

**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, 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

**ORDER AND JUDGMENT GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement ("the Motion") (ECF No. 94). On April 25, 2023, the Court issued an order granting Plaintiffs' Unopposed Motion for Preliminary Approval of the proposed settlement (ECF No. 76) (the "Preliminary Approval Order"), which preliminarily approved the Settlement Agreement ("Settlement Agreement" or "Settlement") as fair, reasonable, and adequate, and satisfying, in all respects, the requirements of Fed. R. Civ. P. 23; conditionally certified the Settlement Class for settlement purposes only; approved and directed the implementation of the Parties' proposed Class Notice Plan ("Notice Plan"); and conditionally approved Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno as Settlement Class Representatives, the law firms

of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC and Simmons Hanly Conroy LLC, collectively, as Settlement Class Counsel, and JND Legal Administration as the Claim Administrator.

On July 12, 2023 and July 25, 2023, the Court issued orders correcting *nunc pro tunc* minor typographical errors in the Settlement Agreement concerning reimbursement percentages for certain Class Vehicles (ECF Nos. 78, 80). On July 25, 2023, the Court amended the Preliminary Approval Order *nunc pro tunc* to extend the class notice and objection/opt-out deadlines for 14,900 Class Members (ECF No. 82). On September 22, 2023, the Court amended the Preliminary Approval Order *nunc pro tunc* to extend the objection/opt-out deadline for 23,500 Class Members, as well as dates for submissions from the Parties concerning final approval of the settlement and the Final Fairness Hearing (ECF No. 90).

The Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes only.

The Court approved, and directed the dissemination of, the Class Notices and Claim Forms pursuant to the Parties' Notice Plan as the best notice practicable under the circumstances and comports in all respects with Fed. R. Civ. P. 23(e) and due process (ECF Nos. 76, 72-3). The Notice Plan, as approved by this Court, was successfully effectuated in a timely and proper manner as confirmed by JND Legal Administration and Settlement Class Counsel (ECF No. 94-2).

On December 5, 2023, the Court held a Final Fairness Hearing to consider the fairness, reasonableness, and adequacy of the Settlement Agreement, and the timeliness and validity of certain Requests for Exclusion. The Court has reviewed and carefully considered all of the filed submissions relating to the proposed Settlement, including Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement (ECF No. 94) and exhibits thereto, the Parties' Settlement

Agreement with exhibits (ECF No. 72-3), the supporting Declaration of counsel (ECF No. 94-2), Defendants' Memorandum of Law In Support of Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement, and the Parties' Joint Response to Objections and Requests for Exclusion (ECF No. 97), all other submissions and filings in this action, and the applicable law, and has had due deliberation thereon.

AND NOW, this 10th day of December 2023, upon careful consideration, it is hereby ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement, ECF No. 72-3 (as amended by the Court), and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. The Court hereby grants final approval of the Settlement Agreement and all of the terms and provisions of the Settlement Agreement. The Court finds that the Settlement is fair, reasonable and adequate, and in all respects satisfies the requirements of Fed. R. Civ. P. 23 and the applicable law. Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. 23(e)(2), *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) and *Broockmann v. Bank of Greene Cnty.*, 2023 WL 7019273 (N.D.N.Y. Oct. 25, 2023), which include: the complexity, expense and likely duration of the litigation; the reaction of the class to the settlement; the stage of the proceedings and the amount of discovery completed; the risks of establishing liability; the risks of establishing damages; the risks of maintaining the class action through the trial; the ability of the defendants to withstand a greater judgment; the range of reasonableness of the settlement fund in light of the best possible recovery; and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. The Court concludes that the factors support granting final approval of the settlement.

3. The Court finds the factors recently added to Fed. R. Civ. P. 23(e)(2) substantially overlap with the factors the Second Circuit has enumerated in *Grinnell*, and that each supports final approval of the Settlement.

4. With respect to the proposed Settlement Class, this Court has determined that, for purposes of settlement of the Action only, Plaintiffs have satisfied each of the Rule 23(a) prerequisites:

- a. The Settlement Class Members are so numerous that joinder of all members is impracticable, as there are approximately 1,010,380 Settlement Class Members. Fed. R. Civ. P. 23(a)(1).
- b. There are questions of law or fact common to the Settlement Class, Fed. R. Civ. P. 23(a)(2), such as whether the sunroofs in the Settlement Class Vehicles contained design defects, whether Defendants unlawfully failed to adequately disclose such alleged defects prior to sale; and whether, as a result, Settlement Class Members sustained any monetary damages.
- c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class. Fed. R. Civ. P. 23(a)(3). They have alleged that Defendants sold defective vehicles and failed to disclose (or to adequately disclose), alleged damages apply to the Settlement Class Members in the same or similar manner, and the interests of the Settlement Class representatives do not conflict with the interests of the Settlement Class.
- d. The Class Representatives have fairly and adequately protected the interests of the Settlement Class. Fed. R. Civ. P. 23(a)(4). The Class Representatives do not have interests that are antagonistic to the Settlement Class and are fully aligned

with the interests of other Settlement Class Members. Accordingly, the Court finds that the Class Representatives have satisfied Rule 23(a) for purposes of evaluating the settlement.

5. The Court also finds for settlement purposes that 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). Here, Settlement Class Members share a common legal grievance arising from Plaintiffs’ claims of Defendants’ alleged failure to disclose or adequately disclose material facts about the sunroofs in the Settlement Class Vehicles. Common legal and factual questions predominate over any individual questions that may exist for purposes of this settlement, and the fact that the Parties are able to resolve the case on terms applicable to all Settlement Class Members underscores the predominance of common legal and factual questions for purposes of this Settlement. In concluding that the Settlement Class should be certified pursuant to Rule 23(b)(3) for settlement purposes, the Court further finds that a class action is superior for purposes of resolving these claims because individual class members have not shown any interest in individually controlling the prosecution of separate actions, and because this is a Settlement, the Court need not be concerned with the manageability issues that would exist if the Action were tried. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Moreover, the cost of litigation likely outpaces the individual recovery available to any Settlement Class Members. *See* Fed. R. Civ. P. 23(b)(3)(A). Accordingly, the Court finds that, for purposes of this Settlement, Rule 23(b)(3) has also been satisfied.

6. The Notice Plan was timely and properly effectuated, and in all respects (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was the best practicable notice under the

circumstances; (iii) reasonably apprised Settlement Class Members of the pendency of the action, the Settlement, and their rights including the right (and deadlines) to object to the proposed Settlement, exclude themselves from the Settlement, and submit a Claim for Reimbursement under the Settlement; (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice, (v) adequately informed Settlement Class Members of their rights in the Action, and (vi) provided Settlement Class Members with reasonable and adequate time to object to the settlement, opt-out of the settlement, and file Claims for Reimbursement under the Settlement. Fed. R. Civ. P. 23(c)(2).

7. In accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), the Settlement Administrator properly and timely caused to be mailed a copy of the proposed Settlement and all other documents required by law to the Attorney General of the United States and to the Attorneys General of each State where Settlement Class Members reside and of Puerto Rico. None of the Attorneys General have filed any objections to the Settlement.

8. The Settlement was entered into as a result of vigorous and extensive arm’s-length negotiations of highly disputed claims, among experienced class action counsel on both sides and with the assistance of an experienced and highly respected third-party neutral mediator at JAMS. The Settlement is not the product of collusion, and was entered into with a sufficient understanding by counsel of the strengths and weaknesses of their respective cases, and of the potential risks versus benefits of continued litigation, including but not limited to the ability to establish and/or extent of establishing liability, alleged damages, class certification, and maintenance of class certification through trial and appeal. In addition, the Court finds that the issues of Class Representative service awards and Class Counsel reasonable attorneys’ fees and expenses were

not discussed, and not agreed to by the Parties, until after the Parties and their counsel had reached agreement on the material terms of this Settlement, and were, likewise, without any collusion.

9. The Court reaffirms its appointments, grants final approval of, and hereby appoints Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno as Representatives of the Settlement Class (“Settlement Class Representatives”), and the law firms of Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC and Simmons Hanly Conroy LLC, collectively, as Class Counsel for the Settlement Class. The Court finds that said Settlement Class Representatives and Class Counsel have fairly and adequately represented, and will continue to fairly and adequately represent, the interests of the Settlement Class.

10. The Court reaffirms, grants final approval of and hereby appoints JND Legal Administration as the Claim Administrator to effectuate its duties and responsibilities set forth in the Settlement Agreement.

11. Settlement Class Members were duly afforded a reasonable and ample opportunity to object to or request exclusion from the Settlement, and were duly advised of the deadlines and procedures for doing so. Of the approximate 1,010,380 Settlement Class Members, the Court has received only five objections to the Settlement, and only 74¹ timely and valid requests for exclusion, from Settlement Class Members. The Court finds that the very small number of objections and requests for exclusion demonstrate that the Settlement Class overwhelmingly favors

¹ The Court received a purported objection from Michelle Mirco. While the purported objection does not meet the requirements of a valid objection, the Court finds that the document indicates Ms. Mirco’s desire to be excluded from the settlement, and therefore treats the purported objection as a timely and valid request for exclusion.

the Settlement, and further supports the finding herein that the Settlement is fair, reasonable, adequate, and warranting of final approval by this Court.

12. The Court, having carefully reviewed all of the Parties' submissions, the objections to the Settlement, and the Parties' responses thereto, and having addressed and duly considered the matters at the Final Fairness Hearing pursuant to Rule 23(e)(5)(B)(i), hereby approves and accepts the settlements and withdrawals of the objections of Lawrence Beck, Joshua Terry, Jonathan Dorant, and Jennifer Feldman. Accordingly, these objections are hereby deemed withdrawn. The Court further finds that, had these objections not been withdrawn, they would be overruled and not preclude the grant of final approval of this Settlement.

13. The Court, having carefully considered the objection of Kendra Bell, and all related submissions and arguments, finds that this objection is overruled.

14. Consistent with the Preliminary Approval Order and the Court's subsequent Orders (ECF 78, 80, 82, 90) the Court hereby grants class certification, for the purpose of settlement, to 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.

The Settlement Class excludes:

(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.

15. The terms of the Settlement Agreement and the Final Approval Order are binding in all respects on Plaintiffs and all Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns, other than those, identified in Exhibit A attached hereto, who have timely and properly filed requests for exclusion from the Settlement.

16. In this regard, the Court has considered the 75 requests for exclusion identified in the list attached as Exhibit A to the Declaration of Marcia A. Uhrig (ECF No. 96) and the Parties' Joint Response to Objections and Requests for Exclusion (ECF No. 97). Of those 75 total requests for exclusion, one request from "Andrea" [no last name provided] fails to comply with one or more of the requirements enumerated in the Preliminary Approval Order and Class Notice, and is therefore rejected. This Settlement Class Member is thus not excluded from, and is bound in all respects by, the Settlement, the Release of Claims contained in the Settlement Agreement, and this Order and Judgment.

17. The Court finds the remaining 74 requests for exclusion from the Settlement Class timely and proper, and the 74 individuals listed in Exhibit A to this Order and Judgment are hereby excluded from the settlement class.

18. The Parties are directed to perform all obligations under the Settlement Agreement in accordance with its terms and provisions.

19. The Parties and all Settlement Class Members are hereby bound in all respects by the terms and conditions of the Settlement Agreement, including but not limited to the Released Claims against all Released Parties contained therein.

20. The Court hereby grants Settlement Class Counsel's request for an award of reasonable attorney's fees, inclusive of all expenses, in the total amount of \$2,850,000. Said award shall be paid by Defendant in the manner provided by the terms of the Settlement Agreement, and said payment shall fully, completely and forever satisfy any and all obligations of Defendant, and any Released Party, with respect to counsel fees and expenses.

21. The Court also hereby approves the payment of service awards to the Settlement Class Representatives as follows: \$5,000 each to Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno. Said incentive awards are to be paid by Defendant in the manner provided by the terms of the Agreement, and said payment shall fully, completely and forever satisfy any and all obligations of Defendant, and any released Party, with respect to Settlement Representative incentive awards.

22. The Action is hereby dismissed with prejudice and without costs, except as provided in the Court's order related to Plaintiffs' motion for attorneys' fees, expenses, and incentive awards. The Clerk of Court is directed to close this docket.

23. Upon the Effective Date, Plaintiffs and each and every Settlement Class Member shall be deemed to have, and by operation of this Final Order and Judgment shall have, fully, completely and forever released, acquitted and discharged all Released Parties from all Released Claims as set forth in the Settlement Agreement.

24. Neither this Settlement, its negotiations, any agreements, documents and submissions relating thereto, nor this Final Approval Order and Judgment or any finding contained herein, shall in any way constitute, or be argued or deemed to constitute, evidence of, or any admission by any Party as to, the merits of any allegation, claim or position that was or could have been asserted in this Action, nor shall it, in any way, or anywhere, be deemed, construed, argued as, admitted as, or in any way used as, any admission of, or as any evidence of, any fact, claim, factual or legal issue, liability, wrongdoing, or responsibility of any kind on the part of Defendants or any Released Party, or of any violation or breach of any statute, law, rule, regulation, principle of common law or equity, or of any duty or obligation whatsoever on the part of any Defendant or Released Party. This Final Approval Order and Judgment and the Settlement shall not be offered or be admissible as evidence against any Defendant, any of the Released Parties, or Plaintiffs, and shall not be cited or referred to in any action or proceeding (judicial, administrative, arbitral, or otherwise) except to enforce the terms of the Settlement Agreement and/or this Final Order and Judgment including the Release of Claims against the Defendants and the Released Parties.

25. In the event that any provision of the Settlement or this Final Approval Order and Judgment is asserted by Defendants or any Released Party as a defense (including, without limitation, as a basis for dismissal, a stay and/or to enforce the Release herein), in whole or in part, to any claim, suit, action or proceeding in any forum, judicial or otherwise, brought by a Settlement Class Member or any person acting or purporting to act on behalf of any Settlement Class Member(s), that claim, suit, action and/or proceeding shall immediately be stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion.

26. Without further Order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement and this Order and any obligations thereunder.

27. Plaintiffs and each and every Settlement Class Member, and any person or entity acting or purporting to act on behalf of any said Settlement Class Member, is/are hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or in any way enforcing, any Released Claim against Defendants and/or any of the Released Parties (including, without limitation, in any individual, class/putative class, representative or other action or proceeding, directly or indirectly, in any judicial, administrative, arbitral, or other forum). This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Approval Order and Judgment, and this Court's authority to enforce and effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. However, this provision will not bar any communications with, or compliance with requests or inquiries from, any governmental authorities.

28. Without affecting the finality of this Final Approval Order and Judgment, this Court hereby retains exclusive jurisdiction, and all Settlement Class Members are hereby deemed to have submitted to the exclusive jurisdiction of this Court, of, over and with respect to the consummation, implementation and enforcement of this Settlement and its terms and provisions, including the release of claims therein, and any suit, action, proceeding (judicial, arbitral, administrative, or otherwise) or dispute arising out of or relating to this Final Approval Order and Judgment, the applicability of the Settlement Agreement, compliance with the terms the Settlement Agreement, and the Court's exclusive jurisdiction includes, without limitation, the Court's power pursuant to the All Writs Act, 28 U.S.C. § 1651, or any other applicable law, to enforce the above-described

bar on and injunction against prosecution of any and all Released Claims against any Released Parties.

IT IS SO ORDERED AND ADJUDGED:

Brooklyn, NY

Dated: ~~December 10, 2023~~

Brian M. Cogan

Hon. Brian M. Cogan
United States District Judge

EXHIBIT A

LIST OF VALID EXCLUSIONS <i>Gjonbalaj v. Volkswagen Grp. Of Am., Inc.</i>	
CLASS MEMBER	VIN (Last 4)
AHMED, IMRAN	9748
ASFOUR, SAM F	1613
BERG, JENNIFER ELIZABETH	4880
BERGER, KIRSTON	5114
BOUDREAUX, ROBERT	4508
BURGUENO, MARIBEL	6524
CAPELO, KATHERINE	7113
CIACCIA, ROBERT	4812
CICCONI, FERNANDO	7272
DARDIN-BOX, CINDI	8465
DEFREESE, ELIZABETH	6890
DEPTULA, DONALD	6398
DIXON, DANIEL	0239; 9105
DORR, KATHLEEN	9877
ELIA, GABRIELLE & ROBERT	9818
EXCONDE, RITZCEL	5052
FLEMING, JOHN & JOAN	6832
FREEMAN, TODD & HENDERSON, BRENDA	3552
GAMEZ, YOLANDA	2556
GARCIA, LIZBETH	1114
GARCIA, OSCAR	5282
GARCIAMONTES, JANET	4936
GASPARYAN, HOVSEP	2965
GLASCO, LAUREN	3761
GOLDSTEIN, RICHARD	0159
GOSS, ANDREA	2575
GREENBAUM, DAVID	4688
HALEY, HEATHER A.	6224
HERNANDEZ DE RODRIGUEZ, MARTHA	3876
HOFSTATTER, STEPHEN L	5213
KINGSLEY, PAUL EDWARD & DELEHANTY, CHRISTINE MARIE	7616
KRINSKY, GLEN	8186
LAKAWALA, KHUSHROO	9289
LAMB, ASHLEY	8309
LOOIE, PAYAM	8330
LOPEZ, ARISTEO CASANOVA	0921
LUNA, DANNY	9679
MANDZIARA, BRIAN	9041
MARRELLO, TIFFANY	9588
MARTINEZ, JOSE RIVERA	2378

MARTINEZ, SOLEDAD	1588
MAUTZ, MELISSA	0250
MCCARTHY, KERRY	3552
MCCONNELL, KATE	6637
MCKNIGHT, DAVID	1476
MCVITTIE, NATHEN	9845
MIRCO, MICHELLE	4146
MORAN, ROSARIO MORAN	7944
MURPHY, MELISSA	0707; 2587
NGUYEN, DIEM	6097
NICKEL, FRANK	5031
OKANO, GARETT	9777
PACYGA, JAMES	1132
PALACIOS, ELIO	6372
RAMIREZ, JESSICA	5638
RAMOS, DANIELA	2256
ROMINEK, JON	4297
ROTH, KIT & CLYDE & JOSLIN	8113
ROUZATI, JASON	8145
RUBIO-APARICIO, DEBORA	5304
SALAZAR, ANNE	4107
SANTAMARIA, DARLENE	9288
SANTOS, GLORIA VALDEZ	7075
SCHEETS, RICHARD DAVID	0540
STOYANOV, SHELLEY CLINGMAN	3702
SUNDQUIST, AMY	8077
SY, CHRISTINE ANN	2304
TALBERT, JEFFREY	3296
TASSONE, CHANCE	7980
TAYLOR, MARIA	6313; 6222
TIRADO, PALOMA	0848
TORRES, FERNANDO	9105
VILLA, IVAN SALAZAR	7046
WYCHE, ARTHUR & ROXIE	5772