successors, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives.

**V. "Settlement Class" or "Settlement Class Members"**

"Settlement Class" or "Settlement Class Members" means: "All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in Section I.X. of this Agreement, in the United States of America and Puerto Rico."

Excluded from the Settlement Class are: (a) all Judges who have presided over the Actions and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

**W. "Settlement Class Representatives"**

"Settlement Class Representatives" means Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno.

### X. "Settlement Class Vehicles"

Settlement Class Vehicles means: (a) any model year 2018, 2019, 2020 and 2021 Volkswagen Atlas vehicle, (b) any model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicle, (c) any model year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicle, (d) any model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicle, (e) any model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicle, (f) any model year 2018, 2019, 2020 and 2021 Volkswagen Tiguan vehicle, (g) any model year 2019, 2020 and 2021 Audi Q3 vehicle, (h) any model year 2019, 2020 and 2021 Audi Q8 vehicle, and (i) any model year 2019, 2020 and 2021 Audi e-tron vehicle, which was/were imported and distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico.

### Y. "Sunroof"

"Sunroof" means the entire sunroof and sunroof assembly of a Settlement Class Vehicle including the sunroof itself, its assembly, its affixation, sealing and drainage related component parts, and all other component parts of the overall sunroof and sunroof system.

## II. SETTLEMENT CONSIDERATION

In consideration for the full and complete Release of all Released Claims against the Defendants and all Released Parties, and the dismissal of the Action (and all former aforesaid actions) with prejudice, Defendant VWGoA agrees to provide the following consideration to the Settlement Class:

**A. Warranty Extension for Current Owners and Lessees of the following Settlement Class Vehicles: (a) model year 2018, 2019, 2020 and 2021 Volkswagen Atlas and Tiguan vehicles, (b) model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicles, (c) model year 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicles, (d) model year 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicles, (e) model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles, and (f) model year 2019, 2020 and 2021 Audi Q3, Q8 and e-tron vehicles**

Effective on the Notice Date, VWGoA will extend its New Vehicle Limited Warranties ("NVLWs") applicable to these specific Settlement Class Vehicles, to cover a percentage of the cost of a Covered Repair (parts and labor), by an authorized Volkswagen ("VW") dealer [if a VW Settlement Class Vehicle] or authorized Audi dealer [if an Audi Settlement Class Vehicle], during a period of up to seven (7) years or eighty thousand (80,000) miles (whichever occurs first) from the vehicle's In-Service Date (hereinafter, the "Warranty Extension"). The percentage of coverage for the cost a Covered Repair under the Warranty Extension shall be pursuant to the coverage percentages set forth in Table I below. The Warranty Extension repair will include the Sunroof and all parts and labor necessary to effectuate such repair.

**Table I:** The following are the applicable percentages of coverage of the cost of a Covered Repair under the Warranty Extension of this Section II.A., and/or of the amount of reimbursement for a past paid Covered Repair under the Reimbursement provision of Section II. B. of this Agreement. These percentages* are based upon (i) the age and mileage of the vehicle at the time of said repair or replacement and (ii) the time/mileage durations of the particular Settlement Class Vehicle's original NVLW):**

| Time from In-Service Date | Up to 36,000 Miles | 36,001 to 50,000 Miles | 50,001-72,000 Miles | 72,001-80,000 Miles |
|---|---|---|---|---|
| 3 Years or Less | 100% (All) | 100% (6/72)<br>100% (4/50)<br>80% (3/36) | 100% (6/72)<br>80% (4/50)<br>70% (3/36) | 100% (6/72)<br>60% (4/50 and 3/36) |
| 3-4 Years | 100% (6/72)<br>100% (4/50)<br>85% (3/36) | 100% (6/72)<br>100% (4/50)<br>75% (3/36) | 100% (6/72)<br>85% (4/50)<br>70% (3/36) | 100% (6/72)<br>55% (4/50 and 3/36) |
| 4-5 Years | 100% (6/72)<br>85% (4/50)<br>70% (3/36) | 100% (6/72)<br>80% (4/50)<br>65% (3/36) | 100% (6/72)<br>70% (4/50)<br>60% (3/36) | 100% (6/72)<br>60% (4/50)<br>50% (3/36) |
| 5-6 Years | 100% (6/72)<br>75% (4/50)<br>65% (3/36) | 100% (6/72)<br>70% (4/50)<br>60% (3/36) | 100% (6/72)<br>65% (4/50)<br>55% (3/36) | 100% (6/72)<br>60% (4/50)<br>45% (3/36) |
| 6-7 Years | 100% (6/72)<br>60% (4/50)<br>60% (3/36) | 90% (6/72)<br>50% (4/50)<br>50% (3/36) | 80% (6/72)<br>40% (4/50)<br>40% (3/36) | 65% (6/72)<br>35% (4/50 and 3/36) |

* The percentages of coverage in the chart are subject to the following exception: For any Settlement Class Vehicle for which the original NVLW time/mileage period has not expired at the time of the said Covered Repair, the percentage of coverage shall be 100%.

** The parenthetical references of "3/36", "4/50" and "6/72" refer to the percentages of coverage, in each category, that apply to respective Settlement Class Vehicles whose original NVLW periods are 3 years or 36,000 miles (whichever occurred first) (referred to as "3/36"), 4 years or 50,000 miles (whichever occurred first) (referred to as "4/50") and 6 years or 72,000 miles (whichever occurred first) (referred to as "6/72") – each from the respective vehicles' In-Service Dates.

The Warranty Extension is subject to the same terms, conditions and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, except for its extension of the time/mileage duration of the original NVLWs pertaining to what is covered under the Warranty Extension.

The Warranty Extension does not apply if the need for the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other

components, improper maintenance, and/or an outside source or factor including a prior repair performed by a non-dealer.

If the applicable Settlement Class Vehicle was, or as a result of the settlement, is currently, subject to a previously-released Service Action identified in Section II.C. below, then in order to be eligible for coverage under the Warranty Extension, the Settlement Class Member is required to have had the Service Action performed on said Settlement Class Vehicle prior to the occurrence of leakage or liquid ingress giving rise to the Covered Repair.

The warranty, as extended, is fully transferable to subsequent owners to the extent that its time or mileage limitation has not expired.

### B. Reimbursement of Certain Out-of-Pocket Expenses Paid for a Covered Repair Prior to the Notice Date and Within 7 Years or 80,000 Miles (Whichever Occurred First) from the Vehicle's In-Service Date – Applicable to All Settlement Class Vehicles That Qualify

**1. Reimbursement**: If a Settlement Class Member paid out-of-pocket expense (that was not otherwise reimbursed) for the cost of a Covered Repair of a Settlement Class Vehicle prior to the Notice Date and within seven (7) years or eighty thousand (80,000) miles (whichever occurred first) from said vehicle's In-Service Date, then the Settlement Class Member may, within the Claim Period, mail to the Settlement Claim Administrator a Claim for Reimbursement (including all Proof of Repair Expense documentation) for a percentage of the paid invoice amount for said Covered Repair (parts and labor), limited to two (2) Covered Repairs per Settlement Class Vehicle during this period, with the percentage of reimbursement being pursuant to the same percentage limits of coverage set forth in Table I of Section II.A. above.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements set forth in Sections II.B.2 and II.B.3 below.

**2. Limitations and Other Conditions:**

a. Any reimbursement under this Section shall be reduced by goodwill or other amount or concession paid by an authorized Audi or VW dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free Covered Repair, or was otherwise reimbursed the full amount for the Covered Repair, they will not be entitled to any reimbursement.

b. Defendant shall not be responsible for, and shall not warrant, repair/replacement work performed at any service center or facility that is not an authorized VW or Audi dealer.

c. If, at the time of the past paid Covered Repair for which reimbursement is sought, the Settlement Class Vehicle was subject to a previously-released Service Action identified in Section II.C. below, then in order to qualify for reimbursement, the Settlement Class Member must submit, in addition to the Claim Form and Proof of Repair Expense, either (i) proof that the applicable Service Action was performed on the vehicle prior to the occurrence of leakage or liquid ingress that gave rise to the Covered Repair, or (ii) a signed Declaration attesting, under penalty of perjury, that the applicable Service Action was not performed prior to the Covered Repair because that Settlement Class Member was not notified of said Service Action prior to the Covered Repair, and VWGoA's records do not show otherwise. Proof that the applicable Service Action was performed shall take the form of an original or legible copy of an invoice, receipt, or similar record confirming said Service Action was performed on the Settlement Class Vehicle, the date that it was performed, the vehicle mileage, and the VW or Audi dealership that performed it.

d. A past paid Covered Repair shall not be eligible for, and shall be excluded from, reimbursement under this Agreement if the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly

or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair by a non-dealer.

e. If, within the Settlement Class Vehicle's original NVLW time and mileage period, the past paid Covered Repair for which reimbursement is sought was performed by a service entity or facility that is not an authorized VW or Audi dealer, then the Settlement Class Member must also submit, together with the other proof and submission requirements set forth in Section II.B.3., documentation (such as a written estimate or invoice), or if documents are not available after a good-faith effort to obtain them, a Declaration signed under penalty of perjury, confirming that the Settlement Class Member first attempted to have the Covered Repair performed by an authorized VW or Audi dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

**3. <u>Requirements for a Valid and Timely Claim for Reimbursement:</u>**

a. In order to submit a valid and timely Claim for Reimbursement pursuant to Section II.B. of this Agreement, the Settlement Class Member must mail to the Settlement Claim Administrator, post-marked within the Claim Period (no later than 60-days after the Notice Date), a fully completed, signed and dated Claim Form, together with the required Proof of Repair Expense and any other proof set forth in Section II.B.

b. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Claim Form, the Claim must contain proof that the claimant is a Settlement Class Member and that the vehicle that is the subject of the Claim is a Settlement Class Vehicle.

c. The Claim Form and supporting documentation must demonstrate the Settlement Class Member's right to reimbursement, for the amount requested, under the terms and conditions of this Settlement Agreement.

### C. Extension of Service Actions Applicable to Certain Settlement Class Vehicles

Effective on the Notice Date, VWGoA will extend the following previously-released Service Actions in the United States relating to certain free specified Sunroof related servicing, by authorized VW dealers, for current owners and lessees of certain Settlement Class Vehicles as specified below:

- Service Action 60E2 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2018 and 2019 Volkswagen Atlas and Atlas Cross Sport vehicles, will be extended for a period of six (6) months from the Notice Date; and
- Service Action 60E5 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagon vehicles, some model year 2016, 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles, and to some model year 2018 and 2019 Volkswagen Tiguan vehicles, will be extended for a period of six (6) months from the Notice Date.

### D. Updated Sunroof Maintenance Recommendation and Schedule for the Volkswagen Settlement Class Vehicles

As of the Notice Date, VWGoA shall advise authorized VW dealers, and will advise the Settlement Class in the Class Notice, that the sunroof maintenance recommendation and schedule will be updated for the following VW Settlement Class Vehicles, as follows:

Involved Settlement Class Vehicles:

Model Year 2018 and 2019 Volkswagen Atlas

Model Year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI

Model Year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen

Model Year 2017, 2018 and 2019 Volkswagen Golf Alltrack

Model Year 2018 and 2019 Volkswagen Tiguan

Updated Maintenance Recommendation and Schedule:

Every 2 years or 20,000 miles (whichever comes first) – Check sunroof function, clean guide rails and lubricate with grease (if equipped), check water drainage (if equipped).

## III. CLAIMS ADMINISTRATION

### A. Costs of Administration and Notice

As between the Parties, Defendant shall be responsible for the reasonable fee of the Claim Administrator for class notice and settlement claim administration. The Parties retain the right to audit and review the Claims handling by the Claim Administrator, and the Claim Administrator shall report to both parties jointly.

### B. Claim Administration

1. Only timely Claims that are complete and which satisfy the Settlement criteria for reimbursement can be approved for payment. For each approved reimbursement claim, the Claim Administrator, on behalf of Defendant, shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check to be sent within one-hundred (100) days of the date of receipt of the completed Claim, or within one- hundred (100) days of the Effective Date, whichever is later. The reimbursement checks shall remain valid for

180 days. The Settlement Class Member may make one (1) request for reissuance of an expired un-negotiated check from the Claims Administrator within 225 days of its original issuance.

2. The Claim Administrator's denial of any Claim in whole or in part shall be binding and non-appealable, except that Class Counsel and Defense Counsel may confer and attempt to resolve in good faith any disputed denial by the Claim Administrator.

3. If the Claims Administrator initially determines that the Claim Form is incomplete, deficient or otherwise not fully completed, signed and/or dated, and/or that supporting documentation is missing, deficient, or otherwise incomplete, then the Claim Administrator will send the Settlement Class Member a letter or notice by regular mail advising of the deficiency(ies) in the Claim Form and/or the documentation. The Settlement Class Member will then have thirty (30) days after the date of said letter/notice to mail a response to the Claim Administrator, curing all said deficiencies and supplying all missing information and documentation, or the claim will be denied.

4. If the Claim is denied in whole or in part, either for untimeliness, not meeting the Settlement criteria for reimbursement, or for failure to timely cure any deficiencies or missing or incomplete information/documentation, the Claim Administrator will so notify the Settlement Class Member by sending a letter or notice of the denial by regular mail. Any Settlement Class Member whose claim is denied shall have fifteen (15) days from the date of the Claim Administrator's letter/notice of denial to request an "attorney review" of the denial, after which time Class Counsel and Defense Counsel shall meet and confer and determine whether said denial, based upon the Claim Form and documentation previously submitted, was correct under the terms of the Settlement, whether the denial should be modified if it is not correct, and/or whether any disputed issues can amicably be resolved. The Claim Administrator will

thereafter advise the Settlement Class Member of the attorney review determination, which shall be binding and not appealable.

## IV. NOTICE

A. To Attorneys General: In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, the Claim Administrator shall provide notice of this proposed Settlement to the Attorney General of the United States, and the Attorneys General of each state in which a known Settlement Class Member resides. The Claim Administrator shall also provide contemporaneous notice to the Parties.

B. To Settlement Class: The Claim Administrator shall be responsible for the following Settlement Class Notice Plan:

1. On an agreed upon date with the Claim Administrator, but in no event more than one-hundred-twenty (120) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual Class Notice, substantially in the form attached hereto as Exhibit 2, together with the Claim Form, substantially in the form attached hereto as Exhibit 1, to be mailed, by U.S. first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Defendant may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it and Class Counsel approves all changes and formatting. The Claim Administrator shall be responsible for dissemination of the Class Notice.

2. For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from Polk/IHS Markit or an equivalent company (such as Experian) the names and current or last known addresses of Settlement Class Vehicle owners and lessees

that can reasonably be obtained, based upon the VINs of Settlement Class Vehicles to be provided by Defendant.

3. Prior to mailing the Class Notice, the Claim Administrator shall conduct an address search through the United States Postal Service's National Change of Address database to update the address information for Settlement Class Vehicle owners and lessees. For each individual Class Notice that is returned as undeliverable, the Claim Administrator shall re-mail all Class Notices where a forwarding address has been provided. For the remaining undeliverable notice packets where no forwarding address is provided, the Claim Administrator shall perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable to the extent any new and current addresses are located.

4. The Claim Administrator shall diligently, and/or as reasonably requested by Class Counsel or Defense Counsel, report to Class Counsel and Defense Counsel the number of individual Class Notices originally mailed to Settlement Class Members, the number of individual Class Notices initially returned as undeliverable, the number of additional individual Class Notices mailed after receipt of a forwarding address, and the number of those additional individual Class Notices returned as undeliverable.

5. The Claim Administrator shall, upon request, provide Class Counsel and Defense Counsel with the names and addresses of all Settlement Class Members to whom the Claim Administrator sent a Class Notice pursuant to this section.

6. The Claim Administrator shall implement a Settlement website that contains the following information:

(i) instructions on how to submit a Claim for Reimbursement by mail;

(ii) instructions on how to contact the Claim Administrator, Class Counsel and Defense Counsel for assistance;

(iii) a copy of the Claim Form, Class Notice and this Settlement Agreement, the Preliminary Approval Order, the motion for Final Approval, the Class Counsel Fee and Expenses Application, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and

(iv) the deadlines for any objections, requests for exclusion and mailing of claims, the date, time and location of the final fairness hearing, and any other relevant information agreed upon by counsel for the Parties.

7. No later than ten (10) days after the Notice Date, the Claim Administrator shall provide an affidavit to Class Counsel and Defense Counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of the Class Notice Plan if this Agreement or those required by the Court and agreed by counsel.

8. Notification to Authorized VW and Audi dealers: Prior to the Notice Date, Defendant will advise authorized VW and Audi dealers of the Settlement's Extended Warranty, so that the Extended Warranty may be implemented in accordance with the terms and conditions of this Settlement Agreement. Defense Counsel will confirm with Class Counsel that Defendant has notified authorized dealers of the Settlement's Extended Warranty.

## V. RESPONSE TO NOTICE

### A. Objection to Settlement

Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement and/or to Class Counsel's Fee and Expense Application must, by the date specified in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, either (i) file any such objection and all supporting papers and submissions with the Court either in person at the Clerk's Office of the United States District Court, Eastern District of New York located at 225 Cadman Plaza East, Brooklyn, New York 11201, or (ii) file such objection and all supporting papers and submissions via the Court's electronic filing system, or (iii) if not filed in person or via the Court's electronic system, then, within the said 30-day

deadline, mail the objection and all supporting papers and submissions to the Court at the United State Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201 and also serve by U.S. first-class mail copies of the objection and all supporting papers and submissions upon each of the following: Gregory F. Coleman, Milberg Coleman Bryson Phillips Grossman LLC, First Tennessee Plaza, 800 S. Gay Street, Suite 1100, Knoxville, TN 37929, on behalf of Plaintiffs, and Michael B. Gallub, Shook, Hardy & Bacon, L.L.P., 1 Rockefeller Plaza, 28th Floor, New York, New York 10020 on behalf of Defendant.

1. Any objecting Settlement Class Member must include with his or her objection:

(a) the objector's full name, address, and telephone number,

(b) the model, model year and Vehicle Identification Number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);

(c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and

(d) copies of any papers, briefs, or other documents upon which the objection is based and/or which are pertinent to the objection;

(e) the name and address of the lawyer(s), if any, who is/are representing the objecting Settlement Class Member in making the objection;

(f) a statement of whether the objection Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Approval Hearing; and

(g) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements in any court in the United States in the previous five (5)

years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, then he/she/it shall affirmatively so state in the objection.

2. Any Settlement Class Member who has not timely and properly filed an objection in accordance with the deadlines and requirements set forth herein shall be deemed to have waived and relinquished his/her/its right to object to any aspect of the Settlement, or any adjudication or review of the Settlement, by appeal or otherwise.

3. Subject to the approval of the Court, any timely and properly objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain the bases for the objection to final approval of the proposed Settlement and/or to any motion for Class Counsel Fees and Expenses or incentive awards. In order to appear at the Final Fairness Hearing, the objecting Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court, and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and identity of any witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other specifications set forth in the Class Notice, or who has not filed an objection that complies in full with the deadline and other requirements set forth in the Settlement Agreement and Class Notice, shall be deemed to have waived and relinquished any right to appear, in person or by counsel, at the Final Fairness Hearing.

**B. Request for Exclusion from the Settlement**

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must timely mail a request for exclusion ("Request for Exclusion") to the Claim Administrator and to Class Counsel and Defense Counsel at the addresses specified in the Class Notice, by the deadline set forth below and specified in the Preliminary Approval Order. To be effective, the Request for Exclusion must be timely mailed to the specified addresses below and:

(a) include the Settlement Class Member's full name, address and telephone number;

(b) identify the model, model year and VIN of the Settlement Class Vehicle; and

(c) specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

2. Any request for exclusion must be postmarked on or before the deadline set by the Court, which date shall be approximately thirty (30) days after the Notice Date, and mailed to each of the following by U.S. first-class mail: the Claims Administrator, at the address specified on the Class Notice, Gregory F. Coleman, Milberg Coleman Bryson Phillips Grossman LLC**,** First Tennessee Plaza, 800 S. Gay Street, Suite 1100, Knoxville, TN 37929, and Michael B. Gallub, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, 28th Floor, New York, NY 10020. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion mailed to the proper addresses, shall be subject to and bound by this Settlement Agreement, the Release, and every order or judgment entered relating to this Settlement Agreement.

3. Class Counsel and Defense Counsel will review the purported Requests for Exclusion and determine whether they meet the requirements of a valid and timely Request for Exclusion. Any communications from Settlement Class Members (whether styled as an

exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself/herself/itself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. The Claim Administrator will maintain a database of all Requests for Exclusion, and will send written communications memorializing those Requests for Exclusion to Class Counsel and Defendant's counsel. The Claim Administrator shall report the names of all such persons and entities requesting exclusion, and the VINs of the Settlement Class Vehicles owned or leased by the persons and entities requesting exclusion, to the Court, Class Counsel and Defense Counsel at least eighteen (18) days prior to the Final Fairness Hearing, and the list of persons and entities deemed by the Court to have timely and properly excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

## VI. WITHDRAWAL FROM SETTLEMENT

**Plaintiffs or Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:**

1. Any objection to the proposed Settlement is sustained and such objection results in changes to this Agreement that the withdrawing party deems in good faith to be material (e.g., because it increases the costs of the Settlement, alters the Settlement, or deprives the withdrawing party of a material benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

2. The preliminary or final approval of this Settlement Agreement is not obtained without modification, and any modification required by the Court for approval is not agreed to

by both parties, and the withdrawing party deems any required modification in good faith to be material (e.g., because it increases the cost of the Settlement, alters the Settlement, or deprives the withdrawing party of a benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

3. Entry of the Final Order and Judgment described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court, except that a reversal or modification of an order awarding reasonable attorneys' fees and expenses, if any, shall not be a basis for withdrawal; or

4. In addition to the above grounds, the Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if more than five-percent (5%) of the persons and entities identified as being members of the Settlement Class exclude themselves from the Settlement Class.

5. To withdraw from this Settlement Agreement under this paragraph, the withdrawing Party must provide written notice to the other Party's counsel and to the Court within ten (10) business days of receipt of any order or notice of the Court modifying, adding or altering any of the material terms or conditions of this Agreement. In the event either Party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in the Action or any other litigation or proceeding for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without

prejudice to the Defendant and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, claim, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

6. A change in law, or change of interpretation of present law, that affects this Settlement shall not be grounds for withdrawal from the Settlement.

## VII. ADMINISTRATIVE OBLIGATIONS

A. In connection with the administration of the Settlement, the Claim Administrator shall maintain a record of all contacts from Settlement Class Members regarding the Settlement, any Claims submitted pursuant to the Settlement and any responses thereto. The Claim Administrator, on a monthly basis, shall provide to Class Counsel and Defense Counsel summary information concerning the number of Claims made, number of Claims approved, the number of Claims denied, the number of Claims determined to be deficient, and total dollar amount of payouts on Claims made, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

B. Except as otherwise stated in this Agreement, all reasonable expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of the Class Notice, and the cost of the Claim Administrator's distributing and administering the benefits of the Settlement Agreement based upon properly approved Claims, shall be paid by Defendant.

## VIII. SETTLEMENT APPROVAL PROCESS

### A. Preliminary Approval of Settlement

Promptly after the execution of this Settlement Agreement, Class Counsel shall present this Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as Exhibit 3.

### B. Final Approval of Settlement

1. If this Settlement Agreement is preliminarily approved by the Court, and pursuant to a schedule set forth in the Preliminary Approval Order or otherwise agreed by the Parties, Class Counsel shall present a motion requesting that the Court grant final approval of the Settlement and issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) substantially in a form to be agreed by the Parties.

2. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. Such best efforts shall include taking all reasonable steps to secure entry of a Final Order and Judgment, as well as supporting the Settlement and the terms of this Settlement Agreement through any appeal.

### C. Plaintiffs' Application for Class Counsel Reasonable Fees and Expenses and Class Representative Service Awards

1. After the Parties reached an agreement on the material terms of this Settlement, the Parties commenced efforts to negotiate the issue of Class Counsel Fees and Expenses and

Class Representative service awards. As a result of adversarial arm's length negotiations, the Parties hereby agree that Class Counsel may collectively apply to the Court ("Fee and Expense Application") for a combined award of reasonable attorneys' fees, costs and expenses (hereinafter, collectively, "Class Counsel Fees and Expenses") in an amount up to, but not exceeding, the total combined sum of Two Million Eight Hundred and Fifty Thousand Dollars ($2,850,000). Class Counsel may apply for such an award, up to that total combined sum, on or before twenty-one (21) days prior to the deadline in the Preliminary Approval Order for objections and/or requests for exclusion, or as otherwise directed by the Court. Defendant will not oppose a request for Class Counsel Fees and Expenses that does not exceed said total combined sum of up to Two Million Eight Hundred and Fifty Thousand Dollars ($2,850,000), and Class Counsel shall not seek or be awarded, nor shall Class Counsel accept, any amount of Class Counsel Fees and Expenses exceeding said total combined sum. The award of reasonable Class Counsel Fees and Expenses, to the extent consistent with this Agreement, shall be paid by Defendant as set forth below, and shall not reduce or in any way affect any benefits available to the Settlement Class pursuant to this Agreement.

The Parties also agree that Class Counsel may also apply to the Court for a reasonable Service Award of up to, but not exceeding, Five Thousand Dollars ($5,000) for each of the following named Plaintiffs: Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno, who are serving as Settlement Class Representatives, to be paid by Defendant as set forth below. Defendant will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendant pay a Service Award of up to $5,000 for each of the aforesaid Plaintiff-Settlement Class Representatives.

2. The Class Counsel Fees and Expenses and Settlement Class Representative Service Awards, to the extent consistent with this Agreement, shall be paid as directed by the Court by wire transfer to Milberg Coleman Bryson Phillips Grossman LLC within thirty (30) days after the later of the Effective Date of the Settlement or the date of entry of the Final Order and Judgment for attorney fees, expenses, and service awards, including final termination or disposition of any appeals relating thereto. Said payment to Milberg Coleman Bryson Phillips Grossman LLC shall fully satisfy and discharge all obligations of Defendant and the Released Parties with respect to payment of the Class Counsel Fees and Expenses, any attorneys' fees and expenses in connection with the Action (including all other aforementioned actions previously filed), and Settlement Class Representative service awards, and Milberg Coleman Bryson Phillips Grossman LLC shall thereafter have sole responsibility to distribute the appropriate portions of said payment to the other Class Counsel as agreed among them and/or as directed by the Court, and to the Settlement Class Representatives.

3. The procedure for, and the grant, denial, allowance or disallowance by the Court of the Fee and Expense Application, are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the Effective Date of the Settlement if it is granted final approval by the Court. Payment of Class Counsel Fees and Expenses and the Settlement Class Representatives' Service Awards will not reduce the benefits to which Settlement Class Members may be eligible under the Settlement terms, and the

Settlement Class Members will not be required to pay any portion of the Class Counsel Fees and Expenses and Settlement Class Representative Service Awards.

**D. Release of Plaintiffs' and Settlement Class Members' Claims**

1. Upon the Effective Date, the Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, completely and forever released, acquitted and discharged the Defendants and all Released Parties from all Released Claims.

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiffs and all Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Upon the Effective Date, the Action (including all other aforementioned actions previously filed) will be deemed dismissed with prejudice.

## IX. MISCELLANEOUS PROVISIONS

**A. Effect of Exhibits**

The exhibits to this Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Agreement.

**B. No Admission of Liability**

Neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim, allegation or fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind and nature on the part of Defendant and the Released Parties, or any admission by

Defendant and any Released Parties of any claim or allegation made in any action or proceeding against them. The Parties understand and agree that neither this Agreement, any documents prepared and/or filed in connection therewith, nor the negotiations that preceded it, shall be offered or be admissible in evidence against Defendant, the Released Parties, the Plaintiffs or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding, except in an action or proceeding brought to enforce the terms of this Agreement.

**C. Entire Agreement**

This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person or party against whom enforcement of the Agreement is sought.

**D. Arm's-Length Negotiations and Good Faith**

The Parties have negotiated all of the terms and conditions of this Agreement at arm's-length and in good faith. All terms, conditions and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. In addition, the Parties hereby acknowledge that they have had ample opportunity to, and that they did, confer with counsel of their choice regarding, and before executing, this Agreement, and that this Agreement is fully entered into voluntarily and with no duress whatsoever.

**E. Continuing Jurisdiction**

The Parties agree that the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of this Agreement.

**F. Binding Effect of Settlement Agreement**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, attorneys, executors, administrators, heirs, successors and assigns.

**G. Extensions of Time**

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to Court approval as to Court dates).

**H. Service of Notice**

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Defendant's counsel or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other parties in writing, of a successor individual or address:

As to Plaintiffs:

Gregory F. Coleman
Mitchell M. Breit
Milberg Coleman Bryson Phillips Grossman LLC
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929

As to Defendant:

Michael B. Gallub, Esq.
Homer B. Ramsey, Esq.
Shook, Hardy & Bacon L.L.P.
1 Rockefeller Plaza, 28th Floor
New York, NY 10020

**I. Authority to Execute Settlement Agreement**

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

**J. Return of Confidential Materials**

All documents and information designated as "confidential" and produced or exchanged in the Action, shall be returned or destroyed within thirty (30 days after entry of the Final Order and Judgment.

**K. No Assignment**

The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the litigation or any related action.

**L. No Third-Party Beneficiaries**

This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of this Agreement. However, this does not apply to, or, in any way, limit, any Released Party's right to enforce the Release of Claims set forth in this Agreement.

**M. Construction**

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

**N. Captions**

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

ON BEHALF OF PLAINTIFFS:

Dated: April__, 2023

Gregory F. Coleman
Mitchell M. Breit
**Milberg Coleman Bryson Phillips Grossman LLC**
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel. (865) 247-0080
Fax (865) 522-0049
greg@gregcolemanlaw.com
mbreit@milberg.com

Mark P. Bryant
Emily Ward Roark
**BRYANT LAW CENTER PSC**
601 Washington Street
P.O. Box 1876
Paducah, KY 42002-1876
Tel. (270) 442-1422
Fax (270) 443-8788
mark@bryant.law
emily@bryant.law

**N. Captions**

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

ON BEHALF OF PLAINTIFFS:

Dated: April__, 2023

Gregory F. Coleman
Mitchell M. Breit
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Russell D. Paul
Jeffrey L. Osterwise
Amey J. Park
Abigail J. Gertner
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josterwise@bm.net
apark@bm.net
agertner@bm.net

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Christopher E. Stiner
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An Truong
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7th Floor
New York, NY 10016-7416
Tel. (212) 784-6400
Fax (212) 213-5949
atruong@simmonsfirm.com
jaybarnes@simmonsfirm.com

Dated: April 5, 2023

Sokol Gjonbalaj

Sokol Gjonbalaj

Dated: April__, 2023

Joseph Campbell

Dated: April__, 2023

Jessica Cole

Dated: April__, 2023

Karen Werner

Dated: April__, 2023

Austin Barden

Dated: April__, 2023

Mary Govan

Dated: April__, 2023

Antonio Cabezas

Dated: April__, 2023

Rick Hornick

Dated: March__, 2023

Krzysztof Ziarno

Dated: April__, 2023

Sokol Gjonbalaj

Dated: April 6, 2023

Joseph Campbell (Apr 6, 2023 20:50 EDT)

Joseph Campbell

Dated: April__, 2023

Jessica Cole

Dated: April__, 2023

Karen Werner

Dated: April__, 2023

Austin Barden

Dated: April__, 2023

Mary Govan

Dated: April__, 2023

Antonio Cabezas

Dated: April__, 2023

Rick Hornick

Dated: March__, 2023

Krzysztof Ziarno

Dated: April__, 2023 4/18/2023

Sokol Gjonbalaj

Sokol Gjonbalaj

Dated: April__, 2023

Joseph Campbell

Dated: April__, 2023 4/11/2023

DocuSigned by:
Jessica Cole
BAA1F855ADD14AE...

Jessica Cole

Dated: April__, 2023 4/17/2023

Karen Werner

Karen Werner

Dated: April__, 2023

Austin Barden

Dated: April__, 2023 4/17/2023

Mary Govan

Mary Govan

Dated: April__, 2023 4/13/2023

Cabezas 6817

Antonio Cabezas

Dated: April__, 2023 4/13/2023

Rick Hornick

Rick Hornick

Dated: March__, 2023

Krzysztof Ziarno

Dated: April__, 2023

Sokol Gjonbalaj

Dated: April__, 2023

Joseph Campbell

Dated: April__, 2023

Jessica Cole

Dated: April__, 2023

Karen Werner

Dated: April__, 2023

Austin Barden (Apr 7, 2023 11:02 PDT)

Austin Barden

Dated: April__, 2023

Mary Govan

Dated: April__, 2023

Antonio Cabezas

Dated: April__, 2023

Rick Hornick

Dated: March__, 2023

Krzysztof Ziarno

ON BEHALF OF DEFENDANT:

Dated: April__, 2023

Michael B. Gallub
Homer B. Ramsey
SHOOK, HARDY & BACON, L.L.P.
1 Rockefeller Plaza, 28th Floor
New York, New York 10020

# EXHIBIT 2

# VOLKSWAGEN CLASS NOTICE

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

## UNITED STATES DISTRICT COURT
## FOR THE EASTERN DISTRICT OF NEW YORK

If you currently or previously owned or leased a vehicle listed below, you may be entitled to benefits afforded by a class action settlement. This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

- **This proposed class action, pending in the United States District Court for the Eastern District of New York, is entitled *Sokol Gjonbalaj, et al., v. Volkswagen Group of America, Inc., et al.,* Civil Action No. 2:19-cv-07165-BMC (the "Action" or "Lawsuit"). The parties have agreed to a class settlement of the Action and have asked the Court to approve the proposed Settlement. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement.**

- **This Notice explains the Action, the proposed Settlement, your legal rights and options, available benefits, who is eligible for and how to obtain the benefits, and applicable dates, time deadlines and procedures.**

- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

- **The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after appeals, if any, are resolved.**

### BASIC INFORMATION

### 1. Why you received this notice, and what the settlement benefits are.

According to records, you have been identified as a current or past owner or lessee of a certain vehicle within the following models/model years, that was imported and distributed by Volkswagen Group of America, Inc. ("VWGoA") in the United States or Puerto Rico (hereinafter, collectively, "Settlement Class Vehicles"):

Model Year 2018, 2019, 2020 and 2021 Volkswagen Atlas;
Model Year 2020 and 2021 Volkswagen Atlas Cross Sport;
Model Year 2015, 2016, 2017 and 2018 Volkswagen Golf or Volkswagen Golf GTI;
Model Year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen;
Model Year 2017, 2018 and 2019 Volkswagen Golf Alltrack;
Model Year 2018, 2019, 2020 and 2021 Volkswagen Tiguan;

As a current or past owner or lessee of a Settlement Class Vehicle, you are considered a "Settlement Class Member."

The Lawsuit claims that the sunroofs in the Settlement Class Vehicles may be susceptible to water leakage. Defendant has denied the claims, and maintains that the Settlement Class Vehicles' sunroofs are properly designed and manufactured, not defective, function properly, and that no applicable warranties were breached or statutes violated. The Court has not decided in favor of either party. Instead, the Lawsuit has been resolved through a Settlement under which the benefits set forth below will be provided. The available benefits will vary depending on the year and model Settlement Class Vehicle that you own(ed) or lease(d), as discussed below:

**I. Warranty Extension for Current Owners and Lessees of the following Settlement Class Vehicles: (a) model year 2018, 2019, 2020 and 2021 Volkswagen Atlas and Tiguan vehicles, (b) model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicles, (c) model year 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicles, (d) model year 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicles, and (e) model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles.**

Effective on _____, 2023 (the Notice Date), VWGoA will extend its New Vehicle Limited Warranties ("NVLWs") applicable to these specific Settlement Class Vehicles' sunroofs, to cover a percentage of the cost of a Covered Repair (parts and labor), by an authorized Volkswagen ("VW") dealer, during a period of up to seven (7) years or eighty thousand (80,000) miles (whichever occurs first) from the vehicle's In-Service Date. The percentage of coverage for the cost a Covered Repair under the Warranty Extension shall be pursuant to the coverage percentages set forth in Table I below. The Warranty Extension repair will include the Sunroof and all parts and labor necessary to effectuate such repair.

A Covered Repair is defined as repair or replacement (parts and labor) of (a) the Sunroof of a Settlement Class Vehicle to address a diagnosed condition of leakage and liquid ingress into the vehicle's interior from the Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged, and if applicable, (b) to address a diagnosed condition of liquid damage to a Settlement Class Vehicle's interior seats, carpets/floor mats, interior ceiling, and failure of electrical components, directly caused by a diagnosed condition of leakage and liquid ingress into the vehicle's interior from said vehicle's Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged.

**Table I:** The following are the applicable percentages of coverage of the cost of a Covered Repair under the Warranty Extension and/or of the amount of reimbursement for a past paid Covered Repair under the Reimbursement provision (Section 1.II. below). These percentages* are based upon (i) the age and mileage of the vehicle at the time of said repair or replacement and (ii) the time/mileage durations of the particular Settlement Class Vehicle's original NVLW):**

| Time from In-Service Date | Up to 36,000 Miles | 36,001 to 50,000 Miles | 50,001-72,000 Miles | 72,001-80,000 Miles |
|---|---|---|---|---|
| 3 Years or Less | 100% (All) | 100% (6/72)<br>100% (4/50)<br>80% (3/36) | 100% (6/72)<br>80% (4/50)<br>70% (3/36) | 100% (6/72)<br>60% (4/50 and 3/36) |
| 3-4 Years | 100% (6/72)<br>100% (4/50)<br>85% (3/36) | 100% (6/72)<br>100% (4/50)<br>75% (3/36) | 100% (6/72)<br>85% (4/50)<br>70% (3/36) | 100% (6/72)<br>55% (4/50 and 3/36) |
| 4-5 Years | 100% (6/72)<br>85% (4/50)<br>70% (3/36) | 100% (6/72)<br>80% (4/50)<br>65% (3/36) | 100% (6/72)<br>70% (4/50)<br>60% (3/36) | 100% (6/72)<br>60% (4/50)<br>50% (3/36) |
| 5-6 Years | 100% (6/72)<br>75% (4/50)<br>65% (3/36) | 100% (6/72)<br>70% (4/50)<br>60% (3/36) | 100% (6/72)<br>65% (4/50)<br>55% (3/36) | 100% (6/72)<br>60% (4/50)<br>45% (3/36) |
| 6-7 Years | 100% (6/72)<br>60% (4/50)<br>60% (3/36) | 90% (6/72)<br>50% (4/50)<br>50% (3/36) | 80% (6/72)<br>40% (4/50)<br>40% (3/36) | 65% (6/72)<br>35% (4/50 and 3/36) |

* The percentages of coverage in the chart are subject to the following exception: If the Covered Repair occurs within a Settlement Class Vehicle's original NVLW time/mileage period, then the percentage of coverage shall be 100%.

** The parenthetical references of "3/36", "4/50" and "6/72" refer to the percentages of coverage, in each category, that apply to respective Settlement Class Vehicles whose original NVLW periods are 3 years or 36,000 miles (whichever occurred first) (referred to as "3/36"), 4 years or 50,000 miles (whichever occurred first) (referred to as "4/50") and 6 years or 72,000 miles (whichever occurred first) (referred to as "6/72") – each from the respective vehicles' In-Service Dates.

The Warranty Extension is subject to the same terms, conditions and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, except for its extension of the time/mileage duration of the original NVLWs pertaining to what is covered under the Warranty Extension.

The Warranty Extension does not apply if the need for the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair performed by a non-dealer.

If the applicable Settlement Class Vehicle was, or as a result of the settlement, is currently, subject to a previously-released Service Action identified in Section 1.IV. below, then in order to be eligible for coverage under the Warranty Extension, the Settlement Class Member is required to have had the Service Action performed on said Settlement Class Vehicle prior to the occurrence of leakage or liquid ingress giving rise to the Covered Repair.

The warranty, as extended, is fully transferable to subsequent owners to the extent that its time or mileage limitation has not expired.

### II. Reimbursement of Certain Out-of-Pocket Expenses Paid for a Covered Repair Prior to the Notice Date and Within 7 Years or 80,000 Miles (Whichever Occurs First) from the Vehicle's In-Service Date – Applicable to All Settlement Class Vehicles That Qualify

If a Settlement Class Member paid out-of-pocket expense (that was not otherwise reimbursed) for the cost of a Covered Repair of a Settlement Class Vehicle prior to _____, 2023 (the Notice Date) and within seven (7) years or eighty thousand (80,000) miles (whichever occurred first) from said vehicle's In-Service Date, then the Settlement Class Member may, within the Claim Period, mail to the Settlement Claim Administrator a Claim for Reimbursement (including all Proof of Repair Expense documentation) for a percentage of the paid invoice amount for said Covered Repair (parts and labor), limited to two (2) Covered Repairs per Settlement Class Vehicle during this period, with the percentage of reimbursement being pursuant to the same percentage limits of coverage set forth in Table I above.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements which are set forth below and in the Settlement Agreement, which can be found on the Settlement website at www.XXXXXXXXXXX.com.

### III. Required Proof and Limitations

To qualify for reimbursement of past paid and unreimbursed out-of-pocket expenses as provided in Section 1.II. above, Settlement Class Members must timely comply with the following requirements:

A. Any Claim for Reimbursement must contain the required completed and signed Claim Form, a copy of which is enclosed with this Notice and also available at www.XXXXXXXXXX.com, together with Proof of Repair Expense, all required documentation and, if applicable, declaration(s), listed in the Claim Form.

B. The fully completed and signed Claim Form, together with all required documentation and declaration(s), must be mailed to the Settlement Claim Administrator by first class mail **post-marked no later than _____, 2023 (60 days after the Notice Date).**

C. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Claim Form, the Claim shall contain proof that the claimant is a Settlement Class Member, that the vehicle is a Settlement Class Vehicle, and that the Settlement Class

Member paid for the repair for which reimbursement is being sought under this Settlement.

D. Any reimbursement shall be reduced by goodwill or other amount or concession paid by an authorized VW dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free Covered Repair, or was otherwise reimbursed the full amount for the Covered Repair, he/she/it will not be entitled to any reimbursement.

E. If, at the time of the past paid Covered Repair for which reimbursement is sought, the Settlement Class Vehicle was subject to a previously-released Service Action identified in Section 1.IV. below, then in order to qualify for reimbursement, the Settlement Class Member must submit, in addition to the Claim Form and Proof of Repair Expense, either (i) proof that the applicable Service Action was performed on the vehicle prior to the occurrence of leakage or liquid ingress that gave rise to the Covered Repair, or (ii) a signed Declaration attesting, under penalty of perjury, that the applicable Service Action was not performed prior to the Covered Repair because that Settlement Class Member was not notified of said Service Action prior to the Covered Repair, and VWGoA's records do not show otherwise. Proof that the applicable Service Action was performed shall take the form of an original or legible copy of an invoice, receipt, or similar record confirming said Service Action was performed on the Settlement Class Vehicle, the date that it was performed, the vehicle mileage, and the VW dealership that performed it.

F. A past paid Covered Repair shall not be eligible for, and shall be excluded from, reimbursement if the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair by a non-dealer.

G. If, within the Settlement Class Vehicle's original NVLW time and mileage period, the past paid Covered Repair for which reimbursement is sought was performed by a service entity or facility that is not an authorized VW dealer, then the Settlement Class Member must also submit, together with the other proof and submission requirements set forth in this Notice, documentation (such as a written estimate or invoice), or if documents are not available after a good-faith effort to obtain them, a Declaration signed under penalty of perjury, confirming that the Settlement Class Member first attempted to have the Covered Repair performed by an authorized VW dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

## IV. Extension of Service Actions Applicable to Certain Settlement Class Vehicles

Effective on _____, 2023 (the Notice Date), VWGoA will extend the following previously-released Service Actions in the United States relating to certain free specified Sunroof related servicing, by authorized VW dealers, for current owners and lessees of certain Settlement Class Vehicles as specified below:

- Service Action 60E2 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2018 and 2019 Volkswagen Atlas and Atlas Cross Sport vehicles, will be extended until _____ (six (6) months from the Notice Date); and
- Service Action 60E5 (Front Sunroof Drain Cleaning & Modification), applicable to some model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagon vehicles, some model year 2016, 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicles, and to some model year 2018 and 2019 Volkswagen Tiguan vehicles, will be extended until _____ (six (6) months from the Notice Date).

## V. Updated Sunroof Maintenance Recommendation and Schedule for the Volkswagen Settlement Class Vehicles

As part of the class settlement, VWGoA is also hereby providing, in this Notice, the following updated sunroof maintenance recommendations and schedule (which updates any prior sunroof maintenance recommendations and schedule contained in the following VW vehicles' Warranty and Maintenance Booklets):

Involved Settlement Class Vehicles:
Model Year 2018 and 2019 Volkswagen Atlas
Model Year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI
Model Year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen
Model Year 2017, 2018 and 2019 Volkswagen Golf Alltrack

Model Year 2018 and 2019 Volkswagen Tiguan

Updated Maintenance Recommendation and Schedule:
Every 2 years or 20,000 miles (whichever comes first) – Check sunroof function, clean guide rails and lubricate with grease (if equipped), check water drainage (if equipped).

### 2. Why is this a class action settlement?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. All of these people are Class Members or Settlement Class Members. The Class Representatives and all Settlement Class Members are called the Plaintiffs and the companies they sued are called the Defendants. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Class.

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a Settlement with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the Settlement Class Members) will receive benefits quickly. The Class Representatives and the attorneys believe the Settlement is best for the Settlement Class.

## WHO IS PART OF THE SETTLEMENT?

### 3. Am I in this Settlement Class?

The Court has conditionally approved the following definition of a Settlement Class Member: All persons or entities who purchased or leased a Settlement Class Vehicle in the United States of America and Puerto Rico.

Excluded from the Settlement Class are (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents, and representatives of Defendant, and their family members; (c) any affiliate, parent, or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of final approval of the Settlement, settled with and released Defendant or any Released Parties from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

### 4. I'm still not sure if I am included in this Settlement.

If you are still not sure whether you are included in this Settlement, you can get more information. Call the Settlement Claim Administrator at 1-XXX-XXX-XXXX or visit www.XXXXXXXXXXX.com for more information.

## SETTLEMENT BENEFITS – WHAT YOU GET

### 5. What does the Settlement provide?

The benefits afforded by the Settlement are described in Section 1. Additional details are provided in the next three sections.

### 6. Who can send in a Claim for Reimbursement?

Any United States or Puerto Rico resident who purchased or leased a Settlement Class Vehicle can send in a timely Claim for Reimbursement if the Claim satisfies the parameters, criteria and proof required for reimbursement described in Section 1.

## 7. How and When do I send in a Claim for Reimbursement?

To submit a Claim for Reimbursement, you must do the following before the _____, 2023 deadline:

A. Complete, sign under penalty of perjury, and date a Claim Form (there is one enclosed with this Class Notice, and you can also download one at www.XXXXXXXXX.com). It is recommended that you keep a copy of the completed Claim Form; and

B. Mail the completed, signed, and dated Claim Form, together with your supporting documentation (i.e., repair record[s], receipts, proof of payment, etc.) by first-class mail to the Settlement Claim Administrator, at the address provided on the Claim Form, **post-marked no later than _____, 2023**. The information that must be reflected in your records is described on the Claim Form. It is recommended that you keep a copy of your records and receipts.

If you are eligible for reimbursement benefits under the Settlement but fail to submit the completed Claim Form and supporting documents by the required deadline, you will not receive a reimbursement.

## 8. When do I get my reimbursement or learn whether I will receive a payment?

If the Settlement Claim Administrator determines your Claim is valid, your reimbursement will be mailed to you within one hundred (100) days of either (i) the date of receipt of the completed Claim (with all required proof), or (ii) the date that the Settlement becomes final (the "Effective Date"), whichever is later. The Court will hold a Final Fairness Hearing on _____**, 2023 at ___(EDT),** to decide whether to approve the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at www.XXXXXXXXXX.com.

If the Claims Administrator determines your Claim should not be paid, you will be mailed a letter telling you this. If the reason for rejecting your Claim is due to a deficiency in your Claim Form and/or supporting proof, the letter will notify you of the deficiency in your Claim and what needs to be submitted, and by when, to correct the deficiency. To check on the status of your Claim, you can call 1-XXX-XXX-XXXX.

## 9. What am I giving up to participate in the Settlement and stay in the Class?

Unless you exclude yourself by taking the steps described in Section 10 below, you are staying in the Class, and that means that if the Court approves the settlement, you will be bound by the release of claims and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were or could have been asserted in this case, and the Released Claims against the Released Parties set forth in the Settlement Agreement. It also means that all of the Court's orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in Sections I.T, I.U, and VIII.D. of the Settlement Agreement, a copy of which is available for review on the settlement website, www.XXXXXXXXXX.com.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

## 10. How do I Exclude Myself from this Settlement?

**You have a right, if you so desire, to exclude yourself from this Settlement.** To exclude yourself from the Settlement, you must mail a written Request for Exclusion, by the deadline below, stating clearly that you want to be excluded from the Settlement. You must include in the Request for Exclusion your full name, address, telephone number; the model, model year and VIN of the Settlement Class Vehicle; a statement that you are a present or former owner or lessee of a Settlement Class Vehicle; and specifically and unambiguously state your desire to be excluded from the Settlement Class. You must mail your Request for Exclusion by first-class mail, **post-marked no later than _____, 2023 [30 Days after Notice Date]**, to each of the following:

| CLAIMS ADMINISTRATOR | CLASS COUNSEL | DEFENSE COUNSEL |
|---|---|---|
| JND Legal Administration | GREGORY F. COLEMAN, ESQ.<br>MILBERG COLEMAN BRYSON<br>PHILLIPS GROSSMAN LLC<br>FIRST TENNESSEAN PLAZA<br>800 S. GAY STREET, SUITE 1100<br>KNOXVILLE, TN 37929 | MICHAEL B. GALLUB, ESQ.<br>SHOOK HARDY & BACON LLP<br>1 ROCKEFELLER PLAZA<br>28TH FLOOR<br>NEW YORK, NY 10020 |

You cannot exclude yourself on the phone or by email. If you timely mail a Request for Exclusion with all required information, then you will not receive any benefits of the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit.

### 11. If I don't exclude myself, can I sue later?

No, not for the same matters and legal claims that were or could have been asserted in the Action, unless your claim is for personal injury or property damage (other than damage to the Settlement Class Vehicle itself).

### 12. If I exclude myself, can I get the benefits of this Settlement?

No, if you exclude yourself from the Settlement Class, you won't receive any money or benefits from this Settlement, and you should not submit a Claim Form. You cannot do both.

### 13. Do I have a lawyer in this case?

Yes. The Court has conditionally appointed the law firms of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC, and Simmons Hanly Conroy to represent the Settlement Class. Together, these law firms are called "Class Counsel."

### 14. Should I get my own lawyer?

You do not need to hire your own lawyer to participate in the Settlement because Class Counsel will be representing you and the Settlement Class. But, if you want your own lawyer, you may hire one at your own cost.

### 15. How will the lawyers be paid, and will the Plaintiff Settlement Class Representative receive an incentive award?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees and reasonable costs and expenses ("Fees and Expenses") in an amount not exceeding a combined total sum of $_____. VWGoA has agreed not to oppose Class Counsel's application for Fees and Expenses to the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any Fees and Expenses in excess of that combined total sum. You won't have to pay these Fees and Expenses. Any Fees and Expenses awarded to Class Counsel will not affect your Settlement amount.

Class Counsel will also apply to the Court for service awards to the named Plaintiffs, Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno, who have conditionally been approved as Settlement Class Representatives, in the amount of $XXXX each for their efforts in pursuing this litigation for the benefit of the Settlement Class.

Any award for Class Counsel Fees and Expenses, and any service award, will be paid by Defendant and will not reduce any benefits available to you or the rest of the Settlement Class under the Settlement.

Class Counsel's motion for fees and expenses and Settlement Class Representative service awards will be filed by **_____, 2023 [9 Days after Notice Date],** and a copy will be made available for review at www.XXXXXXXXXs.com.

## 16. How do I tell the Court that I like or dislike the Settlement?

**If you are a member of the Settlement Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or you can ask the Court to deny approval by submitting a written objection. You can object to the Settlement and/or to Class Counsel's requests for Fees and Expenses and Settlement Class Representative service awards.** You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object on a timely basis. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object to or comment on the Settlement, you must do one of the following:

(a) Submit your written objection or comment, and any supporting papers or materials, to the Court. You may do so by filing them in person **no later than _____, 2023 [30 Days after the Notice Date],** at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, or by filing electronically via the Court's electronic filing system; or

(b) If not filed in person or via the Court's electronic filing system, by mailing the objection or comment, by first-class mail, **postmarked no later than _____, 2023 [30 Days after the Notice Date],** to the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, and to each of the following:

| CLAIMS ADMINISTRATOR | CLASS COUNSEL | DEFENSE COUNSEL |
|---|---|---|
| JND Legal Administration | GREGORY F. COLEMAN, ESQ.<br>MILBERG COLEMAN BRYSON<br>PHILLIPS GROSSMAN LLC<br>FIRST TENNESSEAN PLAZA<br>800 S. GAY STREET, SUITE 1100<br>KNOXVILLE, TN 37929 | MICHAEL B. GALLUB, ESQ.<br>SHOOK HARDY & BACON LLP<br>1 ROCKEFELLER PLAZA<br>28TH FLOOR<br>NEW YORK, NY 10020 |

Your written objection must state clearly that you are objecting to the Settlement or the request for Class Counsel Fees and Expenses and/or Class Representative Service Awards, in *Sokol Gjonbalaj, et al., v. Volkswagen Group of America, Inc., et al.,* United States District Court for the Eastern District of New York, Civil Action No. 2:19-cv-07165-BMC, and must include the following: your full name, current address and telephone number; the model, model year and VIN of your Settlement Class Vehicle, along with proof that you own(ed) or lease(d) the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration or license receipt); a written statement of all your factual and legal grounds for objecting; copies of any papers, briefs and/or other documents upon which the objection is based and which are pertinent to the objection; the name, address, and telephone number of any counsel representing you; a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, and the identity of any counsel that will appear on behalf of the Settlement Class Member at the Final Fairness Hearing; and a list of all objections submitted by the objector or objector's counsel to any class action settlement in any court in the United States in the previous five (5) years, including the full case name and the jurisdiction in which it was filed and the docket number.

Any objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing. The settlement website will indicate whether the Final Fairness Hearing will be held in person or remotely.

Any Settlement Class Member who does not submit a written comment on or objection to the proposed Settlement or the application of Class Counsel for service awards or attorneys' Fees and Expenses in accordance with the deadline and procedure set forth herein, may waive his/her right to appeal from any order or judgment of the Court concerning this Action.

### 17. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

## FINAL FAIRNESS HEARING

### 18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing at ___ _.m. (EDT) on _____, 2023, before the Honorable Brian M. Cogan, United States District Judge, United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201, to determine whether the Settlement should be finally approved. At this Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's application for Fees and Expenses and service awards to the Settlement Class Representatives.

### 19. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send a timely objection, you do not have to come to Court to talk about it. You may also pay your own lawyer to attend, but that is not necessary in order for your objection to be considered by the Court.

### 20. May I speak at the Fairness Hearing?

If you do not exclude yourself, you may speak at the Final Fairness Hearing concerning the proposed Settlement or the application of Class Counsel for Fees and Expenses and Settlement Class Representative service awards. In order to appear at the Final Fairness Hearing, you must file a Notice of Intention to Appear at the Final Fairness Hearing **on or before _____, 2023 [30 Days after Notice Date]**, including copies of any papers, exhibits or other evidence and any witnesses you intend to present at the Final Fairness Hearing, if any. If you do not file a Notice of Intention to Appear at the Final Fairness Hearing within that deadline, you will waive your right to appear at the hearing. The settlement website will indicate whether the Final Fairness Hearing will be held in person or remotely. You cannot speak at the Final Fairness Hearing if you excluded yourself from the Settlement.

## IF YOU DO NOTHING

### 21. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, including all orders, judgements and the release of claims set forth in the Settlement.

## MORE INFORMATION

### 22. Where can I get more information?

Visit the website at www.XXXXXXXXX.com where you can find extra Claim Forms, a copy of the Settlement Agreement and other pertinent documents, and more information on this Lawsuit and Settlement. Updates regarding the Action, including important dates and deadlines, will also be available on the website. You may also call the Claims Administrator at 1-XXX-XXX-XXXX or email [info@XXXXXXXXX.com].

# AUDI CLASS NOTICE

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

## UNITED STATES DISTRICT COURT
## FOR THE EASTERN DISTRICT OF NEW YORK

If you currently or previously owned or leased a vehicle listed below, you may be entitled to benefits afforded by a class action settlement. This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

- **This proposed class action, pending in the United States District Court for the Eastern District of New York, is entitled *Sokol Gjonbalaj, et al., v. Volkswagen Group of America, Inc., et al.,* Civil Action No. 2:19-cv-07165-BMC (the "Action" or "Lawsuit"). The parties have agreed to a class settlement of the Action and have asked the Court to approve the proposed Settlement. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement.**
- **This Notice explains the Action, the proposed Settlement, your legal rights and options, available benefits, who is eligible for and how to obtain the benefits, and applicable dates, time deadlines and procedures.**
- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**
- **The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after appeals, if any, are resolved.**

### BASIC INFORMATION

### 1. Why you received this notice, and what the settlement benefits are.

According to records, you have been identified as a current or past owner or lessee of a certain vehicle within the following models/model years, that was imported and distributed by Volkswagen Group of America, Inc. ("VWGoA") in the United States or Puerto Rico (hereinafter, collectively, "Settlement Class Vehicles"):

Model Year 2019, 2020 or 2021 Audi Q3;
Model Year 2019, 2020 or 2021 Audi Q8; or
Model Year 2019, 2020 or2021 Audi e-tron;

As a current or past owner or lessee of a Settlement Class Vehicle, you are considered a "Settlement Class Member."

The Lawsuit claims that the sunroofs in the Settlement Class Vehicles may be susceptible to water leakage. Defendant has denied the claims, and maintains that the Settlement Class Vehicles' sunroofs are properly designed and manufactured, not defective, function properly, and that no applicable warranties were breached or statutes violated. The Court has not decided in favor of either party. Instead, the Lawsuit has been resolved through a Settlement under which the benefits set forth below will be provided. The available benefits will vary depending on the year and model Settlement Class Vehicle that you own(ed) or lease(d), as discussed below:

**I. Warranty Extension for Current Owners and Lessees of Model Year 2019, 2020 and 2021 Audi Q3, Q8 and e-tron vehicles.**

Effective on _____, 2023 (the Notice Date), VWGoA will extend its New Vehicle Limited Warranties ("NVLWs") applicable to these specific Settlement Class Vehicles' sunroofs, to cover a percentage of the cost of a Covered Repair (parts and labor), by an authorized Audi dealer, during a period of up to seven (7) years or eighty thousand (80,000) miles (whichever occurs first) from the vehicle's In-Service Date. The percentage of coverage for the cost a Covered Repair under the Warranty Extension shall be pursuant to the coverage percentages set forth in Table I below. The Warranty Extension repair will include the Sunroof and all parts and labor necessary to effectuate such repair.

A Covered Repair is defined as repair or replacement (parts and labor) of (a) the Sunroof of a Settlement Class Vehicle to address a diagnosed condition of leakage and liquid ingress into the vehicle's interior from the Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged, and if applicable, (b) to address a diagnosed condition of liquid damage to a Settlement Class Vehicle's interior seats, carpets/floor mats, interior ceiling, and failure of electrical components, directly caused by a diagnosed condition of leakage and liquid ingress into the vehicle's interior from said vehicle's Sunroof while it was in the fully closed position with the sunroof glass not broken, cracked or otherwise damaged.

**Table I:** The following are the applicable percentages of coverage of the cost of a Covered Repair under the Warranty Extension and/or of the amount of reimbursement for a past paid Covered Repair under the Reimbursement provision (Section 1.II. below). These percentages* are based upon (i) the age and mileage of the vehicle at the time of said repair or replacement and (ii) the time/mileage durations of the particular Settlement Class Vehicle's original NVLW):**

| Time from In-Service Date | Up to 36,000 Miles | 36,001 to 50,000 Miles | 50,001-72,000 Miles | 72,001-80,000 Miles |
|---|---|---|---|---|
| 3 Years or Less | 100% | 100% | 80% | 60% |
| 3-4 Years | 100% | 100% | 85% | 55% |
| 4-5 Years | 85% | 80% | 70% | 60% |
| 5-6 Years | 75% | 70% | 65% | 60% |
| 6-7 Years | 60% | 50% | 40$ | 35% |

* The percentages of coverage in the chart are subject to the following exception: If the Covered Repair occurs within a Settlement Class Vehicle's original NVLW time/mileage period, then the percentage of coverage shall be 100%.

The Warranty Extension is subject to the same terms, conditions and limitations set forth in the Settlement Class Vehicle's original NVLW and Warranty Information Booklet, except for its extension of the time/mileage duration of the original NVLWs pertaining to what is covered under the Warranty Extension.

The Warranty Extension does not apply if the need for the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair performed by a non-dealer.

The warranty, as extended, is fully transferable to subsequent owners to the extent that its time or mileage limitation has not expired.

**II. Reimbursement of Certain Out-of-Pocket Expenses Paid for a Covered Repair Prior to the Notice Date and Within 7 Years or 80,000 Miles (Whichever Occurs First) from the Vehicle's In-Service Date – Applicable to All Settlement Class Vehicles That Qualify**

If a Settlement Class Member paid out-of-pocket expense (that was not otherwise reimbursed) for the cost of a Covered Repair of a Settlement Class Vehicle prior to _____, 2023 (the Notice Date) and within seven (7) years or eighty thousand (80,000) miles (whichever occurred first) from said vehicle's In-Service Date, then the Settlement Class Member may, within the Claim Period, mail to the Settlement Claim Administrator a Claim for Reimbursement (including all Proof of Repair Expense documentation) for a percentage of the paid invoice amount for said Covered Repair (parts and labor), limited to two (2) Covered Repairs per Settlement Class Vehicle during this period, with the percentage of reimbursement being pursuant to the same percentage limits of coverage set forth in Table I above.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements which are set forth below and in the Settlement Agreement, which can be found on the Settlement website at www.XXXXXXXXXXX.com.

**III. Required Proof and Limitations**

To qualify for reimbursement of past paid and unreimbursed out-of-pocket expenses as provided in Section 1.II. above, Settlement Class Members must timely comply with the following requirements:

A. Any Claim for Reimbursement must contain the required completed and signed Claim Form, a copy of which is enclosed with this Notice and also available at www.XXXXXXXXXX.com, together with Proof of Repair Expense, all required documentation and, if applicable, declaration(s), listed in the Claim Form.

B. The fully completed and signed Claim Form, together with all required documentation and declaration(s), must be mailed to the Settlement Claim Administrator by first class mail **post-marked no later than _____, 2023 (60 days after the Notice Date).**

C. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Claim Form, the Claim shall contain proof that the claimant is a Settlement Class Member, that the vehicle is a Settlement Class Vehicle, and that the Settlement Class Member paid for the repair for which reimbursement is being sought under this Settlement.

D. Any reimbursement shall be reduced by goodwill or other amount or concession paid by an authorized AUDI dealer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free Covered Repair, or was otherwise reimbursed the full amount for the Covered Repair, he/she/it will not be entitled to any reimbursement.

E. A past paid Covered Repair shall not be eligible for, and shall be excluded from, reimbursement if the Covered Repair resulted from abuse, misuse, alteration or modification, a collision or crash, vandalism and/or other impact, failure to properly or fully close the Sunroof, broken, cracked or damaged Sunroof glass or other components, improper maintenance, and/or an outside source or factor including a prior repair by a non-dealer.

F. If, within the Settlement Class Vehicle's original NVLW time and mileage period, the past paid Covered Repair for which reimbursement is sought was performed by a service entity or facility that is not an authorized Audi dealer, then the Settlement Class Member must also submit, together with the other proof and submission requirements set forth in this Notice, documentation (such as a written estimate or invoice), or if documents are not available after a good-faith effort to obtain them, a Declaration signed under penalty of perjury, confirming that the Settlement Class Member first attempted to have the Covered Repair performed by an authorized Audi dealer, but the dealer declined or was unable to perform the repair free of charge pursuant to the NVLW.

## 2. Why is this a class action settlement?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. All of these people are Class Members or Settlement Class Members. The Class Representatives and all Settlement Class Members are called the Plaintiffs and the companies they sued are called the Defendants. One

court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Class.

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a Settlement with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the Settlement Class Members) will receive benefits quickly. The Class Representatives and the attorneys believe the Settlement is best for the Settlement Class.

## WHO IS PART OF THE SETTLEMENT?

### 3. Am I in this Settlement Class?

The Court has conditionally approved the following definition of a Settlement Class Member: All persons or entities who purchased or leased a Settlement Class Vehicle in the United States of America and Puerto Rico.

Excluded from the Settlement Class are (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents, and representatives of Defendant, and their family members; (c) any affiliate, parent, or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of final approval of the Settlement, settled with and released Defendant or any Released Parties from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

### 4. I'm still not sure if I am included in this Settlement.

If you are still not sure whether you are included in this Settlement, you can get more information. Call the Settlement Claim Administrator at 1-XXX-XXX-XXXX or visit www.XXXXXXXXXXX.com for more information.

## SETTLEMENT BENEFITS – WHAT YOU GET

### 5. What does the Settlement provide?

The benefits afforded by the Settlement are described in Section 1. Additional details are provided in the next three sections.

### 6. Who can send in a Claim for Reimbursement?

Any United States or Puerto Rico resident who purchased or leased a Settlement Class Vehicle can send in a timely Claim for Reimbursement if the Claim satisfies the parameters, criteria and proof required for reimbursement described in Section 1.

### 7. How and When do I send in a Claim for Reimbursement?

To submit a Claim for Reimbursement, you must do the following before the _____, 2023 deadline:

A. Complete, sign under penalty of perjury, and date a Claim Form (there is one enclosed with this Class Notice, and you can also download one at www.XXXXXXXXX.com). It is recommended that you keep a copy of the completed Claim Form; and

B. Mail the completed, signed, and dated Claim Form, together with your supporting documentation (i.e., repair record[s], receipts, proof of payment, etc.) by first-class mail to the Settlement Claim Administrator, at the address provided on the Claim Form, **post-marked no later than _____, 2023**. The information that must be reflected in your records is described on the Claim Form. It is recommended that you keep a copy of your records and receipts.

If you are eligible for reimbursement benefits under the Settlement but fail to submit the completed Claim Form and supporting documents by the required deadline, you will not receive a reimbursement.

### 8. When do I get my reimbursement or learn whether I will receive a payment?

If the Settlement Claim Administrator determines your Claim is valid, your reimbursement will be mailed to you within one hundred (100) days of either (i) the date of receipt of the completed Claim (with all required proof), or (ii) the date that the Settlement becomes final (the "Effective Date"), whichever is later. The Court will hold a Final Fairness Hearing on _____, **2023 at ___(EDT),** to decide whether to approve the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at www.XXXXXXXXXX.com.

If the Claims Administrator determines your Claim should not be paid, you will be mailed a letter telling you this. If the reason for rejecting your Claim is due to a deficiency in your Claim Form and/or supporting proof, the letter will notify you of the deficiency in your Claim and what needs to be submitted, and by when, to correct the deficiency. To check on the status of your Claim, you can call 1-XXX-XXX-XXXX.

### 9. What am I giving up to participate in the Settlement and stay in the Class?

Unless you exclude yourself by taking the steps described in Section 10 below, you are staying in the Class, and that means that if the Court approves the settlement, you will be bound by the release of claims and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were or could have been asserted in this case, and the Released Claims against the Released Parties set forth in the Settlement Agreement. It also means that all of the Court's orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in Sections I.T, I.U, and VIII.D. of the Settlement Agreement, a copy of which is available for review on the settlement website, www.XXXXXXXXXX.com.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 10. How do I Exclude Myself from this Settlement?

**You have a right, if you so desire, to exclude yourself from this Settlement.** To exclude yourself from the Settlement, you must mail a written Request for Exclusion, by the deadline below, stating clearly that you want to be excluded from the Settlement. You must include in the Request for Exclusion your full name, address, telephone number; the model, model year and VIN of the Settlement Class Vehicle; a statement that you are a present or former owner or lessee of a Settlement Class Vehicle; and specifically and unambiguously state your desire to be excluded from the Settlement Class. You must mail your Request for Exclusion by first-class mail, **post-marked no later than _____, 2023 [30 Days after Notice Date]**, to each of the following:

| CLAIMS ADMINISTRATOR | CLASS COUNSEL | DEFENSE COUNSEL |
|---|---|---|
| JND Legal Administration | GREGORY F. COLEMAN, ESQ.<br>MILBERG COLEMAN BRYSON<br>PHILLIPS GROSSMAN LLC<br>FIRST TENNESSEAN PLAZA<br>800 S. GAY STREET, SUITE 1100<br>KNOXVILLE, TN 37929 | MICHAEL B. GALLUB, ESQ.<br>SHOOK HARDY & BACON LLP<br>1 ROCKEFELLER PLAZA<br>28TH FLOOR<br>NEW YORK, NY 10020 |

You cannot exclude yourself on the phone or by email. If you timely mail a Request for Exclusion with all required information, then you will not receive any benefits of the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit.

### 11. If I don't exclude myself, can I sue later?

No, not for the same matters and legal claims that were or could have been asserted in the Action, unless your claim is for personal injury or property damage (other than damage to the Settlement Class Vehicle itself).

### 12. If I exclude myself, can I get the benefits of this Settlement?

No, if you exclude yourself from the Settlement Class, you won't receive any money or benefits from this Settlement, and you should not submit a Claim Form. You cannot do both.

### 13. Do I have a lawyer in this case?

Yes. The Court has conditionally appointed the law firms of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC, and Simmons Hanly Conroy to represent the Settlement Class. Together, these law firms are called "Class Counsel."

### 14. Should I get my own lawyer?

You do not need to hire your own lawyer to participate in the Settlement because Class Counsel will be representing you and the Settlement Class. But, if you want your own lawyer, you may hire one at your own cost.

### 15. How will the lawyers be paid, and will the Plaintiff Settlement Class Representative receive an incentive award?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees and reasonable costs and expenses ("Fees and Expenses") in an amount not exceeding a combined total sum of $_____. VWGoA has agreed not to oppose Class Counsel's application for Fees and Expenses to the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any Fees and Expenses in excess of that combined total sum. You won't have to pay these Fees and Expenses. Any Fees and Expenses awarded to Class Counsel will not affect your Settlement amount.

Class Counsel will also apply to the Court for service awards to the named Plaintiffs, Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno, who have conditionally been approved as Settlement Class Representatives, in the amount of $XXXX each for their efforts in pursuing this litigation for the benefit of the Settlement Class.

Any award for Class Counsel Fees and Expenses, and any service award, will be paid by Defendant and will not reduce any benefits available to you or the rest of the Settlement Class under the Settlement.

Class Counsel's motion for fees and expenses and Settlement Class Representative service awards will be filed by _____, **2023 [9 Days after Notice Date],** and a copy will be made available for review at www.XXXXXXXXXs.com.

## SUPPORTING OR OBJECTING TO THE SETTLEMENT

### 16. How do I tell the Court that I like or dislike the Settlement?

**If you are a member of the Settlement Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or you can ask the Court to deny approval by submitting a written objection. You can object to the Settlement and/or to Class Counsel's requests for Fees and Expenses and Settlement Class Representative service awards.** You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object on a timely basis. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object to or comment on the Settlement, you must do one of the following:

(a) Submit your written objection or comment, and any supporting papers or materials, to the Court. You may do so by filing them in person **no later than _____, 2023 [30 Days after the Notice Date],** at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, or by filing electronically via the Court's electronic filing system; or

(b) If not filed in person or via the Court's electronic filing system, by mailing the objection or comment, by first-class mail, **postmarked no later than _____, 2023 [30 Days after the Notice Date],** to the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, and to each of the following:

| CLAIMS ADMINISTRATOR | CLASS COUNSEL | DEFENSE COUNSEL |
|---|---|---|
| JND Legal Administration | GREGORY F. COLEMAN, ESQ.<br>MILBERG COLEMAN BRYSON<br>PHILLIPS GROSSMAN LLC<br>FIRST TENNESSEAN PLAZA<br>800 S. GAY STREET, SUITE 1100<br>KNOXVILLE, TN 37929 | MICHAEL B. GALLUB, ESQ.<br>SHOOK HARDY & BACON LLP<br>1 ROCKEFELLER PLAZA<br>28TH FLOOR<br>NEW YORK, NY 10020 |

Your written objection must state clearly that you are objecting to the Settlement or the request for Class Counsel Fees and Expenses and/or Class Representative Service Awards, in *Sokol Gjonbalaj, et al., v. Volkswagen Group of America, Inc., et al.,* United States District Court for the Eastern District of New York, Civil Action No. 2:19-cv-07165-BMC, and must include the following: your full name, current address and telephone number; the model, model year and VIN of your Settlement Class Vehicle, along with proof that you own(ed) or lease(d) the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration or license receipt); a written statement of all your factual and legal grounds for objecting; copies of any papers, briefs and/or other documents upon which the objection is based and which are pertinent to the objection; the name, address, and telephone number of any counsel representing you; a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, and the identity of any counsel that will appear on behalf of the Settlement Class Member at the Final Fairness Hearing; and a list of all objections submitted by the objector or objector's counsel to any class action settlement in any court in the United States in the previous five (5) years, including the full case name and the jurisdiction in which it was filed and the docket number.

Any objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing. The settlement website will indicate whether the Final Fairness Hearing will be held in person or remotely.

Any Settlement Class Member who does not submit a written comment on or objection to the proposed Settlement or the application of Class Counsel for service awards or attorneys' Fees and Expenses in accordance with the deadline and procedure set forth herein, may waive his/her right to appeal from any order or judgment of the Court concerning this Action.

### 17. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

## FINAL FAIRNESS HEARING

### 18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing at ___ _.m. (EDT) on _____, 2023, before the Honorable Brian M. Cogan, United States District Judge, United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201, to determine whether the Settlement should be finally approved. At this Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's application for Fees and Expenses and service awards to the Settlement Class Representatives.

### 19. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send a timely objection, you do not have to come to Court to talk about it. You may also pay your own lawyer to attend, but that is not necessary in order for your objection to be considered by the Court.

### 20. May I speak at the Fairness Hearing?

If you do not exclude yourself, you may speak at the Final Fairness Hearing concerning the proposed Settlement or the application of Class Counsel for Fees and Expenses and Settlement Class Representative service awards. In order to appear at the Final Fairness Hearing, you must file a Notice of Intention to Appear at the Final Fairness Hearing **on or before _____, 2023 [30 Days after Notice Date]**, including copies of any papers, exhibits or other evidence and any witnesses you intend to present at the Final Fairness Hearing, if any. If you do not file a Notice of Intention to Appear at the Final Fairness Hearing within that deadline, you will waive your right to appear at the hearing. The settlement website will indicate whether the Final Fairness Hearing will be held in person or remotely. You cannot speak at the Final Fairness Hearing if you excluded yourself from the Settlement.

## IF YOU DO NOTHING

### 21. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, including all orders, judgements and the release of claims set forth in the Settlement.

## MORE INFORMATION

### 22. Where can I get more information?

Visit the website at www.XXXXXXXXX.com where you can find extra Claim Forms, a copy of the Settlement Agreement and other pertinent documents, and more information on this Lawsuit and Settlement. Updates regarding the Action, including important dates and deadlines, will also be available on the website. You may also call the Claims Administrator at 1-XXX-XXX-XXXX or email [info@XXXXXXXXX.com].

# EXHIBIT 3

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

| | |
|---|---|
| SOKOL GJONBALAJ, JOSEPH CAMPBELL, JESSICA COLE, KAREN WERNER, AUSTIN BARDEN, MARY GOVAN, ANTONIO CABEZAS, RICK HORNICK, LISA and STEVEN DELPRETE, and KRZYSZTOF ZIARNO, individually, and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, and VOLKSWAGEN AG, a foreign corporation,<br><br>Defendants. | 2:19-cv-07165-BMC<br><br>**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** |

WHEREAS, pursuant to Fed. R. Civ. P. ("Rule") 23(a), 23(b)(3), and 23(e), the parties seek entry of an order, *inter alia*, preliminarily approving the class Settlement of this Action ("Settlement") pursuant to the terms and provisions of the Settlement Agreement dated April __, 2023, with attached exhibits ("Settlement Agreement"); preliminarily certifying the Settlement Class for settlement purposes only; directing Notice to the Settlement Class pursuant to the parties' proposed Notice Plan; preliminarily appointing the Settlement Class Representatives, Settlement Class Counsel and the Claims Administrator; directing the timing and procedures for any objections to, and requests for exclusion from, the Settlement; setting forth other procedures, filings and deadlines; and scheduling the Final Fairness Hearing; and

WHEREAS, the Court has carefully reviewed and considered the Settlement Agreement and its exhibits, Plaintiffs' Unopposed Motion for Preliminary Approval, and the applicable law;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. The Court grants preliminary approval of the Settlement Agreement and its terms and conditions as fair, reasonable and adequate under, and satisfying in all respects the requirements of, Fed. R. Civ. P. 23 (hereinafter, "Rule 23").

3. Pursuant to Rule 23, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

> All persons and entities who purchased or leased, in the United States or Puerto Rico, (a) any model year 2018, 2019, 2020 and 2021 Volkswagen Atlas vehicle, (b) any model year 2020 and 2021 Volkswagen Atlas Cross Sport vehicle, (c) any model year 2015, 2016, 2017 and 2018 Volkswagen Golf and Volkswagen Golf GTI vehicle, (d) any model year 2015, 2016, 2017, 2018 and 2019 Volkswagen Golf SportWagen vehicle, (e) any model year 2017, 2018 and 2019 Volkswagen Golf Alltrack vehicle, (f) any model year 2018, 2019, 2020 and 2021 Volkswagen Tiguan vehicle, (g) any model year 2019, 2020 and 2021 Audi Q3 vehicle, (h) any model year 2019, 2020 and 2021 Audi Q8 vehicle, and (i) any model year 2019, 2020 and 2021 Audi e-tron vehicle, that was/were imported and distributed by Volkswagen Group of America, Inc. for sale or lease in the United States or Puerto Rico (hereinafter, the "Settlement Class").

Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendants, and their family members; (c) any affiliate, parent or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a

Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released any Defendant or Released Party from any Released Claims; and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class.

4. The Court preliminarily appoints the law firms of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfosn PC and Simmons Hanly Conroy, collectively, as Class Counsel for the Settlement Class (hereinafter, "Class Counsel" or "Settlement Class Counsel") .

5. The Court preliminarily appoints Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick and Krzysztof Ziarno as Settlement Class Representatives (hereinafter, "Settlement Class Representatives").

6. The Court preliminarily appoints JND Legal Administration as the Settlement Claim Administrator (hereinafter, "Claim Administrator").

7. The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class exists in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

8. In addition, the Court preliminarily finds that certification of the Settlement Class is appropriate when balanced against the risks and delays of further litigation. The proceedings that occurred before the Parties entered into the Settlement Agreement were sufficient to afford counsel for both sides the opportunity to adequately assess the facts, claims and defenses in the

Action, the respective positions, strengths, weaknesses, risks and benefits to each Party of further litigation, and as such, to negotiate a Settlement Agreement that is fair, reasonable and adequate and reflects those considerations.

9. The Court also preliminarily finds that the Settlement Agreement has been reached as a result of extensive, arm's-length negotiations of disputed claims by experienced class action counsel, and that the proposed Settlement is not the result of any collusion.

10. The Court approves the form and content of the Settlement Class Notice (Exhibit 2 to the Settlement Agreement). The Court further finds that the mailing of the Settlement Class Notice, in the manner set forth in the Settlement Agreement, as well as the establishment of a settlement website, (the "Notice Plan"), satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action, the certification of the Settlement Class for settlement purposes only, the terms of the Settlement, its benefits and the Release of Claims, the Settlement Class Members' rights including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement, the deadline, procedures and requirements for submitting a Claim for Reimbursement pursuant to the Settlement terms, Class Counsel's request for reasonable attorneys' fees and expenses and Settlement Class Representative service awards, the time, place, and right to appear at the Final Fairness hearing, and other pertinent information about the Settlement and the Settlement Class Members' rights. The Court authorizes the Parties to make non-material modifications to the Settlement Class Notice prior to mailing if they jointly agree that any such changes are appropriate.

11. Accordingly, the Court approves, and directs the implementation of, the Notice Plan pursuant to the terms of the Settlement Agreement.

12. The Claim Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including mailing of the CAFA Notice, implementing and maintaining the Settlement website, disseminating the Class Notice pursuant to the Notice Plan, the processing and review of timely

submitted and proper Claims for Reimbursement under the Settlement terms, and the submission of any declarations and other materials to counsel and the Court, as well as any other duties required under the Settlement Agreement.

13. The Departments of Motor Vehicles within the United States and its territories are ordered to provide approval to Experian, Polk/IHS Markit, or any other company so retained by the parties and/or the Claim Administrator, to release the names and addresses of Settlement Class Members in the Action associated with the titles of the Vehicle Identification Numbers at issue in the Action for the purposes of disseminating the Settlement Class Notice to the Settlement Class Members. Experian, Polk/IHS Markit, or any other company so retained by the parties is ordered to license, pursuant to agreement between it and Defendant and/or the Claim Administrator, the Settlement Class Members' contact information to the Claim Administrator and/or Defendant solely for the use of providing Settlement Class Notice in the Action and for no other purpose.

14. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than thirty (30) days after the Notice Date, a written request for exclusion ("Request for Exclusion") to each of the following: (a) the Claim Administrator at the address specified in the Class Notice; (b) Gregory F. Coleman, Milberg Coleman Bryson Phillips Grossman LLC, First Tennessee Plaza, 800 S. Gay Street, Suite 1100, Knoxville TN 37929 on behalf of Class Counsel; and (c) Michael B. Gallub, Esq., Shook, Hardy & Bacon, L.L.P., 1 Rockefeller Plaza, 28th Floor, New York, New York 10020 on behalf of Defendant. To be effective, the Request for Exclusion must:

a. Include the Settlement Class Member's full name, address and telephone number, and identify the model, model year and VIN of the Settlement Class Vehicle;

b. State that the Settlement Class Member is/was a present or former owner or lessee of a Settlement Class Vehicle; and

c. Specifically and unambiguously state his/her/their/its desire to be excluded from the Settlement Class.

15. Any Settlement Class Member who fails to timely mail to the proper addresses a properly completed Request for Exclusion, containing the information required above, shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders and judgments in the Action concerning the Settlement, and all terms and conditions of the Settlement Agreement including but not limited to the Released Claims against Defendant and the Released Parties.

16. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Class Counsel Fees and Expenses and/or Settlement Class Representative service awards if the following requirements are satisfied:

a. To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system no later than thirty (30) days after the Notice Date; or (ii) mail, via first-class mail postmarked no later than thirty (30) days after the Notice Date, the objection, together with any supporting briefs and/or documents, to each of the following: the Clerk's Office of the United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201; Gregory F. Coleman, Milberg Coleman Bryson Phillips Grossman LLC, First Tennessee Plaza, 800 S. Gay Street, Suite 1100, Knoxville TN 37929 on behalf of Class Counsel; and Michael B. Gallub, Shook, Hardy & Bacon, L.L.P., 1 Rockefeller Plaza, 28th Floor, New York, New York 10020 on behalf of Defendant.

b. Any objecting Settlement Class Member must include the following with his/her/their/its objection: (i) the objector's full name, address, and telephone number; (ii) the model, model year and Vehicle Identification Number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or

license receipt); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address and telephone number of any counsel representing the objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Approval Hearing; and (vii) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/their/its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, this shall affirmatively be stated in the objection.

c. Subject to the approval of the Court, any Settlement Class Member who has not requested to be excluded from the Settlement may appear, in person or by counsel, at the Final Fairness Hearing to voice his/her/their/its support of final approval of the Settlement or of any timely and proper objection to the Settlement and/or Class Counsel's requested Fees and Expenses or Settlement Class Representative service awards. In order to appear, any Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of all witnesses that the Settlement Class Member (or the Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness

Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

d. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objection to the Settlement and any adjudication or review of the Settlement Agreement, by appeal or otherwise.

17. In the event the Settlement is not granted final approval by the Court, or for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;

b. All of the Parties' respective pre-Settlement claims, defenses and procedural rights and status will be preserved, and the parties will be restored to their positions *status quo ante*;

c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against any Defendant, Released Parties or Plaintiffs on any allegation, claim, defense, or point of fact or law in connection with this Action;

d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and

e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily approved.

18. Pending the Final Fairness Hearing and the Court's decision whether to grant final approval of the Settlement, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in any action or proceeding in any court or tribunal (judicial, administrative or otherwise) against Defendant and/or any of the Released Parties, asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. § 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

19. Pending the Final Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

20. Based on the foregoing, the Court sets the following schedule, below, for the Final Fairness Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class, and Settlement Class Members should check the Settlement website regularly for updates and further details regarding this Settlement:

| **Event** | **Deadline Pursuant to Settlement Agreement** |
|---|---|
| Notice shall be mailed in accordance with the Notice Plan and this Order | _____ [120-days after issuance of Preliminary Approval Order] |
| Deadline for Filing Class Counsel's Fee and Expense Application and request for service awards for | _____[129-days after issuance of Preliminary Approval Order; 9-days after the Notice Date] |

| | |
|---|---|
| Plaintiffs-Settlement Class Representatives. | |
| Deadline for Filing or Mailing any Objections to the Settlement, Class Counsel's Proposed Fees and Expenses, and/or the proposed Settlement Class Representative service awards | _____ [150-days after issuance of Preliminary Approval Order; 30-days after the Notice Date] |
| Deadline for Mailing any Requests for Exclusion from the Settlement | _____ [150-days after issuance of Preliminary Approval Order; 30-days after the Notice Date] |
| Claim Administrator shall submit a declaration to the Court (i) reporting the names of all persons and entities that submitted timely Requests for Exclusion; and (ii) attesting that Notice was disseminated in accordance with the Settlement Agreement and this Preliminary Approval Order. | _____ [18-days prior to Final Fairness Hearing] |
| Deadline for Plaintiffs to File Motion for Final Approval of the Settlement | _____ [150-days after issuance of Preliminary Approval Order; 30-days after the Notice Date] |
| Deadline for Plaintiffs and Defendant to file any submissions in response to any Objections and/or Requests for Exclusion | _____ [180-days after issuance of Preliminary Approval Order; 60-days after the Notice Date] |
| Deadline for Defendant to file any submissions concerning Final Approval of Settlement | _____ [180-days after issuance of Preliminary Approval Order; 60-days after the Notice Date] |
| Final Fairness Hearing to be held at ___ [a.m./p.m.] [in _____ at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, or by video conference _____] | _____ [at least 200-days after issuance of Preliminary Approval Order; at least 30-days after Plaintiffs' filing of Final Approval Motion] |

SO-ORDERED:

Date: _____

_____
Honorable Brian M. Cogan
United States District Judge

# EXHIBIT B

Milberg.

COLEMAN BRYSON PHILLIPS GROSSMAN

# Who We Are

Established by members of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP, the firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims' rights and have recovered over $50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar client service. We have repeatedly been recognized as leaders in the plaintiffs' bar and appointed to leadership roles in prominent national mass torts and class actions.

*Milberg challenges corporate wrongdoing through class action, mass tort, consumer, and shareholder rights services, both domestically and globally.*

Milberg's previous litigation efforts helped to create a new era of corporate accountability that put big companies on notice. The strategic combination of four leading plaintiffs' firms offers clients expanded capabilities, greater geographical coverage, enhanced financial breadth, and increased operational capacity. It also enables the firm to serve diverse and global clients who are seeking to enforce their rights against well-financed corporations—wherever they operate.

www.milberg.com

# Practice Areas

**Antitrust & Competition Law**

Today, on a global scale, consolidated corporate entities exercise dominating market power, but proper enforcement of antitrust law ensures a fair, competitive marketplace. Milberg prosecutes complex antitrust class actions against large, well-funded corporate defendants in healthcare, technology, agriculture, and manufacturing. Our leading practitioners successfully represent plaintiffs affected by price-fixing, monopolization, monopoly leveraging tying arrangements, exclusive dealing, and refusals to deal. The firm continues aggressively vindicating rights of plaintiffs victimized by antitrust violations, holding companies accountable for anticompetitive behavior.

**Complex Litigation**

With 50 years of vetted success, Milberg handles complex, high-stakes cases at any stage of the litigation process. Our attorneys have experience litigating complex cases for business and plaintiffs outside of class action context, business torts, contract disputes, anti-SLAPP motions, corporations, LLCs, partnerships, real estate, and intellectual property. The repeated success of our attorneys against well-funded adversaries with top-tier counsel has established Milberg as the go-to firm for complex litigation.

**Consumer Products**

Milberg's consumer litigation group focuses on protecting victims of deceptive marketing and advertising of goods and services, or those who have bought defective products. Our attorneys are experienced in handling a wide array of consumer protection lawsuits, including breach of contract, failure to warn, false or deceptive advertising of goods and services, faulty, dangerous, or defective products, warranty claims, unfair trade practices, and notable product cases. Milberg has achieved real-world recoveries for clients, often requiring corporations to change the way they do business. Our team of attorneys has extensive experience representing plaintiffs against well-resourced and sophisticated defendants.

**Consumer Services**

Consumers have rights, and companies providing consumer services have a legal obligation to abide by contractual agreements made with customers. Companies must also follow state and federal laws that prohibit predatory, deceptive, and unscrupulous business practices. Milberg's Consumer Services litigation group protects consumers whose rights have been violated by improperly charged fees, predatory and discriminatory lending, illegal credit reporting practices, and invasion of privacy. We also enforce consumer rights by upholding The Fair Credit Reporting Act and Telephone Consumer Protection Act.

**Class Action Lawsuits**

Milberg pioneered federal class action litigation is recognized as a leader in defending the rights of victims of corporate and large-scale wrongdoings. We have the manpower, resources, technology, and experience necessary to provide effective representation in nationwide class action lawsuits. Our attorneys have led class actions resulting in settlements up to billions of dollars across a variety of practice areas, including defective consumer products, pharmaceutical drugs, insurance, securities, antitrust, environmental and toxic torts, consumer protection, and breach of contract.

**Dangerous Drugs & Devices**

For some patients, medication and medical devices improve their lives. For others, the drugs and equipment have questionable benefits, at best, and serious, unintended side effects at worst. Taking on drug and device makers requires a law firm that can stand up to the world's largest, most powerful companies. Our defective drug lawyers have held leadership roles in many national drug and device litigations, recovering billions of dollars in compensation.

**Data Breach, Cyber Security & Biometric Data Lawsuits**

Technology changes faster than laws regulate it. Staying ahead of legal technical issues requires a law firm that can see the full picture of innovation and apply past lessons to navigate fast-moving developments, putting consumers ahead of corporate interests. Our data breach and privacy lawyers work at the cutting edge of technology and law, creating meaningful checks and balances against technology and the companies that wield it. Cyber security threats continue evolving and posing new consumer risks. Milberg will be there every step of the way to protect consumer privacy and hold big companies accountable.

**Environmental and Toxic Torts Litigation**

Litigation is key in fighting to preserve healthy ecosystems and hold environmental lawbreakers accountable. But in today's globalized world, pollutants—and polluters—are not always local. Corporations have expanded their reach and ability to cause harm. Our environmental litigation practice focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. The companies involved in harmful environmental practices are large, wealthy, and globally influential, but as an internationally recognized plaintiffs' firm, Milberg has the strength and resources to present clients seeking to enforce their environmental rights against well-financed corporations—wherever they operation.

**Finance & Insurance Litigation**

Big banks and public insurance firms are obligated by their corporate charters to put shareholders' interests ahead of client interests. However, that doesn't mean they can deceive clients to profit at their expense. Milberg's attorneys handle hundreds of insurance-related disputes, including first party bad faith insurance cases, business interruption cases, and hurricane insurance cases. As one of the nation's stop class action law firms, we are well-positioned to pursue insurance bad faith cases on a statewide or nationwide basis.

**Public Client Representation**

The ability of governments to serve and protect their residents is often threatened by the combination of lower revenues and rising costs. Budget shortfalls are increasing in part because private companies externalize costs, but while corporate profits grow, public interest pays the price. Effectuating meaningful change through litigation, Milberg partners with state and local governments to address the harms facing its residents. Internationally, Milberg's Public Client Practice has achieved success against global powerhouse corporations, including drug, tobacco, mining, and oil and gas companies.

**Securities Litigation**

Over 50 years ago, Milberg pioneered litigation claims involving investment products, securities, and the banking industry by using class action lawsuits. Our litigation set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg continues to aggressively pursue these cases on behalf of institutional and individual investors harmed by financial wrongdoing. Inventors of securities class actions, Milberg has decades of experience holding companies accountable both in the United States and globally.

**Whistleblower & Qui Tam**

Blowing the whistle on illegal or unethical conducted is a form of legally protected speech. Milberg's whistleblower attorneys have led actions that returned hundreds of millions of dollars in ill-gotten gains, resulting in significant awards of our clients.Our legacy of standing up to corporate power extends to advocating for greater transparency. In addition to representing whistleblowers, we fight back against corporate-backed laws seeking to deter them from making disclosures.

*"Scoring impressive victories against companies guilty of outrageous behavior."*

- Forbes

*" A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers"*

- New York Times

# Recent Leadership Roles

In re: Google Play Consumer Antitrust Litigation, 20-CV-05761 (N.D. Cal.)
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation MDL No. 2973
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation
In re: Blackbaud Data Privacy MDL No. 2972
In re: Paragard IUD Products Liability Litigation MDL No. 2974
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation MDL No. 3009
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation
In re: Allergan Biocell Textured Breast Implant Product Liability Litigation

In re: Zicam
In re: Guidant Corp. Implantable Defibrillators
In re: Ortho Evra
In re: Yaz
In re: Kugel Mesh
In re: Medtronic Sprint Fidelis Leads
In re: Depuy Pinnacle
In re: Stand 'N Seal
In re: Chantix
In re: Fosamax
In re: Olmesartan
In re: Onglyza (Saxagliptin) And Kombiglyze XR
In re: Risperdal and Invega Product Liability Cases

In re: Mirena
In re: Talcum Powder
In re: Incretin
In re: Chantix
In re: Regla
In re: Levaquin Litigation
In re: Zimmer Nexgen Knee
In re: Fresenius Granuflo
In re: Propecia
In re: Transvaginal Mesh
In re: Fluoroquinolones
In re: Depuy Pinnacle

# Notable Recoveries

$3.2 Billion Settlement - In re: Tyco International Ltd., Securities Litigation, MDL 1335 (D.N.H.)

$4 Billion Settlement - In re: Prudential Insurance Co. Sales Practice Litigation, No. 95-4704 (D.N.J.)

$1.14 Billion Settlement - In Re: Nortel Networks Corp. Securities Litigation, No. 01-1855 (S.D.N.Y.)

$1 Billion-plus Trial Verdict - Vivendi Universal, S.A. Securities Litigation

$1 Billion Settlement - NASDAQ Market-Makers Antitrust Litigation

$1 Billion Settlement - W.R. Grace & Co.

$1 Billion-plus Settlement - Merck & Co., Inc. Securities Litigation

$775 Million Settlement - Washington Public Power Supply System Securities Litigation

# Locations

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## About Berger Montague

Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal* selected Berger Montague in 12 out of 14 years (2003-2005, 2007-2013, 2015-2016) for its "Hot List" of top plaintiffs-oriented litigation firms in the United States. The select group of law firms recognized each year had done "exemplary, cutting-edge work on the plaintiffs' side." The *National Law Journal* ended its "Hot List" award in 2017 and replaced it with "Elite Trial Lawyers," which Berger Montague has won from 2018-2021. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell* and was ranked as a 2021 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of 75 lawyers; 16 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

## History of the Firm

Berger Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 50 years of civil litigation. For example, the firm was one of the principal counsel for

plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by the U.S. Supreme Court to $507.5 million. Berger Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger Montague was also lead class counsel and lead trial counsel in the *Cook v. Rockwell International Corporation* litigation arising out of a serious incident at the Rocky Flats nuclear weapons facility in Colorado.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

**Diversity, Equity and Inclusion Initiatives**

Berger Montague not only supports the idea of its Diversity, Equity and Inclusion ("DEI") initiatives, it is a part of the DNA and fabric of the firm—internally amongst the Berger Montague family and in the way we practice law with co-counsel, opposing counsel, the courts, and with our clients. Through our DEI initiatives, Berger Montague actively works to increase diversity at all levels of our firm and to ensure that professionals of all races, religions, national origins, gender identities, ethnicities, sexual orientations, and physical abilities feel supported and respected in the workplace.

Berger Montague has a DEI Task Force with the leadership of the DEI Coordinator, Camille Fundora Rodriguez, and including, Candice J. Enders, Caitlin G. Coslett, Sophia Rios, and Reginald L. Streater. Berger Montague has enacted a broad range of diversity and inclusion projects, including successful efforts to hire and retain attorneys and non-attorneys from diverse backgrounds and to foster an inclusive work environment, including through firmwide trainings on implicit bias issues that may impact the workplace.

Additionally, at Berger Montague women lead. Women comprise over 30% of Berger Montague's shareholders, well above the national average as reported by the National Association of Women Lawyers. Moreover, women at the firm are encouraged and have taken advantage of professional development support to bolster their trajectories into key participation and leadership roles, both within and outside the firm, including mentoring, networking, and educational opportunities for women across all career levels. As a result of these intentional policies and initiatives, women attorneys at Berger Montague are managing departments, running offices, overseeing major

administrative programs, generating new business, serving as first chair in trials, handling large matters, and holding numerous other leadership positions firmwide.

Berger Montague's commitment to DEI activities extends beyond our firm. For example, DEI Task Force members are involved in numerous community and professional activities outside of the firm. Representative activities include membership in and/or board or leadership positions with the Hispanic Bar Association, the Barristers' Association of Philadelphia, the Philadelphia Public School Board of Education, Court Appointed Special Advocates (CASA) of Philadelphia, Philadelphia Bar Association's Business Law Section's Antitrust Committee, Community Legal Services of Philadelphia, the Greater Philadelphia Chapter of the Pennsylvania ACLU, AccessMatters, After School Activities Partnerships, and Leadership Council on Legal Diversity. As such, Berger Montague's commitment to DEI has created an atmosphere in which the attorneys can share their gifts with the legal and greater communities from which they come.

**Commitment to *Pro Bono***

Berger Montague attorneys commit their most valuable resource, their time, to charities, nonprofit organizations, and *pro bono* legal work. For over 50 years, Berger Montague has encouraged its attorneys to support charitable causes and volunteer in the community. Our lawyers understand that participating in *pro bono* representation is an essential component of their professional and ethical responsibilities.

Berger Montague is strongly committed to numerous charitable causes. Over his lengthy career, David Berger, the firm's founding partner, was prominent in a great many philanthropic and charitable enterprises, including serving as Honorary Chairman of the American Heart Association; a Trustee of the American Cancer Society; and a member of the Board of Directors of the American Red Cross. This tradition continues to the present.

Community Legal Services of Philadelphia, an organization that provides free legal advice and representation to low-income residents of Philadelphia, honored Berger Montague with its 2021 Champion of Justice Award for the firm's work leading a case against the IRS that succeeded in getting unemployed people their rightful benefits during the COVID-19 pandemic.

In prior years, Berger Montague received the Chancellor's Award presented by the Philadelphia Volunteers for the Indigent Program ("VIP"), which provides crucial legal services to more than 1,000 low-income Philadelphia residents each year. VIP relies on volunteer attorneys to provide *pro bono* representation for families and individuals. In 2009 and 2010, Berger Montague also received an award for our volunteer work with the VIP Mortgage Foreclosure Program.

Today, Berger Montague attorneys engage in *pro bono* work for many organizations, including:

- Public Interest Law Center of Philadelphia ("PILCOP")
- Community Legal Services of Philadelphia ("CLS")
- Philadelphia Legal Assistance
- Education Law Center

- Legal Clinic for the Disabled
- Support Center for Child Advocates
- Veterans Pro Bono Consortium
- AIDS Law Project of Philadelphia
- Center for Literacy
- National Liberty Museum
- Philadelphia Volunteers for the Indigent Program
- Philadelphia Mortgage Foreclosure Program

We are proud of our written *pro bono* policy that encourages and strongly supports our attorneys to get involved in this important and rewarding work. Many attorneys at Berger Montague have been named to the First District of Pennsylvania's Pro Bono Honor Roll.

Berger Montague also makes annual contributions to the Philadelphia Bar Foundation, an umbrella charitable organization dedicated to promoting access to justice for all people in the community, particularly those struggling with poverty, abuse, and discrimination.

The firm also has held numerous clothing drives, toy drives, food drives, and blood drives. Through these efforts, Berger Montague professional and support staff have donated thousands of items of clothing, toys, and food to local charities including the Salvation Army, Toys for Tots, and Philabundance, a local food bank. Blood donations are made to the American Red Cross. Berger Montague attorneys also volunteer on an annual basis at MANNA, which prepares and delivers nourishing meals to those suffering with serious illnesses.

## Practice Areas and Case Profiles

### Antitrust

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 50 years, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (settlement of approximately $5.6 billion*), In re Namenda Direct Purchaser Antitrust Litigation* (recovery of $750 million), *In re Loestrin 24 Fe Antitrust Litigation* (recovery of $120 million), and *In re Domestic Drywall Antitrust Litigation* (settlements totaling $190.7 million).

Once again, Berger Montague has been selected by *Chambers and Partners* for its 2021 *Chambers USA* Guide as one of Pennsylvania's top antitrust firms. *Chambers USA 2021* states that Berger Montague's antitrust practice group is "a preeminent force in the Pennsylvania antitrust market, offering expert counsel to clients from a broad range of industries."

*The Legal 500*, a guide to worldwide legal services providers, ranked Berger Montague as a Top Tier Law Firm for Antitrust: Civil Litigation/Class Actions: Plaintiff in the United States in its 2021 guide and states that Berger Montague's antitrust department "has a flair for handling high-stakes plaintiff-side cases, regularly winning high-value settlements for clients following antitrust law violations."

- ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:*** Berger Montague served as co-lead counsel for a national class including millions of merchants in the *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* against Visa, MasterCard, and several of the largest banks in the U.S. (*e.g.*, Chase, Bank of America, and Citi). The lawsuit alleged that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards, individually and together with their respective member banks, violated the antitrust laws. The challenged conduct included, *inter alia*, the collective fixing of interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees. The lawsuit further alleged that defendants maintained their conspiracy even after both Visa and MasterCard changed their corporate forms from joint ventures owned by member banks to publicly-owned corporations following commencement of this litigation. On September 18, 2018, after thirteen years of hard-fought litigation, Visa and MasterCard agreed to pay as much as approximately $6.26 billion, but no less than approximately $5.56 billion, to settle the case. This result is the largest-ever class action settlement of an antitrust case. The settlement received preliminary approval on January 24, 2019. The settlement received final approval on December 16, 2019, for approximately $5.6 billion.

- ***Contant, et al. v. Bank of America Corp., et al.:*** Berger Montague served as lead class counsel in the multistate indirect purchaser antitrust class action *Contant, et al. v. Bank of America Corp., et al.*, against 16 of the world's largest dealer banks. Plaintiffs alleged that the defendants colluded to manipulate prices on foreign currency ("FX") instruments, using a number of methods to carry out their conspiracies, including sharing confidential price and order information through electronic chat rooms, thereby enabling the defendants to coordinate pricing and eliminate price competition. As with prior bank rigging scandals involving conspiracies to manipulate prices on other financial instruments, the defendants' alleged conspiracy to manipulate FX prices was the subject of numerous governmental investigations as well as direct purchaser class actions brought under antitrust federal law. However, the *Contant* action was the first of such cases to bring claims under state indirect purchaser antitrust laws on behalf of state-wide classes of retail investors of those financial instruments and whose claims have never been redressed. On July 29, 2019, U.S. District Judge Lorna G. Schofield granted preliminary approval of a $10 million settlement with Citigroup and a $985,000 settlement with MUFG Bank Ltd. On July 17, 2020, the Court granted preliminary approval of three settlements with all remaining defendants for a combined $12.695 million. Each of the five settlements, totaling $23.63 million, received final approval on November 19, 2020.

- ***In re Dental Supplies Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of dental practices and dental laboratories in *In re Dental Supplies Antitrust Litigation*, a suit brought against Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company, the three largest distributors of dental supplies in the United States. On September 7, 2018, co-lead counsel announced that they agreed with defendants to settle on a classwide basis for $80 million. The settlement received final

approval on June 24, 2019. The suit alleged that the defendants, who collectively control close to 90 percent of the dental supplies and equipment distribution market, conspired to restrain trade and fix prices at anticompetitive levels, in violation of the Sherman Act. In furtherance of the alleged conspiracy, plaintiffs claimed that the defendants colluded to boycott and pressure dental manufacturers, dental distributors, and state dental associations that did business with or considered doing business with the defendants' lower-priced rivals. The suit claimed that, because of the defendants' anticompetitive conduct, members of the class were overcharged on dental supplies and equipment. In the 2019 Fairness Hearing, Judge Brian M. Cogan of the U.S. District Court for the Eastern District of New York said: "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

- ***In re Domestic Drywall Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the U.S. and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." Berger Montague represented a class of direct purchasers of drywall from defendants for the period from January 1, 2012 to January 31, 2013. USG Corporation and United States Gypsum Company (collectively, "USG"), New NGC, Inc., Lafarge North America Inc., Eagle Materials, Inc., American Gypsum Company LLC, TIN Inc. d/b/a Temple-Inland Inc., and PABCO Building Products, LLC were named as defendants in this action. On August 20, 2015, the district court granted final approval of two settlements—one with USG and the other with TIN Inc.—totaling $44.5 million. On December 8, 2016, the district court granted final approval of a $21.2 million settlement with Lafarge North America, Inc. On February 18, 2016, the district court denied the motions for summary judgment filed by American Gypsum Company, New NGC, Inc., Lafarge North America, Inc., and PABCO Building Products. On August 23, 2017, the district court granted direct purchaser plaintiffs' motion for class certification. On January 29, 2018, the district court granted preliminary approval of a joint settlement with the remaining defendants, New NGC, Inc., Eagle Materials, Inc., American Gypsum Company LLC, and PABCO Building Products, LLC, for $125 million. The settlement received final approval on July 17, 2018, bringing the total amount of settlements for the class to $190.7 million.

- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved in October 2009, with a Final Judgment entered in November 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to $386 million. (MDL No. 1409 (S.D.N.Y)).

- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.:*** Berger Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long-haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for $130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."

- ***Ross, et al. v. Bank of America (USA) N.A., et al.:*** Berger Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. In June 2009, the National Arbitration Forum (or "NAF") was added as a defendant. Berger Montague also reached a settlement with NAF. Under that agreement, NAF ceased administering arbitration proceedings involving business cards for a period of three and one-half (3.5) years, which relief is in addition to the requirements of a Consent Judgment with the State of Minnesota, entered into by the NAF on July 24, 2009.

- ***Johnson, et al. v AzHHA, et al.:*** Berger Montague was co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved $24 million in settlements on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over $2 billion in settlements in such cases over the past decade, including:

- ***In re: Namenda Direct Purchaser Antitrust Litigation:*** Berger Montague is co-lead counsel for the class in this antitrust action brought on behalf of a class of direct purchasers of branded and/or generic Namenda IR and/or branded Namenda XR. It settled for $750 million on the very eve of trial. The $750 million settlement received final approval on May 27, 2020, and is the largest single-defendant settlement ever for a case alleging delayed generic competition. (Case No. 15-cv-7488 (S.D.N.Y.)).

- ***King Drug Co. v. Cephalon, Inc.:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of the prescription drug Provigil (modafinil). After nine years of hard-fought litigation, the court approved a $512 million partial settlement, then the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). Subsequent non-class settlements pushed the total settlement figure even higher.

- ***In re Aggrenox Antitrust Litigation:*** Berger Montague represented a class of direct purchasers of Aggrenox in in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, *inter alia*, unlawful reverse payment agreements. The case settled for $146 million. (Case No. 14-02516 (D. Conn.)).

- ***In re Asacol Antitrust Litigation:*** The firm served as class counsel for direct purchasers of Asacol HS and Delzicol in a case alleging that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for $15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).

- ***In re Celebrex (Celecoxib) Antitrust Litigation***: The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for $94 million. (Case No. 14-cv-00361 (E.D. VA.)).

- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger Montague achieved a $20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).

- ***In re K-Dur Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger Montague litigated the case before the Court of Appeals and won a precedent-setting victory and continued the fight before the Supreme Court. On remand, the case settled for $60.2 million. (Case No. 01-1652 (D.N.J.)).

- ***In re Loestrin 24 Fe Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class of direct purchasers of brand Loestrin, generic Loestrin, and/or brand Minastrin. The direct purchaser class alleged that defendants violated federal antitrust laws by unlawfully impairing the introduction of generic versions of the prescription drug Loestrin 24 Fe. The case settled shortly before trial for $120 million (Case No. 13-md-2472) (D.R.I.).

- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for $52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).

- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger Montague served as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for $15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).

- ***In re Oxycontin Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for $16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).

- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel and recovered $19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).

- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.*:** Berger Montague served as co-lead counsel on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for $17.25 million. (Case No. 07-142 (D. Del.)).

- ***In re Skelaxin Antitrust Litigation:*** Berger Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for $73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).

- ***In re Solodyn Antitrust Litigation:*** Berger Montague served as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. With a final settlement on the eve of trial, the case settled for a total of more than $76 million. (Case No. 14-MD-2503-DJC (D. Mass.)).

- ***In re Tricor Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for $250 million. (No. 05-340 (D. Del.)).

- ***In re Wellbutrin XL Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of $37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).

**Commercial Litigation**

Berger Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.*:** Berger Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).

- ***Forbes v. GMH:*** Berger Montague represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced. (No. 07-cv-00979 (E.D. Pa.)).

**Commodities & Financial Instruments**

Berger Montague ranks among the country's preeminent firms for managing and trying complex Commodities & Financial Instruments related cases on behalf of individuals and as class actions. The firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- ***In re Peregrine Financial Group Customer Litigation:*** Berger Montague served as co-lead counsel in a class action which helped deliver settlements worth more than $75 million on behalf of former customers of Peregrine Financial Group, Inc., in litigation against U.S. Bank, N.A., and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse in July 2012. The lawsuit alleges that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use. (No. 1:12-cv-5546)

- ***In re MF Global Holdings Ltd. Investment Litigation*:** Berger Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately $1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.).

- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*:** Berger Montague is one of two co-lead counsel representing traders of traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).

- ***In re Libor-Based Financial Instruments Antitrust Litigation*:** Berger Montague represents exchange-based investors in this sprawling litigation alleging a conspiracy among many of the world's largest banks to manipulate the key LIBOR benchmark rate. LIBOR plays an important role in valuing trillions of dollars of financial instruments worldwide. The case, filed in 2011, alleges that the banks colluded to misreport and manipulate LIBOR rates for their own benefit. The banks' conduct damaged, among others, exchange-based investors who transacted in Eurodollar futures and options on the CME between 2005 and 2010. Eurodollar futures and options are keyed to LIBOR and are the world's most heavily traded short-term interest rate contracts. Following years of hotly contested litigation on behalf of these exchange-based investors, Berger Montague and its co-counsel achieved settlements with seven banks totaling more than $180 million. In September 2019, the Court granted preliminary approval of a plan of distribution for these settlement funds. A final approval hearing on the settlement is scheduled in September 2020. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

**Consumer Protection**

Berger Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***In re Public Records Fair Credit Reporting Act Litigation***: Berger Montague is class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and civil judgments. The settlements provide groundbreaking injunctive relief valued at over $100 billion and provide a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.

- ***In re: CertainTeed Fiber Cement Siding Litigation***: The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than $103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. (MDL No. 2270 (E.D. Pa.)).

- ***Countrywide Predatory Lending Enforcement Action:*** Berger Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

- ***In re Experian Data Breach Litigation***: Berger Montague served on the Executive Committee of this class action lawsuit that arose from a 2015 data breach at Experian in which computer hackers stole personal information including Social Security numbers and other sensitive personal information for approximately 15 million consumers. The settlement is valued at over $170 million. It consisted of $22 million for a non-reversionary cash Settlement Fund; $11.7 million for Experian's remedial measures implemented in connection with the lawsuit; and two years of free credit monitoring and identity theft insurance. The aggregate value of credit monitoring claimed by class members during the claims submission process exceeded $138 million, based on a $19.99 per month retail value of the service.

- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for $24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).

- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based

on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of $15-$30 or store vouchers of $30-$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).

- ***In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. (No. 4:09-MD-2046 (S.D. Tex. 2009)).

- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).

- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation*:** The firm served on the plaintiffs' steering committee and obtained an $11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*:** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

**Corporate Governance and Shareholder Rights**

Berger Montague protects the interests of individual and institutional investors in shareholder derivative actions in state and federal courts across the United States. Our attorneys help individual and institutional investors reform poor corporate governance, as well as represent them in litigation against directors of a company for violating their fiduciary duty or provide guidance on shareholder rights.

- ***Emil Rossdeutscher and Dennis Kelly v. Viacom:*** The firm, as lead counsel, obtained a settlement resulting in a fund of $14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

- ***Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.:*** The firm, as lead counsel, obtained a settlement resulting in a fund of $8.25 million for the class.

**Employee Benefits & ERISA**

Berger Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers and retirees, and also gained favorable changes to their retirement plans.

- ***Diebold v. Northern Trust Investments, N.A.*:** As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a $36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses. (No. 1:09-cv-01934 (N.D. Ill.)).

- ***Glass Dimensions, Inc. v. State Street Bank & Trust Co.***: The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending program at issue, the case settled for $10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds. (No. 1:10-cv-10588-DPW (D. Mass)).

- ***In re Eastman Kodak ERISA Litigation*:** The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for $9.7 million. (Master File No. 6:12-cv-06051-DGL (W.D.N.Y.)).

- ***Lequita Dennard v. Transamerica Corp. et al*.:** The firm served as counsel to plan participants who alleged that they suffered losses when plan fiduciaries failed to act solely in participants' interests, as ERISA requires, when they selected, removed and monitored plan investment options. The case settled for structural changes to the plan and $3.8 million monetary payment to the class. (Civil Action No. 1:15-cv-00030-EJM (N.D. Iowa)).

**Employment & Unpaid Wages**

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees and devotes all of their energies to helping the firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such

as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action.

Berger Montague's Employment & Unpaid Wages Group, which is chaired by Executive Shareholder Shanon Carson, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, *The National Law Journal* selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes *Law360*, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- ***Fenley v. Wood Group Mustang, Inc*:** The firm served as lead counsel and obtained a settlement of $6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-326 (S.D. Ohio)).

- ***Sanders v. The CJS Solutions Group, LLC*:** The firm served as co-lead counsel and obtained a settlement of $3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 17-3809 (S.D.N.Y.)).

- ***Gundrum v.* Cleveland Integrity Services, Inc.:** The firm served as lead counsel and obtained a settlement of $4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 4:17-cv-55 (N.D. Okl.)).

- ***Fenley v.* Applied Consultants, Inc.:** The firm served as lead counsel and obtained a settlement of $9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-259 (W.D. Pa.)).

- ***Acevedo v. Brightview Landscapes, LLC*:** The firm served as co-lead counsel and obtained a settlement of $6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 3:13-cv-02529 (M.D. Pa.)).

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged

that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of $9.98 million and an unprecedented package of extensive programmatic changes valued at approximately $20 million. (EEOC No. 531-2006-00276X (2015)).

- ***Ciamillo v. Baker Hughes, Incorporated:*** The firm served as lead counsel and obtained a settlement of $5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).

- ***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

- ***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

**Environment & Public Health**

Berger Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environment & Public Health Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs. In 2016, Berger Montague was named an Elite Trial Lawyer Finalist in special litigation (environmental) by *The National Law Journal*.

- ***Cook v. Rockwell International Corporation:*** In February 2006, the firm won a $554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium from the former Rocky Flats nuclear weapons site northwest of Denver, Colorado. Judgment in the case was entered by the court in June 2008 which, with

interest, totaled $926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." (No. 90-cv-00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A $375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.

- ***In re Exxon Valdez Oil Spill Litigation*:** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of $5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to $507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

- ***Drayton v. Pilgrim's Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim's Pride Corp.*, 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).

- ***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of $25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

**Insurance Fraud**

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- ***Spencer v. Hartford Financial Services Group, Inc.:*** The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (*Spencer*

*v. Hartford Financial Services Group, Inc.*, Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory appeal under Federal Rule of Civil Procedure 23(f). On September 21, 2010, the U.S. District Court entered judgment granting final approval of a $72.5 million cash settlement.

- ***Nationwide Mutual Insurance Company v. O'Dell:*** The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of $75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

**Predatory Lending and Borrowers' Rights**

Berger Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger Montague has successfully obtained multi-million-dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

- ***Coonan v. Citibank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Citibank and its affiliates in the United States District Court for the Northern District of New York concerning alleged kickbacks Citibank received in connection with its force-placed insurance programs. The firm obtained a settlement of $122 million on behalf of a class of hundreds of thousands of borrowers.

- ***Arnett v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $31 million on behalf of a class of hundreds of thousands of borrowers.

- ***Clements v. JPMorgan Chase Bank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against JPMorgan Chase and its affiliates in the United States District Court for the Northern District of California concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $22,125,000 on behalf of a class of thousands of borrowers.

- ***Holmes v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the Western District of North Carolina concerning alleged kickbacks received in connection with its force-placed wind insurance program. The firm obtained a settlement of $5.05 million on behalf of a class of thousands of borrowers.

**Securities & Investor Protection**

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of $88.2 million and a RICO judgment of $239 million were obtained. Berger Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

- ***In re Merrill Lynch Securities Litigation:*** Berger Montague, as co-lead counsel, obtained a recovery of $475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).

- ***In re: Oppenheimer Rochester Funds Group Securities Litigation:*** The firm, as co-lead counsel, obtained a $89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).

- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

- ***In re NetBank, Inc. Securities Litigation:*** The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The $12.5

million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).

- ***The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.:*** The firm, as co-lead counsel, obtained a class settlement of $25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

- ***Qwest Securities Action:*** The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for $45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

**Whistleblower, *Qui Tam*, and False Claims Act**

Berger Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than $3 billion to federal and state governments. In return, whistleblower clients retaining Berger Montague to represent them in state and federal courts have received more than $500 million in rewards. Berger Montague's time-tested approach in whistleblower/*qui tam* representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

## Judicial Praise for Berger Montague Attorneys

Berger Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

### Antitrust Cases

From **Judge Lorna G. Schofield**, of the U.S. District Court for the Southern District of New York:

> "I'm not sure I've ever seen a case without a single objection or opt-out, so congratulations on that."

Transcript of the November 19, 2020 Hearing in ***Contant, et al. v. Bank of America Corp., et al.***, No. 1:17-cv-03139 (S.D.N.Y.).

From **Judge William E. Smith,** of the U.S. District Court for the District of Rhode Island:

> "The degree to which you all litigated the case is – you know, I can't imagine attorneys litigating a case more rigorously than you all did in this case. It seems like every conceivable, legitimate, substantive dispute that could have been fought over was fought over to the max. So you, both sides, I think litigated the case as vigorously as any group of attorneys could. The level of representation of all parties in terms of the sophistication of counsel was, in my view, of the highest levels. I can't imagine a case in which there was really a higher quality of representation across the board than this one."

Transcript of the August 27, 2020 Hearing in ***In re Loestrin 24 Fe Antitrust Litigation***, No. 13-md-02472 (D.R.I.).

From **Judge Margo K. Brodie,** of the U.S. District Court for the Eastern District of New York:

> "Class counsel has without question done a tremendous job in litigating this case. They represent some of the best plaintiff-side antitrust groups in the country, and the size and skill of the defense they litigated against cannot be overstated. They have also demonstrated the utmost professionalism despite the demands of the extreme perseverance that this case has required…"

***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, No. 1:05-md-01720 (E.D.N.Y. 2019) (Mem. & Order).

From **Judge Brian M. Cogan**, of the U.S. District Court of the Eastern District of New York:

> "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

Transcript of the June 24, 2019 Fairness Hearing in ***In re Dental Supplies Antitrust Litigation***, No. 16-cv-696 (E.D.N.Y.).

From **Judge Michael M. Baylson**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[C]ounsel…for direct action plaintiffs have done an outstanding job here with representing the class, and I thought your briefing was always very on point. I thought the presentation of the very contentious issues on the class action motion was very well done, it was very well briefed, it was well argued."

Transcript of the June 28, 2018 Hearing in ***In re Domestic Drywall Antitrust Litigation***, No. MD-13-2437 at 11:6-11.

From **Judge Madeline Cox Arleo,** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

> "I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express."

Transcript of the September 9 to 11, 2015 Daubert Hearing in ***Castro v. Sanofi Pasteur***, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
>
> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

***In re Currency Conversion Fee Antitrust Litigation***, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg,** of the United States District court for the District of New Jersey:

> "[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers … I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, … On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

***In re Remeron Antitrust Litig***., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners … The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

***In re Linerboard Antitrust Litig***., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

> "[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel….[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

***In re Cardizem CD Antitrust Litig***., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras,** of the U.S. District Court for the Northern District of Illinois:

> "The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . .There is no question that the results achieved by class counsel were extraordinary [.]"

Regarding the work of Berger Montague in achieving more than $700 million in settlements with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte,** of the U.S. District Court for the District of Maryland:

"The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen,** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

***Bogosian v. Gulf Oil Corp.***, 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

> "Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result."

***In re Art Materials Antitrust Litigation***, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld,** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

***In re Master Key Antitrust Litigation***, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

**Securities & Investor Protection Cases**

From **Judge Brantley Starr** of the U.S. District Court for the Northern District of Texas, Dallas Division:

> "I think y'all have been a model on how to handle a case like this. So I appreciate the diligence y'all have put in separating the fee negotiations until after the main event is resolved…Everything I see here is in great shape, and really a testament to y'all's diligence and professionalism. So hats off to y'all…So thanks again for your professionalism in handling this case and handling the stipulated settlement. Y'all are model citizens, and so I wish I could send everyone to y'all's school of litigation management."

***Howell Family Trust DTD 1/27/2004 v. Hollis Greenlaw, et al.***, No. 3:18-cv-02864-X (N.D. Tex., March 25, 2021).

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

> Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

***In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation***, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

***In re CIGNA Corp. Sec. Litig***., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett… [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

***In re U.S. Bioscience Secs. Litig.***, No. 92-0678 (E.D. Pa. April 4, 1994).

From **Judge Wayne Andersen** of the U.S. District Court for the Northern District of Illinois:

> "[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases…in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here…I would say this has been the best representation that I have seen."

***In re: Waste Management, Inc. Secs. Litig.***, No. 97-C 7709 (N.D. Ill. 1999).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

***Ginsburg v. Philadelphia Stock Exchange, Inc.***, No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
>
> "Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

***In re Rite Aid Corp. Securities Litigation***, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

> "In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."
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> * * *
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> "Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

***In Re Melridge, Inc. Securities Litigation***, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

> "[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."
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> * * *
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> "The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

> "In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger Montague...."
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> * * *

> "Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in ***In re Revco Securities Litigation***, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

**Consumer Protection Cases**

From **Judge Paul A. Engelmayer** of the U.S. District Court for the Southern District of New York:

> "I know the diligence of counsel and dedication of counsel to the class…Thank you, Ms. Drake. As always I appreciate the – your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It's a pleasure always to have you before me…Class Counsel [] generated this case on their own initiative and at their own risk. Counsel's enterprise and ingenuity merits significant compensation…Counsel here are justifiably proud of the important result that they achieved."

Sept. 22, 2020, Final Approval Hearing, ***Gambles v. Sterling Info., Inc.***, No. 15-cv-9746.

From **Judge Joel Schneider** of the U.S. District Court for the District of New Jersey:

> "I do want to compliment all counsel for how they litigated this case in a thoroughly professional manner. All parties were zealously represented in the highest ideals of the profession, legitimately and professionally, and not the usual acrimony we see in these cases…I commend the parties and their counsel for a very workmanlike professional effort."

Transcript of the September 10, 2020 Final Fairness Hearing in ***Somogyi, et al. v. Freedom Mortgage Corp.***

From **Judge Harold E. Kahn** of the Superior Court of California County of San Francisco:

> "You are extraordinarily impressive. And I thank you for being here, and for your candid, non-evasive response to every question I have. I was extremely skeptical at the outset of this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects, including the motion for attorneys' fees. And I congratulate you on your excellent work."

Transcript of the November 7, 2017 Hearing in ***Loretta Nesbitt v. Postmates, Inc.***, No. CGC-15-547146

**Civil/Human Rights Cases**

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

> "We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

**Insurance Litigation**

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

> Noting the "very significant risk in pursuing this action" given its uniqueness in that "there was no prior investigation to rely on in establishing the facts or a legal basis for the case….[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants." Further, "the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent…. [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense…. [B]ut for counsel's outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny…. [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result."

Regarding the work of Berger Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in ***Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.,*** in the Order approving the $72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

**Customer/Broker Arbitrations**

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

> "[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration."

About the efforts of Berger Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a $1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

**Employment & Unpaid Wages Cases**

From **Judge Timothy R. Rice**, United States Magistrate Judge for the U.S. District Court for the Eastern District of Pennsylvania:

> Describing Berger Montague as "some of the finest legal representation in the nation," who are "ethical, talented, and motivated to help hard working men and women."

Regarding the work of Berger Montague attorney Camille F. Rodriguez in ***Gonzalez v. Veritas Consultant Group, LLC, d/b/a Moravia Health Network***, No. 2:17-cv-1319-TR (E.D. Pa. March 13, 2019).

From **Judge Malachy E. Mannion**, United States District Judge for the U.S. District Court for the Middle District of Pennsylvania:

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
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> * * *
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> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date."

***Acevedo v. Brightview Landscapes, LLC***, No. 3:13-cv-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017).

From **Judge Joseph F. Bataillon**, United States District Judge for the U.S. District Court for the District of Nebraska:

> [P]laintiffs' counsel succeeded in vindicating important rights. … The court is familiar with "donning and doffing" cases and based on the court's experience, defendant meat packing companies' litigation conduct generally reflects "what can only be described as a deeply-entrenched resistance to changing their compensation practices to comply with the requirements of FLSA." (citation omitted). Plaintiffs' counsel perform a recognized public service in prosecuting these actions as a 'private Attorney General' to protect the rights of underrepresented workers.
>
> The plaintiffs have demonstrated that counsel's services have benefitted the class. … The fundamental policies of the FLSA were vindicated and the rights of the workers were protected.

Regarding the work of Berger Montague among other co-counsel in ***Morales v. Farmland Foods**, Inc.*, No. 8:08-cv-504, 2013 WL 1704722 (D. Neb. Apr. 18, 2013).

From **Judge Jonathan W. Feldman**, United States Magistrate Judge for the U.S. District Court for the Western District of New York:

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
>
> and
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> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

**Employees Committed For Justice v. Eastman Kodak,** (W.D.N.Y. 2010) ($21.4 million settlement).

**Other Cases**

From **Stephen M. Feiler, Ph.D.,** Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

> "On behalf of the Supreme Court of Pennsylvania and AOPC's Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years."

About the efforts of Berger Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

**Select Attorney Profiles**

**Russell D. Paul – Shareholder**
Russell Paul is a Shareholder in the Consumer Protection, Qui Tam/Whistleblower, and Securities/Governance/Shareholder Rights practice groups and heads the Automobile Defect practice area. He concentrates his practice on consumer class actions, securities class actions and derivative suits, complex securities, and commercial litigation matters, and False Claims Act suits.

Mr. Paul has successfully litigated and led consumer protection and product defect actions in the automotive, pet food, soft drink, and home products industries. He has been appointed to a leadership position in several automotive defect cases. See Francis v. General Motors, LLC, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF No. 40 (appointed as member of Plaintiffs' Steering Committee); Weston v. Subaru of America, Inc., No. 1:20-cv-05876 (D.N.J.), ECF No. 49 (appointed as Interim Co-Lead Counsel); Miller v. Ford Motor Co., No. 2:20-cv-01796 (E.D. Cal.) ECF No. 60 (appointed to Interim Class Counsel Executive Committee) and Powell v. Subaru of America, Inc., No. 1:19-cv-19114 (D.N.J.), ECF No. 26 (appointed as Interim Co-Lead Counsel). Mr. Paul has litigated securities class actions against Tyco International Ltd., Baxter Healthcare Corp., ALSTOM S.A., Able Laboratories, Inc., Refco Inc., Toll Brothers and the Federal National Mortgage Association (Fannie Mae). He has also litigated derivative actions in various state courts around the country, including in the Delaware Court of Chancery. Mr. Paul has also briefed and argued several federal appeals, including in the Third, Sixth and Ninth Circuits.

In addition to securities litigation, Mr. Paul has broad corporate law experience, including mergers and acquisitions, venture capital financing, proxy contests, and general corporate matters. He began his legal career in the New York office of Skadden, Arps, Slate, Meagher & Flom.

Mr. Paul has been designated a "Pennsylvania Super Lawyer" and a "Top Attorney in Pennsylvania."

Mr. Paul graduated from the Columbia University School of Law (J.D. 1989) where he was a Harlan Fiske Stone Scholar, served on the Moot Court Review Board, was an editor of Pegasus (the law school's catalog) and interned at the United States Attorneys' Office for the Southern District of New York. He completed his undergraduate studies at the University of Pennsylvania, earning a B.S. in Economics from the Wharton School (1986) and a B.A. in History from the College of Arts and Sciences (1986). He was elected to the Beta Gamma Sigma Honors Society.

**Abigail J. Gertner – Senior Counsel**
Abigail J. Gertner is an attorney in the firm's Philadelphia office and practices in the firm's Consumer Protection and ERISA Litigation practice groups.

Before joining the firm, Ms. Gertner worked at both plaintiff and defense firms, where she gained experience in complex litigation, including consumer fraud, ERISA, toxic tort, and antitrust matters. She concentrates her current practice on automotive defect, consumer fraud, and ERISA class actions.

Ms. Gertner graduated from Santa Clara University School of Law in 2003, where she interned for the Santa Clara County District Attorney's Office in the Child and Elder Abuse Unit. She completed her undergraduate studies at Tulane University in 2000, earning a B.S. in Psychology and a B.A. in Classics.

She is also active in her community, formerly serving as a Youth Aid Panel chairperson for Upland in Delaware County. She now serves on the Upland Borough Council, beginning her four-year term in January 2020.

Ms. Gertner is admitted to practice in state courts in Pennsylvania and New Jersey; and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, and the Eastern District of Michigan.

**Natalie Lesser – Senior Counsel**
Natalie Lesser is Senior Counsel in the firm's Consumer Protection and Employee Benefits & ERISA practice groups. She concentrates her practice on automotive defect, consumer fraud, and ERISA class actions.

Before joining the firm, Ms. Lesser gained experience at both plaintiff and defense firms, litigating complex matters involving consumer fraud, securities fraud, and managed care disputes.

Ms. Lesser is admitted to practice in state courts in Pennsylvania and New Jersey, the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, and the Eastern District of Michigan, and the United States Courts of Appeals for the Third Circuit and the Ninth Circuit.

Ms. Lesser received her law degree from the University of Pittsburgh School of Law in 2010 and her undergraduate degree in English from the State University of New York at Albany in

2007. While attending the University of Pittsburgh School of Law, Ms. Lesser was Editor in Chief of the University of Pittsburgh Law Review.

**Amey J. Park – Associate**
Amey J. Park is an Associate in the firm's Philadelphia office and practices in the firm's Consumer Protection and Commercial Litigation practice groups.

Before joining the firm, Ms. Park was an associate in the litigation department of a large corporate defense firm. She represented corporate and individual clients in complex commercial litigation, product liability, and personal injury matters in a wide variety of industries, including financial services, insurance, trust administration, and real estate. Ms. Park also represented clients *pro bono*, serving as first-chair counsel in a federal jury trial for violations of an inmate's constitutional rights by law enforcement officers and assisting a young refugee seeking asylum in federal immigration court.

In 2019, Ms. Park was named a "Lawyer on the Fast Track" by The Legal Intelligencer, an honor conferred upon only 25 attorneys in Pennsylvania under the age of 40 that year. Ms. Park also currently serves on the Executive Committee of the Temple American Inn of Court.

Ms. Park is admitted to practice in state courts in Pennsylvania and New Jersey; the United States Court of Appeals for the Third Circuit; and the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey, and the Eastern District of Michigan.

**BRYANT LAW CENTER**
**LEADERSHIP AND EXPERIENCE**

The Bryant Law Center (hereinafter BLC) is a medium sized firm with offices in Western Kentucky and Louisville. BLC, Mass Tort Division, has decades of experience in multi-district litigation and a track record of successfully litigating against major corporations on behalf of plaintiffs in both state and federal court. Three attorneys at BLC, Mark Bryant, Emily Roark, and David Bryant, focus primarily on complex litigation. (Resumes attached). BLC began the firm's complex litigation experience with train derailment cases in Kentucky, Illinois, Tennessee, and West Virginia. From this class action litigation, Counsel developed a mass tort and multi-district litigation practice.

**TRAIN DERAILMENT EXPERIENCE**

A large portion of our mass tort experience has been representing plaintiffs in train derailment litigation. Mark Bryant, Emily Roark, and David Bryant have become proficient in federal practice and procedure, document review, brief drafting, case management, client management, trial preparation, and mediation. Each of these cases has been directed by a small trial team with BLC is directly involved in every area of litigation.

The following is a partial list of cases in which BLC has shown the necessary experience, knowledge, skill, and resources to successfully prosecute train derailment litigation:

*Sigman v. CSX Corp, et al.* (United States District Court, Southern District of West Virginia 3:15-cv-13328). A train derailment resulted in an explosion with flames over 90 feet in the air burning on the river between two towns, leading to the evacuation and sheltering in place of 471 residents for up to two weeks in January 2015. The case was resolved in 2018 when United States District Court Judge Robert Maxell mediated the case on the morning of trial.

*Tipton et al v. CSX Transportation and Union Tank Car Company* (United States District Court, Eastern District of Tennessee, Northern Division 3:15-cv-00311-TAV-CCS) is a mass tort arising out of a train derailment that resulted in the evacuation of approximately 7000 residents of Maryville, Tennessee, for the inconvenience from evacuation, business loss, and personal injuries. Mark Bryant was on a trial team against Union Tank Car in which the jury found in favor of the Plaintiffs. David Bryant and Emily Roark devoted hundreds of hours to trial preparation, defending Plaintiffs in witness depositions, expert witness depositions regarding causation, client management, and settlement discussions leading to the successful resolution of the case.

*Smith v. Paducah and Louisville Railroad (CSX)* (United States District Court, Western District of Kentucky 3:12-cv-00818-CRS *Smith v. Paducah and Louisville Railroad (CSX)*. On December 10, 2012, over 1,000 people were evacuated from their homes or sheltered in place when a CSX train derailed. While repairing the derailed car, it exploded. On October 25, 2016, United States Magistrate Dave Whalin mediated the case and reached a multi-million dollar

settlement for the Plaintiffs.

*Kirk Petska v. Canadian National/ Illinois Central Railroad (*Circuit Court Perry County, Illinois 2004- L-27) was an evacuation and property damage case which was granted class certification. After years of appeals by the railroad, the case was de-certified and BLC along with Fayard and Honeycutt filed 521 individual complaints. Canadian National sought mediation with the prospect of 521 trials arising out of a train derailment resulting in evacuations, business loss, and personal injuries. After two days, an undisclosed settlement was reached for the Plaintiffs.

In the majority of the train derailment cases, BLC has formed a leadership team with Fayard & Honeycutt. In the Maryville train derailment, there were multiple groups of attorneys involved, Mark Bryant was named to the Plaintiff Management Committee and Emily Roark was named to the Client Relations sub-committee.

## OTHER BLC LEADERSHIP AND EXPERIENCE IN COMPLEX LITIGATION

BLC currently has leadership positions and manages inventories on the following ongoing mass district and class action litigation:

*In Re: 3M Combat Arms Earplugs Product Liability Litigation,* MDL No. 2885 (N. D. Florida), BLC currently oversees a large inventory of 3M cases. Additionally, David Bryant serves on the Plaintiff Steering Committee.

*In Re: McKinsey & Co., INC. National Prescription Opiate Consultant Litigation,* 3:21-md-02996-CRB (N.D. Cal.) Emily Roark serves on the Plaintiff's Steering Committee, representing the political sub-divisions.

*In re: Ranitidine Products Cases, Superior Court of the State of California, Alameda County*, JCCP No. 5150. BLC has an inventory of Plaintiffs suffering from cancer after years of Zantac use. Emily Roark holds a position on the Executive Committee with a trial to start in the summer of 2023.

*Cole et. al. v. Volkswagen Group of American, Inc. et. al., 4:25-cv-02085 (*Northern District of California). Mark Bryant is on the Executive Committee of a product liability class action involving faulty sunroofs on vehicles.

*In re: Paraquat Products Liability Litigation,* MDL No. 3004 3:21-md-3004 (Southern District of Ill.). BLC has cases filed in this litigation.

*Camp Lejune Water Contamination Litigation.* BLC is continuing to take clients for this litigation.

In addition to the current inventory of MDL and mass tort cases, Counsel has successfully resolved a number of mass tort and MDL cases including the following:

*Mayo v. Wal-Mart Stores, Inc. and Sam's East, Inc*. 5:06-cv-00093-TBR (Western District of Kentucky) Sam's Club was selling counterfeit Prada purses, BLC filed suit and the case was mediated and resolved as a national class.

*In Re: Matter of Bayer Corporation* (Franklin, Kentucky Circuit Court 07-CI-00148), BLC along with multiple other firms was retained by the Attorney General of Kentucky to represent Kentucky against Bayer Corporation. This case was settled in December 2019 shortly before trial.

*In Re: DePuy Orthopedics Inc., ASR Hip Implant Products Liability Litigation,* MDL No. 2191. All BLC DePuy hip cases are resolved in favor of the Plaintiffs.

*Transvaginal Mesh/ Pelvic Mesh.* Counsel has handled cases against defendant C.R. Bard (MDL No. 2187), Boston Scientific (MDL No. 2326), American Medical Systems (MDL No. 2325), and Ethicon, Inc. (MDL No. 2327). All cases are resolved favorably for the Plaintiffs.

*In Re: Syngenta AG MIR 162 Corn Litigation*, MDL No. 2591. This is a defective product case resolved in favor of the Plaintiffs.

*In Re: Abilify (Aripiprazole) Products Liability Litigation,* MDL No. 2734. This is a drug case that had been resolved for the Plaintiffs.

*In Re: Roundup® Products Liability Litigation,* MDL No. 2741, BLC handled over 100 cases that have been settled.

*In Re: Cook Medical Inc., IVC Filters Marketing, Sales Practices, and Products Liability Litigation,* MDL No. 2570. This is a medical device case in which BLC's cases have been settled.

*In Re: Smitty's/CAM 303 Tractor Hydraulic Fluid Marketing, Sales Practices, and Products Liability Litigation,* MDL No. 2936. This litigation involves claims that hydraulic fluid did not meet the manufacturer's standards, despite being marketed as such and the subsequent use of which would damage the engines and transmissions of the equipment in which it was used.

*Wiggins et al v. Daymar College, LLC* (United States District Court, Western District of Kentucky (5:11-cv-00036); (*Dixon et al v. Daymar College, LLC* (McCracken County Circuit Court 10-CI-00132). A for-profit school case with colleges in Kentucky, Ohio, and Tennessee where the Kentucky Supreme Court found the contract between the school and students was unconscionable. The Supreme Court ruling led to mediation that eventually resulted in an agreement in conjunction with the Attorney General resolving all claims with debt forgiveness and a monetary payment.

## KNOWLEDGE OF CURRENT CASE

BLC worked to build a coalition of attorneys that has the skill, resources, and knowledge to litigate against Norfolk for any damages arising out of the train derailment on February 3, 2023, in East Palestine, Ohio, including, but not limited to, injuries, property damage, medical monitoring, and remediation of toxins in the ground and water.

The coalition includes Ron Parry, Strauss Troy Co, LPA, Blayne Honeycutt and Calvin Fayard, Fayard and Honeycutt, Gary Davis, Davis Environmental Attorney, Jim Mackall, Shillen Mackall & Seldon. Counsel filed the second class action case on file, February 8, 2023, *Eisley v. Norfolk Southern Railway Co.* (N.D. Ohio). Additionally, the attorneys in the coalition have been in East Palestine since filing the class action and meeting with concerned victims. Our team represents 400 cases including individuals, businesses and first responders. Our coalition has decades of train derailment experience, experts have tested water and soil on our clients' property near the derailment site, liability experts have been retained, and Counsel understands the preemption arguments and client management challenges.

Last, BLC is prepared with time, resources, and finances to fully invest in any leadership role. Counsel stands ready and willing to answer any questions of the Court.

Ahdoot & Wolfson, PC ("AW") is a nationally recognized law firm founded in 1998 that specializes in complex and class action litigation, with a focus on privacy rights, unfair and anti-competitive business practices, consumer fraud, employee rights, defective products, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

**Results**

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW reached a nationwide class action settlement conservatively valued at approximately $420 million. The settlement extends the promised lifetime subscription for the lifetime of class members who have active accounts, and provides the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover $100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement literally minutes prior to oral argument in the Ninth Circuit.

As co-lead counsel in the *Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155 (N.D. Cal.) (Hon. Laurel Beeler), a nationwide class action alleging privacy violations from the collection of personal information through third-party software development kits and failure to provide end to end encryption, AW achieved an $85 million nationwide class settlement that also included robust injunctive relief overhauling Zoom's data collection and security practices.

As a member of the Plaintiffs' Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide settlement of $310 million minimum and $500 million maximum. The case arose from Apple's alleged

practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life.

In *Eck v. City of Los Angeles*, No. BC577028 (LASC) (Hon. Ann I. Jones), AW achieved a $295 million class settlement in a case alleging that an 8% surcharge on Los Angeles electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google's alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), AW achieved a settlement that establishes a $100 million non-reversionary cash settlement fund and provides meaningful prospective relief for the benefit of class members.

As an invaluable member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-02633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, briefed in part the successful appeal to the D.C. Circuit, and had an important role in a preliminarily approved settlement providing for a $63 million settlement fund.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement fund and robust injunctive relief for the consumer class.

In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made $80 million available to the class and required McAfee to notify customers regarding auto-

renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and then achieved a $51 million class settlement.

As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S.D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a $40 million settlement.

*Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing & Sales Practices Litigation*, No. 1:16-md-02743-AJT-TRJ (E.D. Va.) (Hon. Anthony J. Trenga) arose from alleged misrepresentations of laminate flooring durability, which was coordinated with MDL proceedings regarding formaldehyde emissions. As co-lead class counsel for the durability class, AW was instrumental in achieving a $36 million settlement.

In *McKnight v. Uber Technologies, Inc.*, No. 4:14-cv-05615-JST (N.D. Cal.) (Hon. Jon S. Tigar), AW achieved a $32.5 million settlement for the passenger plaintiff class alleging that Uber falsely advertised and illegally charged a "safe rides fee."

In *Pantelyat v. Bank of America, N.A.*, No. 1:16-cv-08964-AJN (S.D.N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a $22 million class settlement, representing approximately 80% of total revenues gleaned by the bank's alleged conduct.

**Current Noteworthy Leadership Roles**

AW was selected to serve as interim co-lead class counsel in the *StubHub Refund Litigation*, No. 4:20-md-02951-HSG (N.D. Cal.) (Hon. Haywood S. Gilliam, Jr.). This consolidated multidistrict litigation alleges that StubHub retroactively changed its policies for refunds for cancelled or rescheduled events as a result of the Covid-19 pandemic and refused to offer refunds despite promising consumers 100% of their money back if events are cancelled.

AW was appointed, after competing applications, to serve as interim co-lead class counsel in the *Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald), a consolidated class action arising from Ring's failure to implement necessary measures to secure the privacy of Ring user accounts and home-security devices, and failure to protect its customers from hackers despite being on notice of the inadequacies of its cybersecurity.

In *Clark v. American Honda Motor Co., Inc.*, No. 2:20-cv-03147-AB-MRW (C.D. Cal.) (Hon. André Birotte Jr.), AW serves as co-lead counsel in a class action arising from unintended and uncontrolled deceleration in certain Acura vehicles.

In the *Kind LLC "Healthy And All Natural" Litigation*, No. 1:15-md-02645-NRB (S.D.N.Y.) (Hon. Naomi Reice Buchwald), AW was selected as interim co-lead class counsel after competing applications. AW certified three separate classes of New York, California, and Florida consumers who purchased Kind LLC's products in a false labeling food MDL.

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-05062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW serves on the Plaintiffs' Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-02921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-02905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients, as well as many other data breach class actions.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-02514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison's alleged forced labor practices.

In the *Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010-PKC (S.D.N.Y.) (Hon. P. Kevin Castel), a class action alleging monopolization of the digital advertising market, AW is serving as court-appointed co-lead counsel on behalf of the advertiser class.

In *Klein v. Meta Platforms, Inc.*, No. 3:20-cv-08570-JD (N.D. Cal.) (Hon. James Donato), AW is serving on the Executive Committee for the digital advertiser plaintiff class in a class action alleging that Meta (formerly Facebook) engaged in anticompetitive conduct to stifle and/or acquire competition to inflate the cost of digital advertising on its social media platform. Many of the plaintiffs' claims recently survived a motion to dismiss and are in the process of amending their complaint.

In *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-09066-JXN-ESK (D.N.J.) (Hon. Julien Xavier Neals), a class action alleging that a standardized "no-poach" agreement among Jackson Hewitt and its franchisees limited mobility and compensation prospects for the tax preparer employees, AW is asserting claims on behalf of consumers under both federal antitrust and California employment laws.

## Attorney Profiles

**Tina Wolfson** graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson had lead numerous class actions to successful results. Ms. Wolfson is a member of the California, New York and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: "Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts," Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.
- CalBar Privacy Panel: "Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California," Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: "2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions," April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.
- Federal Bar Association: N.D. Cal. Chapter "2016 Class Action Symposium," San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: "The Future of Class Actions: Cutting Edge Topics in Class Action Litigation," San Francisco Nov. 2015 (Co-Chair &Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.
- American Association for Justice: AAJ 2015 Annual Convention – "The Mechanics of Class Action Certification," July 2015, Montreal, Canada.
- HarrisMartin: Data Breach Litigation Conference: The Coming of Age – "The First Hurdles: Standing and Other Motion to Dismiss Arguments," March 2015, San Diego.

- Bridgeport: 2015 Annual Consumer Class Action Conference, February 2015, Miami (Co-Chair).
- Venable, LLP: Invited by former opposing counsel to present mock oral argument on a motion to certify the class in a food labeling case, Hon. Marilyn Hall Patel (Ret.) presiding, October 2014, San Francisco.
- Bridgeport: 15th Annual Class Action Litigation Conference – "Food Labeling and Nutritional Claim Specific Class Actions," September 2014, San Francisco (Co-Chair and Panelist).
- Bridgeport: 2014 Consumer Class Action Conference – "Hot Topics in Food Class Action Litigation," June 2014, Chicago.
- Perrin Conferences: Challenges Facing the Food and Beverage Industries in Complex Consumer Litigations, invited to discuss cutting edge developments in settlement negotiations, notice, and other topics, April 2014, Chicago.
- Bridgeport: Class Action Litigation & Management Conference – "Getting Your Settlement Approved," April 2014, Los Angeles.
- HarrisMartin: Target Data Security Breach Litigation Conference – "Neiman Marcus and Michael's Data Breach Cases and the Future of Data Breach Cases," March 2014, San Diego.
- Bridgeport: Advertising, Marketing & Media Law: Litigation and Best Management Practices – "Class Waivers and Arbitration Provisions Post-*Concepcion / Oxford Health Care*," March 2014, Los Angeles.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

**Robert Ahdoot** graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his deep class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: "Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back."

- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: "Best Legal Claims and Defenses."
- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: "The Scourge of the System: Serial Objectors."
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: "Minimizing Court Scrutiny and Overcoming Objector Challenges."
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do's and Don'ts, January 2014, Los Angeles: "Current Uses for the 17200, the CLRA an PAGA."
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: "Settlement Mechanics and Strategy."

**Bradley K. King** is a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contracts, criminal defense, and premises liability cases. During his nine-year career at AW, Mr. King has focused on consumer class actions, and data breach class actions in particular. He has extensive experience litigating consolidated and MDL class actions with AW serving in leadership roles, including numerous large data breach cases that have resulted in nationwide class settlements.

**Christopher E. Stiner** graduated from Duke University School of Law *cum laude* in 2007 and is a member of the California and New York Bars. Mr. Stiner began his legal career at the New York office of Milbank Tweed working on finance matters for some of the world's largest financial institutions. Several years later, Mr. Stiner transitioned to a litigation practice at the Los Angeles office of Katten Muchin, again representing large financial institutions and other corporate clients. Chris also worked as a clerk for the Honorable Thomas B. Donavan in the Central District of California Bankruptcy Court. In 2020, Mr. Stiner joined AW to pursue his desired focus on consumer class actions with a particular interest in consumer finance and banking matters.

**Deborah De Villa** is an associate attorney at Ahdoot Wolfson and a member of the State Bars of New York and California. Ms. De Villa focuses on consumer protection and class actions. She graduated from Pepperdine University School of Law in 2016, where she earned the CALI Excellence for the Future Award in immigration law, business planning and commercial law. During law school, Ms. De Villa completed internships at the Los Angeles District Attorney's Office, Hardcore Gangs Unit, and at the Supreme Court of the Philippines, Office of the Court Administrator. Born in the Philippines, Ms. De Villa moved to Florida at the age of sixteen to attend

IMG Golf Academy as a full-time student-athlete. Ms. De Villa earned a scholarship to play NCAA Division 1 college golf at Texas Tech University, where she graduated *magna cum laude* with a Bachelor of Arts in Psychology and a minor in Legal Studies. Ms. De Villa has gained substantial experience litigating class actions with Ahdoot Wolfson serving in leadership roles, including numerous large data breach and data privacy cases that have resulted in nationwide class settlements.

# FIRM RESUME

SIMMONS HANLY CONROY
A NATIONAL LAW FIRM

## GJONBALAJ, ET AL. V. VOLKSWAGEN GROUP OF AM., INC. ET AL.

EASTERN DISTRICT OF NEW YORK
CASE NO. 2:19-cv-07165-BMC


*We stand for our clients.*

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# GENERAL INFORMATION AND FIRM HISTORY


A LEADING NATIONAL LAW FIRM. Simmons Hanly Conroy is a leading national law firm representing individuals, businesses and government entities seeking justice. Our clients have been harmed in every conceivable way: by terrorism, child abuse, defective drugs and devices, toxic exposures and economic conspiracies. We are at home in the justice system, whether in state or federal court, and we seek the best procedural course for our clients, including the filing of individual cases, class actions, or multidistrict mass tort litigation, as circumstances require.

A STRONG FOUNDATION AND COMMITMENT TO JUSTICE. Led by John Simmons, Paul J. Hanly, Jr., and Jayne Conroy, and with over 90 attorneys and 150 support staff in offices coast to coast, the firm brings centuries of experience to bear against companies who have harmed American workers and families. We have spent years researching, talking to countless experts, and creating a network of knowledge that gives clients the comprehensive resources they deserve. We use these resources to level the playing field against larger opponents in and out of the courtroom, and we have prevailed. Rest assured that SHC has the resources and capital to handle almost any case, and the staying power to remain committed throughout the litigation process. We are resolute and unwavering in our stance against corporate wrongdoers.

A PROVEN RECORD OF SUCCESS. We stand on a strong foundation of values and a track record of success. We never lose sight of the fact that our success is measured one satisfied client at a time. Keeping this paramount is what helps drive our success. To date, Simmons Hanly Conroy has secured over $9 billion in settlements and verdicts on behalf of thousands of clients across the country.

A DIVERSE LITIGATION PRACTICE. OUR PRACTICE AREAS INCLUDE:

- ASBESTOS & MESOTHELIOMA LITIGATION
- DANGEROUS DRUGS & MEDICAL DEVICES LITIGATION
- SEXUAL ABUSE LITIGATION
- BUSINESS AND COMMERCIAL LITIGATION
- CATASTROPHIC PERSONAL INJURY LITIGATION
- CLASS ACTIONS & MASS TORT LITIGATION

# FIRM AFFILIATIONS & AWARDS

SIMMONS HANLY CONROY and its attorneys are listed in several peer-reviewed legal listings for its mass tort and private liability litigation practices, and have been recognized by a number of legal and business listings, including:

### BBB Accredited

The firm has been a Better Business Bureau (BBB) accredited business since 2003 and has maintained an A+ rating during that time. The BBB has processed 0 total complaints about this company in the last 36 months, the BBB's standard reporting period.

### U.S. News & World Report/Best Law Firm

Since 2014, the firm has been ranked one of the "Best Law Firms" in the country by U.S. News & World Report and Best Lawyers. The annual ranking is based on a rigorous research process, including client and lawyer evaluations, peer reviews from leading attorneys, and a survey completed by the firm.

### Martindale-Hubbell AV rating

Attorneys at Simmons Hanly Conroy have earned AV Preeminent ratings from Martindale-Hubbell. An AV rating, which identifies a lawyer with a very high to preeminent legal ability, is a prestigious peer-reviewed analysis of the attorney's expertise, experience, integrity and overall professional excellence.

### Super Lawyers & Rising Stars

Firm attorneys have been represented on the Super Lawyers and Rising Stars lists since 2006. The annual selections are made using a rigorous, multi-phased process of statewide lawyer surveys, an independent research evaluation of candidates and peer reviews by practice area.

### Named Among America's Elite Trial Lawyers: Product Liability

The National Law Journal, the nation's top legal publication, and Law.com teamed up to select law firms doing the most creative and substantial work on the plaintiff's side. This is the fifth year Simmons Hanly Conroy has been included among the nation's top 50 firms that secured the largest awards for their clients in that calendar year.

### Top 100 Verdicts & Settlement Lists

Verdicts and settlements secured by Simmons Hanly Conroy's trial teams have been consecutively ranked in national and state Top 100 Verdicts & Settlements lists since 2016. In the past four years, the Asbestos Department has won eight asbestos verdicts, totaling more than $180 million. These results were featured on the National Law Journal's Top 100 Verdicts list, The New York Law Journal's Top Verdicts & Settlements List, The (California) Daily Journal's Top Verdicts List, and Texas Lawyer's Top Verdicts & Settlements of the Southwest List.

# FIRM QUALIFICATIONS

## FIRM QUALIFICATIONS | *Notable Cases*

SIMMONS HANLY CONROY attorneys have a history of persevering for their clients amid the most challenging circumstances and fierce opposition during the course of class action and mass tort lawsuits. The following representative cases illustrate the firm's experience, commitment, and success in handling complex litigations.

### *Opioid Litigation*

Since 1999, the amount of opioids sold in the U.S. has nearly quadrupled. Over that same time period, the number of deaths from prescription opioids have also more than quadrupled. From 1999 to 2019, nearly 500,000 people have died in the United States from overdoses involving opioids.

As hundreds of thousands of people suffered from the metastasizing opioid epidemic, attorneys at Simmons Hanly Conroy took notice and effectively invented large-scale, multi-defendant opioid litigation against drug manufacturers. In 2003, the firm commenced groundbreaking opioid litigation and went toe-to-toe against pharmaceutical giants, becoming the only major plaintiffs' firm in the country at the time to prosecute and hold drug manufacturers accountable for the havoc they wreaked on individuals, families and governmental entities throughout the country.

Simmons Hanly Conroy continues to lead the way in opioid litigation against drug manufacturers, distributors and retail pharmacies. SHC shareholder Jayne Conroy is co-lead in the *In Re National Prescription Opiate Litigation, MDL 2804 (N.D. Ohio)* and a member of the Plaintiffs' Steering Committee in *In re McKinsey & Co. Inc. National Prescription Opiate Consultant Litigation,* MDL 2996 (N.D. Cal.). In addition, the firm currently represents 11 New York counties and New York City in on-going litigation against pharmaceutical companies and physicians over aggressive and fraudulent marketing of prescription opioid painkillers that has led to a drug epidemic.

### *In re Chantix (Varenicline) Products Liability Litigation*

Chantix, known by the generic name varenicline, works by blocking the effect of nicotine on the brain. In early 2008, U.S. Food and Drug Administration officials acknowledged receiving troubling reports from Chantix patients throughout the U.S.. These reports included 34 cases of suicide and nearly 420 reports of suicidal thoughts and behaviors. Firm attorneys Jayne Conroy, Clint Fisher and David Miceli served on the Plaintiffs' Steering Committee against Pfizer. The case consolidated more than 2,500 lawsuits filed between 2009 and 2012 and was settled for approximately $299 million.

### *In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*

In December 2016, SHC Shareholder Jayne Conroy served on the lead trial team that secured a $1 billion jury verdict against the defendants on behalf of six patients who were injured by DePuy's Pinnacle metal-on-metal hip implant. The jury awarded more than $1 billion punitive damages and nearly $40 million compensatory damages. The legal team convinced the jury in the U.S. District Court for the Northern District of Texas, Dallas Division that J&J sidestepped standard regulatory review and mislead doctors to believe that the design of the market-leading device was safe. The evidence presented during testimony against J&J told the deeper story of how the science was manipulated in order to sell the product, Jayne Conroy said. The trial was the third bellwether trial as part of the federal multidistrict litigation.

In March 2016, SHC Shareholder Jayne Conroy served on the lead trial team that secured a $502 million jury verdict against the defendants on behalf of five patients injured by DePuy's Pinnacle metal-on-metal hip implant. The jury verdict for $142 million compensatory and $360 million punitive damages followed 37 days of testimony in the U.S. District Court for the Northern District of Texas Dallas Division. The trial was the second bellwether trial as part of the federal multidistrict litigation.

### *In re: Actos (Pioglitazone) Products Liability Litigation*

The Actos lawsuits alleged Takeda Pharmaceutical Company executives ignored or downplayed risks about the drug's cancer-causing potential before Actos went on sale in the U.S. in 1999, and also misled regulators about the medication's risks. As reported by Bloomberg, Takeda executives failed to provide clear warnings about the associated cancer risk for at least seven years. Although research showed a link between Actos and bladder cancer, the company chose not to issue warnings to consumers. SHC Shareholder Jayne Conroy served as a court-appointed member of the Plaintiff's Steering Committee and helped secure millions of dollars for clients, with a global total of $2.37 billion.

### *In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*

Bayer aggressively marketed its birth control medications Yaz and Yasmin, claiming the medications also treated PMS symptoms, caused weight loss and treated acne. Not only were the claims misleading, according to the FDA, but the newer pill was also found to be three times more likely to cause serious, fatal complications. SHC, led by attorney Jayne Conroy, and joined by attorneys Trent Miracle and Paul Hanly, Jr., filed litigation on behalf of over 100 clients injured by the drug. Ms. Conroy and Mr. Miracle were appointed to leadership positions on the federal Yaz MDL and helped negotiate the final global settlement of $1.69 billion dollars for all women harmed by the drug.

### *In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*

SHC filed the first lawsuits on behalf of vehicle owners harmed by unintended acceleration in 2010. Three years of hard-fought litigation followed in which firm shareholder Jayne Conroy played a leading role, having been appointed by U.S. District Judge James Selna as a member of the plaintiffs' leadership team. In connection with the settlement, Ms. Conroy was separately appointed by Judge Selna as one of three settlement allocation counsel charged with overseeing the allocation of settlement funds to millions of Toyota owners throughout the United States. SHC helped to secure more than $1.1 billion, plus $200 million in attorneys' fees and Toyota's reimbursement of plaintiffs' counsel's expenses in the amount of approximately $27 million

### *Joseph Jean-Charles v. Douglas Perlitz et al.*

The firm represented 24 Haitian boys who were the victims of a pedophile sponsored by Fairfield University and the Society of Jesus. Members of the firm traveled to Haiti on numerous occasions to investigate the case and provide counsel to the victims. Because of their extraordinary efforts in both Haiti and the federal court proceedings in the United States, the firm was able to hold the defendants responsible and provide justice to the victims and their families, garnering a $12 million settlement and $500,000 per victim.

### *Chambers et al v. Merrill Lynch & Co., Inc., et al.*

In this nationwide class action suit, the firm represented 1,100 former Merrill Lynch financial advisors who were denied deferred compensation benefits upon the acquisition of the company in 2009 by Bank of America. The complex case involved difficult issues of contract interpretation in the context of class certification. The settlement was in the amount of approximately $20 million for the plaintiffs. Shareholder Paul Hanly, Jr. served as lead counsel.

### *Families Impacted by 9/11 Terrorist Attack*

SHC proudly represented thousands of family members of September 11 victims in their suits against financial sponsors of terrorism and against airlines and airport security companies. Working directly with Ronald L. Motley in this litigation, Simmons Hanly Conroy co-founder Jayne Conroy was appointed to a leadership role on the Plaintiffs Executive Committee for Personal Injury and Death Claims. She, and other firm mass tort attorneys, represented the consolidated cases against the airlines and security companies in the multidistrict litigation against the financial sponsors of terrorism. In 2007, the litigation was settled for hundreds of millions of dollars in payments to clients of the firm. The firm also represented property owners who suffered financial injury as a result of the September 11 attacks.

### *Synergetics USA, Inc. v. Alcon Laboratories Inc., et al.,*

SHC represented Synergetics, a small medical device manufacturer, in an antitrust lawsuit against a larger competitor. The suit alleged that Alcon engaged in certain anti-competitive conduct in the market for vitreoretinal surgical equipment and supplies. Shareholder Paul Hanly, Jr. served as lead counsel and the firm secured a $32 million settlement.

### *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*

A total of $15.9 billion in a class action lawsuit was awarded to the owners of Volkswagen diesel vehicles that had secret software installed to falsely pass emission tests. More than $10 billion of the settlement was for buybacks of 2.0-liter diesel vehicles and owner compensation. Another $1.2 billion was for buybacks of 3.0-liter diesel vehicles and the remaining $4.7 billion went to offsetting excess emissions. Shareholder Jayne Conroy serves on the Plaintiffs' Executive Committee of the Volkswagen MDL.

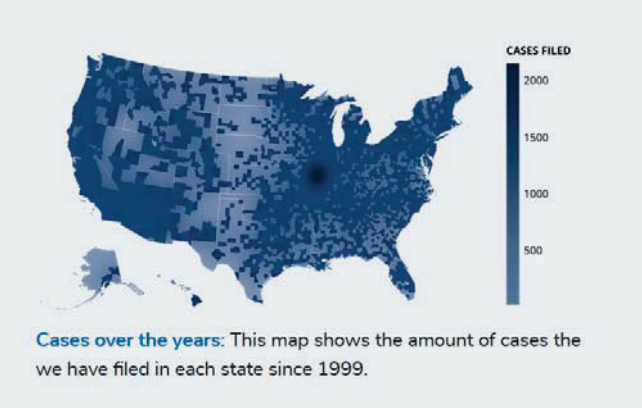
### *In re Syngenta MIR162 Corn Litigation*

The subject of the case was Syngenta's Agrisure Viptera corn, a strain that had been genetically modified to be resistant to insects. While Viptera had been approved in 2010 for sale in the United States, it did not have such acceptance in corn markets worldwide, which class members allege was responsible for economic chaos within the U.S. corn market. Shareholder Jayne Conroy served on the Plaintiffs' Steering Committee for the Syngenta MIR 162 MDL and the case ultimately resulted in Syngenta agreeing to pay $1.51 billion to the members of a class of U.S. farmers who either grew corn or rent land for growing corn. The result was considered by some to be the largest monetary award to-date in a court case involving agriculture.

## FIRM QUALIFICATIONS | *Leadership Appointments (Partial List)*

SHC attorneys have held leadership roles in high-stakes, high-profile litigation of national scope. To be appointed, the firm and its attorneys must have a track record of experience and demonstrate that they have the resources necessary to litigate the cases to resolution. SHC attorneys hold leadership roles in the following case:

- *In re Facebook Internet Tracking Litig.*, Case No. 5:12-md-02314 (N.D. Cal.)
- *In re Google RTB Privacy Litigation*, Case No. 4:20-cv-02155 (N.D. Cal.)
- *In Re National Prescription Opiate Litig.*, MDL 2804 (N.D. Ohio)
- *In re McKinsey & Co. Inc. National Prescription Opiate Consultant Litig.*, MDL 2996 (N.D. Cal.)
- *In re Allergan Biocell Textured Breast Implant Prods. Liab. Litig.*, MDL No. 2921 (D.N.J)
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, And Prods. Liab. Litig.*, MDL No. 2672 (N.D. Cal.)
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Prod. Liab. Litig.*, MDL 2151 (C.D. Cal.)
- *In re Terrorist Attacks on September 11, 2001*, MDL 1570 (S.D.N.Y.)
- *In re DePuy Pinnacle Hip Implant Prods. Liab. Litig.*, MDL 2244 (N.D. Tex.)
- *In re DePuy ASR Hip Implant Prods. Liab. Litig.*, MDL 2197 (N.D. Ohio)
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.)
- *In re Syngenta AG MIR162 Corn Litig.*, MDL 2591 (D. Kan.)
- *In re Lipitor Prods. Liab. Litig.*, MDL 2502 (D.S.C.)
- *In re Zoloft Products Liability Litigation*, MDL 2342 (E.D. Pa.)
- *In Re Propecia (Finasteride) Product Liability Litigation*, MDL 2331 (E.D.N.Y.)
- *In re Pelvic Repair System Products Liability Litigation*, MDL 2325, 2326 & 2327 (S.D. W. Va.)
- *In re Actos Products Liability Litigation*, MDL 2299 (W.D. La.)
- *In re Yazmin and Yaz (Drospirenone) Marketing, Sales Practices and Prods. Liab. Litig.*, MDL 2100 (S.D. Ill.)
- *In re Chantix (Varenicline) Prods. Liab. Litig.*, MDL 2092 (N.D. Ala.)
- *In re Gadolinium-Based Contrast Agents Prods. Liab. Litig.*, MDL 1909 (N.D. Ohio)
- *In re Zyprexa Litig.*, MDL 1596 (E.D.N.Y.)




**Cases over the years:** This map shows the amount of cases the we have filed in each state since 1999.

SHC has more than 90 lawyers and 150 support staff, has extensive financial resources, has extensive experience in mass torts and complex litigation, has a significant reputation nationwide, and has successfully prosecuted thousands of claims against some of the largest companies in the world. In sum, SHC has the track record, the staying power and the resources to handle all phases of litigation of this matter and the firm is committed to aggressively prosecuting this case through final resolution. A sample list of the resources SHC bring to bear are as follows.

## Our Resources

- ✓ 90 plus attorneys and 150 paralegals, assistants and support staff spread through six offices in the United States
- ✓ 16 full-time case investigators, including former police officers
- ✓ State-of-the-art technical support for document management and trial preparation
- ✓ Research and Discovery Department comprised of veteran attorneys and PhD researchers
- ✓ Robust national network of consulting and trial experts

# ATTORNEY QUALIFICATIONS

## ATTORNEY QUALIFICATIONS | *Jayne Conroy, Leadership*

Jayne Conroy is a named shareholder at Simmons Hanly Conroy and oversees the Complex Litigation Department. Under her leadership, the firm has become one of the country's largest plaintiff law firms dedicated to helping those injured by corporate wrongdoing. With a legal career spanning more than three decades, Jayne has earned a superb national reputation as an elite trial lawyer, skilled strategist and decisive negotiator. She has consistently helped secure billions of dollars in verdicts and settlements for thousands of individuals, families and communities in numerous courtrooms nationwide.

Jayne focuses her practice in mass torts, class actions, product liability, pharmaceutical and sexual abuse litigation. She serves or has served on dozens of court-appointed leadership committees in complex legal actions of national scope.

### *Fighting the Opioid Epidemic*

Jayne and the firm are at the forefront of unprecedented litigation that seeks to resolve the ongoing opioid epidemic. The litigation looks to secure meaningful funds for communities that incurred millions in costs related to dealing with the estimated 400,000 opioid-related deaths since 1996. A sampling of Jayne's leadership in the opioid litigation includes:

- *In re: National Prescription Opiate Litigation, MDL 2804 (N.D. Ohio 2018).* Co-Lead of Plaintiffs' Executive Committee.
- *In re McKinsey & Co Inc National Prescription Opiate Consultant Litigation, Judicial Panel on Multidistrict Litigation, No. 2996.* Court-appointed member of the Plaintiffs Steering Committee.
- *In re: Opioid Litigation, case number 400000/2017; County of Suffolk v. Purdue Pharma LP et al., case number 400001/2017; County of Nassau v. Purdue Pharma LP et al., case number 400008/2017; and State of New York v. Purdue Pharma LP et al., case number 400016/2018, in the Supreme Court of the State of New York, County of Suffolk.* Lead counsel for Suffolk County. $1.7 billion in settlements.

### *A Sampling of Results*

- **$26 billion global settlement** with McKesson Corp., Cardinal Health Inc., AmerisourceBergen Drug Corp. and Johnson & Johnson as part of the National Prescription Opiate MDL.
- **Over $1.7 billion in verdicts** for those affected by J&J/DePuy Pinnacle hip replacement devices after four bellwether trials.
- **$60 million** to a class of 170+ Haitian boys abused by a convicted pedophile at a school sponsored by a Connecticut-based university.
- **$16 billion global settlement** for owners of VW vehicles involved in the 2016 emissions scandal.
- **Multiple billions of dollars in claims** for businesses and individuals harmed by the Deepwater Horizon Oil Spill.
- **$1.69 billion global settlement** for women injured by Yaz birth control.
- **Hundreds of millions of dollars in settlements** for the families and victims of the 9/11 tragedy.

## ATTORNEY QUALIFICATIONS | *Jason "Jay" Barnes, Shareholder*

Jay Barnes is a shareholder at Simmons Hanly Conroy in the Complex Litigation Department. He leads the Class Action Litigation Team and focuses his practice on consumer protection and data privacy lawsuits. Prior to joining the firm, Jay served eight years as a state representative in the Missouri General Assembly. There, he fought against fraud, abuse and waste as chairman of the House Committee on Government Oversight and Accountability. He also served as chairman of the Special Investigative Committee on Oversight formed in 2018 to investigate the wrongdoings of former Missouri governor Eric Greitens.

As a shareholder, Jay represents hardworking people who have been wronged through corporate fraud and utilizes a mixture of experience, dedication, professionalism and tenacity to secure justice on behalf of his clients. As one of the nation's leading consumer-privacy attorneys, Jay has held leadership positions and key roles in several notable privacy cases, including:

- *In re Google Cookie Placement Consumer Privacy Litig.*, 806 F.3d 125 (3d Cir. 2015): Jay was a member of the Plaintiffs' Steering Committee. The case is the first decision to establish that a company can be held liable for intrusion upon seclusion for misleading consumers about their privacy practices.
- *In re Nickelodeon Consumer Privacy Litig.*, 827 F.3d 262 (3d Cir. 2016): Jay was co-lead counsel on this case. *Nickelodeon* remains a staple of the data privacy jurisprudence. It is the first post-*Spokeo* decision from any Circuit court to affirmatively hold that privacy injury is sufficient to confer Article III standing for common law torts and statutory claims. I served as co-lead counsel with two other firms; had responsibility for briefing the intrusion, Wiretap, and VPPA claims; and successfully argued the appeal before the Third Circuit.
- *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589 (9th Cir. 2020): Jay is chair of the Plaintiffs' Steering Committee and a member of a three-person Executive Committee. This case is the leading decision from the Ninth Circuit on key privacy claims, including the ECPA, intrusion upon seclusion, and whether economic standing is established from the surreptitious taking and use of Internet user personal information through web-browsers.

An Award-winning Attorney, Jay's accomplishments are well-documented not only through verdicts, settlements and press clippings, but also through the awards and accolades he's received from his peers and community. A small sampling of notable honors include:

- Influential Lawyer Award, Missouri Lawyers Weekly, 2019
- Champion of Justice Award, Missouri Association of Trial Attorneys, 2018
- State Advocate of the Year Award, St. Louis Children's Hospital, 2015
- Rory Ellinger Legislative Award, The Legal Services of Eastern Missouri, 2015
- Legislator of the Year Award, Missouri Bar Association, 2014

For additional information please visit https://www.simmonsfirm.com/about-us/our-attorneys/jason-barnes/

## ATTORNEY QUALIFICATIONS | *Eric S. Johnson, Shareholder*

Eric Johnson is a shareholder at Simmons Hanly Conroy, focusing his practice on complex litigation, mass torts and consumer class actions. Eric graduated with his master's degree in public health from the University of Illinois at Chicago and earned his J.D. from St. Louis University's School of Law where he was a member of the school's National Moot Court Competition Team. During law school, he also worked as a law clerk for Judge Paula Bryant in the 22nd Judicial Circuit Court in St. Louis. Eric is a member of the Missouri Bar and admitted to practice in the Eastern and Western Districts of Missouri, and the South and central Districts of Illinois.

As a shareholder of the firm, Eric has represented individuals in consumer protection and consumer fraud class actions, dangerous drugs and defective medical devices litigations, and data privacy actions. In 2012, Eric was selected to serve on the national multidistrict litigation discovery sub-committee involving the DePuy Pinnacle System metal-on-metal hip implant. He was also awarded the Judge Robert G. Dowd, Sr. Appellate Advocacy Award in 2008.

For additional information please visit https://www.simmonsfirm.com/about-us/our-attorneys/eric-johnson/

## ATTORNEY QUALIFICATIONS | *An V. Truong, Shareholder*

An Truong is a shareholder at Simmons Hanly Conroy in the Complex Litigation Department. Located in the firm's New York City office, An works with a team of attorneys to give clients a voice against corporations who prioritize profits over individuals' health and safety. Her practice is focused on advocating for the rights of consumers against large corporations, including class actions involving product liability, consumer fraud, and data privacy violations.

Currently, An serves on the law & briefing committee in the multidistrict litigation, *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, MDL No. 2921, and she is a member of the litigation team for consolidated class actions *In re Meta Pixel Healthcare Litigation*, 22-cv-03580, and *In re Google RTB Consumer Privacy Litigation*, 20-cv-02155.

Prior to joining Simmons Hanly Conroy, An worked as a senior appellate court attorney with the New York Supreme Court, Appellate Division. An is a graduate of The Ohio State University and obtained her J.D., *cum laude*, from New York Law School. She is a member of the New York Bar and admitted to practice in the Southern and Eastern Districts of New York.

For additional information please visit https://www.simmonsfirm.com/about-us/our-attorneys/an-truong/

## ATTORNEY QUALIFICATIONS | *Erin Gee, Associate*

Erin Gee is an attorney at Simmons Hanly Conroy in the Complex Litigation Department. Her practice is focused on complex legal matters involving privacy, pharmaceutical, and medical device issues.

Erin was a member of the trial team for the bellwether trials in MDL 2244, *In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*, in the United States District Court for the Northern District of Texas. Together, the three trials resulted in more than $1.5 billion in jury verdicts and led to settlement of one of the largest MDLs in the country. Erin was also involved with individual cases pending in MDL 2391, *In re: Biomet M2A Magnum Hip Implant Products Liability Litigation*, in the United States District Court for the Northern District of Indiana. In addition to briefing key issues, she assisted lead counsel with one of the largest and most diverse post-global settlement/opt out group of Biomet plaintiffs.

Erin received a B.B.A. in Management from Texas A&M University and her J.D. from Baylor University School of Law. While there, she served on the *Baylor Law Review* and participated in both mock trial and moot court teams.

For additional information please visit https://www.simmonsfirm.com/about-us/our-attorneys/erin-gee/

## ATTORNEY QUALIFICATIONS | *Jenny Paulson, Associate*

Jenny Paulson is an associate at Simmons Hanly Conroy. She joined the firm's Complex Litigation Department in 2022, and focuses her practice on consumer class action lawsuits. Located at the firm's Alton, Illinois office, Jenny works closely with the trial attorneys on all aspects of litigation from initial investigation, to pleadings and discovery, and on to trial preparation.

Prior to joining the firm, Jenny served as a judicial law clerk to Chief Judge Nancy J. Rosenstengel, the Honorable Mark A. Beatty and the Honorable Clifford J. Proud in the U.S. District Court for the Southern District of Illinois.

Jenny received a B.A. in English from The Ohio State University in 2014. She received her J.D. and MBA from Southern Illinois University School of Law, graduating summa cum laude and first in her class.

For additional information please visit https://www.simmonsfirm.com/about-us/our-attorneys/jenny-paulson/