

**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**

**PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR FEE  
AND EXPENSE AWARD AND INCENTIVE PAYMENT**

**PLEASE TAKE NOTICE** that on November 14, 2023 at 11:30 a.m. in Courtroom 8D at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, before the Honorable Brian M. Cogan, Plaintiffs Sokol Gjonbalaj, Joseph Campbell, Jessica Cole, Karen Werner, Austin Barden, Mary Govan, Antonio Cabezas, Rick Hornick, and Krzysztof Ziarno will, and herby do, move the Court for an order granting payment of \$2,850,000.00 for Class Counsel's fees and expenses, and payment of \$5,000.00 to each of the named Plaintiffs (for a total of \$45,000.00) for their efforts and contributions to this matter.

The motion is based upon this Notice of Motion; the accompanying Memorandum in Support of Plaintiffs' Unopposed Motion for Fee and Expense Award and Incentive Payment, the

Declaration of Mitchell Breit in Support of Plaintiffs' Unopposed Motion for Fee and Expense Award and Incentive Payment; all the pleadings and documents on file in this Action; and such other matters as may be presented at or before the hearing.

Dated: August 31, 2023

Respectfully submitted,

/s/Mitchell M. Breit  
Mitchell M. Breit  
**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**  
405 East 50th Street  
New York, NY 10022  
T: 347-668-8445/F: 865-522-0049  
mbreit@milberg.com

Gregory F. Coleman  
**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**  
800 S. Gay Street, Suite 1100  
Knoxville, TN 37929  
T: 865-247-0080/F: 865-522-0049  
gcoleman@milberg.com

Russell D. Paul  
Jeffrey L. Osterwise  
Amey J. Park  
Abigail J. Gertner  
**BERGER MONTAGUE PC**  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
T: 215-875-3000/F: 215-875-4604  
rpaul@bm.net  
josterwise@bm.net  
apark@bm.net  
agertner@bm.net

Mark P. Bryant  
Emily Ward Roark  
**BRYANT LAW CENTER PSC**  
601 Washington Street  
P.O. Box 1876  
Paducah, KY 42002-1876

T: 270-442-1422/F: 270-443-8788  
mark@bryant.law  
emily@bryant.law

Tina Wolfson  
Christopher E. Stiner  
**AHDOOT & WOLFSON, PC**  
10728 Lindbrook Drive  
Los Angeles, CA 90024  
T: 310-474-9111  
twolfson@ahdootwolfson.com  
cstiner@ahdootwolfson.com

Jason 'Jay' Barnes  
Eric Johnson  
An Truong  
**SIMMONS HANLY CONROY**  
12 Madison Avenue  
New York, NY 10016-7416  
T: 212-784-6400/F: 212-213-5949  
jaybarnes@simmonsfirm.com  
ejohnson@simmonsfirm.com  
atruong@simmonsfirm.com

*Plaintiffs' Counsel*

**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**

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED  
MOTION FOR FEE AND  
EXPENSE AWARD AND  
INCENTIVE PAYMENT**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY.....4

III. ARGUMENT.....6

    A. Class Counsel’s Requested Fees Are Reasonable Under the Lodestar Method .....6

        1. Class Counsel’s Hours .....7

        2. Class Counsel’s Rates .....8

    B. The *Goldberger* Factors Illustrate the Reasonableness of the Fee .....10

        1. Time and Labor Expended by Counsel.....10

        2. The Litigation’s Complexities and Magnitude .....11

        3. The Litigation Risks.....12

        4. Quality of Representation .....13

        5. Relationship of Requested Fee to Settlement .....14

        6. Considerations of Public Policy.....14

    C. The 1.59 Positive Multiplier Is Reasonable.....15

    D. Class Counsel’s Litigation Costs Were Necessarily and Reasonably Incurred.....17

    E. The Requested Service Award for the Settlement Class Representatives Is  
        Reasonable .....17

IV. CONCLUSION.....19

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Dupler v. Costco Wholesale Corp.</i> , 705 F. Supp. 2d 231 (E.D.N.Y. 2010) .....	7, 14
<i>In re FLAG Telecom Holdings, Ltd. Sec. Litig.</i> , No. 02 Civ. 3400, 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010) .....	9
<i>Fleisher v. Phoenix Life Ins. Co.</i> , No. 11-CV-8405 (CM), 2015 WL 10847814 (S.D.N.Y. Sept. 9, 2015) .....	13
<i>Flores v. Mamma Lombardi's of Holbrook, Inc.</i> , 104 F. Supp. 3d 290 (E.D.N.Y. 2015) .....	14
<i>Goldberger v. Integrated Res., Inc.</i> , 209 F.3d 43 (2d Cir. 2000) .....	<i>passim</i>
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983) .....	6, 7, 8
<i>Kindle v. Dejana</i> , 308 F. Supp. 3d 698 (E.D.N.Y. 2018) .....	8
<i>Massiah v. MetroPlus Health Plan, Inc.</i> , No. 11-cv-05669 (BMC), 2012 WL 5874655 (E.D.N.Y. Nov. 20, 2012) .....	14, 17, 18
<i>In re MetLife Demutalization Litig.</i> , 689 F. Supp. 2d 297 (E.D.N.Y. 2010) .....	13, 17
<i>Monserate v. Tequipment, Inc.</i> , No. 11 CV 6090, 2012 WL 5830557 (E.D.N.Y. Nov. 16, 2012) .....	15, 17
<i>MSC Mediterranean Shipping Co. Holding S.A. v. Forsyth Kownacki LLC</i> , No. 16-8103, 2017 WL 1194372 (S.D.N.Y. Mar. 30, 2017) .....	8-9
<i>In re Nasdaq Market-Makers Antitrust Litig.</i> , 187 F.R.D. 465 (S.D.N.Y. 1998) .....	11
<i>Parker v. Time Warner Ent. Co., L.P.</i> , 631 F. Supp. 2d 242 (E.D.N.Y. 2009) .....	12, 16
<i>Roberts v. Texaco, Inc.</i> , 979 F. Supp. 185 (S.D.N.Y. 1997) .....	17
<i>Sheppard v. Consol. Edison Co. of New York</i> , No. 94-CV-0403(JG), 2002 WL 2003206 (E.D.N.Y. Aug. 1, 2002) .....	17
<i>In re Twinlab Corp. Sec. Litig.</i> , 187 F. Supp. 2d 80 (E.D.N.Y. 2002) .....	6
<i>Volpe v. Nassau Cnty.</i> , No. 12CV2416JFBAKT, 2016 WL 6238525 (E.D.N.Y. Oct. 24, 2016) .....	8
 <b>Rules</b>	
Fed. R. Civ. P. 8 .....	5
Fed. R. Civ. P. 23 .....	1-4, 6

**I. INTRODUCTION**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court’s April 25, 2023 Order Granting Preliminary Approval of Class Action Settlement, ECF No. 76 (“Preliminary Approval Order”), 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”), respectfully request that the Court grant their motion awarding Milberg Coleman Bryson Phillips Grossman LLC, Bryant Law Center PSC, Berger Montague PC, Ahdoot & Wolfson PC, and Simmons Hanly Conroy, LLC (“Class Counsel” or “Plaintiffs’ Counsel”) attorneys’ fees, costs, and expenses in the amount of \$2,850,000, which includes litigation expenses that Class Counsel reasonably and necessarily incurred in prosecuting and resolving this Action (“Class Counsel Fees and Expenses”). Plaintiffs also seek an order awarding a representative reimbursement award in the amount of \$5,000 for each Plaintiff’s time and expenses directly related to their representation of the Settlement Class (“Service Awards”). The requested Class Counsel Fees and Expenses, as well as the Service Awards, will be paid directly by Defendant Volkswagen Group of America, Inc. (“VWGoA”) and will not impact the Settlement Benefits available to Class Members.

As explained in Plaintiffs’ preliminary approval papers and further herein, the Settlement Agreement provides exceptional relief to the Settlement Class, which includes: (1) warranty extension benefits; (2) up to 100% reimbursement of out-of-pocket expenses; (3) extension of service actions; and (4) updated maintenance recommendations and schedule for the Volkswagen Settlement Class Vehicles.

VWGoA is in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and selling automobiles and motor vehicle components throughout the

United States of America. This litigation alleges that the sunroofs in the following Settlement Class Vehicles are potentially prone to water leakage 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 VWGoA for sale or lease in the United States and Puerto Rico (the "Settlement Class Vehicles").

According to Plaintiffs' allegations, the Settlement Class Vehicles' sunroofs are defective and prone to leakage due to problems with their drainage system and/or incorporation of defective seals. 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 alleged that Defendants knew of but failed to disclose the alleged defects, and Plaintiffs 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.

As the result of hard-fought litigation for more than three years, lengthy settlement negotiations that spanned approximately nine months, and a full-day mediation with an experienced and well-respected neutral mediator from JAMS, VWGoA agreed to provide the



following valuable benefits to the Settlement Class: (a) for current owners and lessees of certain Settlement Class Vehicles, a warranty extension of the New Vehicle Limited Warranties (“NVLW”) applicable to the Settlement Class Vehicles’ sunroof to cover a percentage<sup>1</sup> of the cost of a Covered Repair within 7 years or 80,000 miles (whichever occurs first) from the vehicle’s In-Service Date by an authorized Volkswagen dealer or Audi dealer; and (b) for both former and current owners and lessees of Settlement Class Vehicles, reimbursement for a percentage<sup>2</sup> of eligible out-of-pocket expenses previously paid for up to two Covered Repairs prior to the Notice Date and within 7 years or 80,000 miles (whichever occurs first) from the Settlement Class Vehicle’s In-Service Date.

These benefits, as well as the extension of service actions and updated sunroof maintenance recommendations and schedule, discussed more fully in Plaintiffs’ Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement, ECF No. 72-1, address the issues involved in this action and are fair, reasonable, and adequate. To receive a reimbursement for a percentage of past paid out-of-pocket expenses, Class Members need only complete, sign, and submit a Claim Form *via* first-class mail, along with certain required documents proving the Covered Repair and payment thereof. ECF No. 72-3, at 17-18. Class Members who qualify do not need to submit a Claim Form in order to receive a Covered Repair under the terms of the warranty extension, to the extent their vehicle is eligible. *Id.* at 13-15.

Plaintiffs’ Counsel remain confident that Plaintiffs’ claims are strong. Nevertheless, prosecuting consumer class action cases has certain inherent risks. VWGoA, a well-resourced

---

<sup>1</sup> The percentage of coverage for the reimbursement and extended warranty aspects of the Settlement are based upon the age and mileage of the vehicle at the time of the Covered Repair, as set forth in the table of percentages contained in the Settlement Agreement and discussed below.

<sup>2</sup> The percentage of reimbursement is pursuant to the same percentage limits of coverage set forth in the Table of percentages contained in the Settlement Agreement.

company, is represented by a reputable, national law firm and planned to vigorously defend itself but for the Settlement. Plaintiffs' Counsel could not ignore the inherent risks that Plaintiffs would certainly face at class certification, summary judgment, and trial.

As a result of this litigation and an extensive negotiation process, Class Members will benefit from an excellent Settlement that greatly extends the NVLW and reimburses Class Members' past-paid and unreimbursed out-of-pocket expenses up to 100% of the costs incurred. The relief available to Class Members is of significant monetary value and was achieved through hard-fought litigation and arm's-length negotiations. After the Settlement terms were agreed to in full, the Parties agreed that Plaintiffs' Counsel may apply for an award of reasonable attorneys' fees, costs, and expenses not to exceed the combined total sum of \$2,850,000, and that any amount awarded by the Court be paid by VWGoA, separate and apart from any relief provided to the Settlement Class. *Id.* at 30-33. The Parties have also agreed that Plaintiffs' Counsel will seek a Service Award not to exceed a total of \$45,000 to be evenly divided between the nine named Plaintiffs, which will likewise be paid by VWGoA separate and apart from any relief provided to the Settlement Class. *Id.*

## **II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

Between December 2019 and May 2020, various plaintiffs filed six class actions against VWGoA alleging that defects in the subject vehicles' sunroofs could result in leakage and water ingress into the vehicles' interiors, potentially damaging certain vehicle systems, seat upholstery, carpets, and roof headliners. Pursuant to an agreement among the Parties, plaintiffs in the six class actions agreed to consolidate and adjudicate their claims in this Action. On August 28, 2020,

Plaintiffs filed a Consolidated and Amended Class Action Complaint (“CACAC”) in this Action, ECF No. 44, and VWGoA moved to dismiss the CACAC.<sup>3</sup>

In its motion, 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. While the motion to dismiss remained pending, the Parties advised the Court that they were engaging in negotiations for a potential class settlement, and the Court deferred a decision on the motion to dismiss pending the outcome of the settlement negotiations. Following lengthy, protracted, and vigorous arm’s-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 and memorialized those terms in a formal Settlement Agreement.

Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement on April 18, 2023. ECF No. 72. The Court granted Preliminary Approval of Class Action Settlement on April 25, 2023. ECF No. 76. Pursuant to the Court’s August 18, 2023 Order granting the Parties’ joint motion to amend the Class Notice deadline, Class Notice will be mailed to all identified class members by September 8, 2023. ECF No. 82. The final fairness hearing is scheduled for November 14, 2023. ECF No. 76.

---

<sup>3</sup> While the motion to dismiss remained pending, Plaintiffs Lisa and Steven DelPrete and Plaintiff Dimitri Williams voluntarily dismissed their claims, ECF Nos. 49, 56, 71, and 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.

### III. ARGUMENT

Plaintiffs seek attorneys' fees and expenses for Class Counsel in the amount of \$2,850,000, as well as service awards of \$5,000 for each of the nine named Plaintiffs (for a total of \$45,000). The fee award is reasonable under the lodestar method. This fee is particularly warranted given the exceptional results achieved for Class Members and the experience of Class Counsel.

#### A. **Class Counsel's Requested Fees Are Reasonable Under the Lodestar Method.**

The Federal Rules of Civil Procedure authorize a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Once it is established that a party is entitled to attorneys' fees, "[i]t remains for the district court to determine what fee is 'reasonable.'" *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "What constitutes a reasonable fee is properly committed to the sound discretion of the district court and will not be overturned absent an abuse of discretion, such as a mistake of law or a clearly erroneous factual finding." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) (citation omitted).

"There are two methods by which the district court may calculate reasonable attorneys' fees in class action cases, the lodestar method and the percentage method." *In re Twinlab Corp. Sec. Litig.*, 187 F. Supp. 2d 80, 84 (E.D.N.Y. 2002). Here, the Settlement Agreement does not include a common fund; rather, it provides a fulsome warranty extension program for all Class Members and a claims-made reimbursement benefit to Class Members who incurred out-of-pocket expenses related to the alleged defect. Accordingly, Class Counsel believes the lodestar methodology is most appropriate.

Under the lodestar approach, the court quantifies attorneys' fees by multiplying a reasonable hourly rate by the reasonable number of hours expended on the litigation. *See Hensley*, 461 U.S. at 434; *Goldberger*, 209 F.3d at 47. "Once that initial computation has been made, the district court may, in its discretion, increase the lodestar by applying a multiplier based on other less objective factors, such as the risk of the litigation and the performance of the attorneys." *Goldberger*, 209 F.3d at 47 (internal quotation marks omitted). While the fee applicant bears the burden of establishing entitlement to the award, the quantification of attorneys' fees is not intended to be a "second major litigation." *Hensley*, 461 U.S. at 437. Additionally, "[i]n a case where the attorneys' fees are to be paid directly by defendant and, thus, 'money paid to the attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members.'" *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231 (E.D.N.Y. 2010) (quoting *McBean v. City of N.Y.*, 233 F.R.D. 377, 392 (S.D.N.Y.2006)).

### **1. Class Counsel's Hours**

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 433. Here, after more than years of hard-fought litigation and extensive arms-length negotiations, including with the assistance of an experienced neutral third-party mediator, the Parties reached an agreement to resolve the litigation on a class-wide basis under terms set forth in the Settlement Agreement.

The Settlement Agreement is the product of vigorous litigation and a fully informed decision by Plaintiffs' Counsel after engaging in motion practice, informational exchanges between the Parties, in-depth factual investigation, a comprehensive evaluation of factual and legal issues underlying Plaintiffs' claims, approximately nine months of negotiations, and a full day

mediation with an experienced and well-respected neutral mediator from JAMS. Declaration of Mitchell Breit ISO of Motion, (“Breit Decl.”) ¶¶ 10-11. Only after the Class benefits were negotiated did the Parties discuss attorneys’ fee and expenses and Class Representative Service Awards. *Id.* ¶ 12. Here, the time that Plaintiffs’ Counsel spent during the course of this litigation reasonably reflects the work performed on behalf of the Class.

## 2. Class Counsel’s Rates

“The Second Circuit’s ‘forum rule’ generally requires use of ‘the hourly rates employed in the district in which the reviewing court sits in calculating the presumptively reasonable fee.’” *Volpe v. Nassau Cnty.*, No. 12CV2416JFBAKT, 2016 WL 6238525, at \*6 (E.D.N.Y. Oct. 24, 2016) (quoting *Bergerson v. N.Y. State Office of Mental Health, Cent. N.Y. Psychiatric Ctr.*, 652 F.3d 277, 290 (2d Cir. 2011)). However, strict adherence to the “forum rule” is not required. *See Kindle v. Dejana*, 308 F. Supp. 3d 698, 704 (E.D.N.Y. 2018). Out-of-district hourly rates may be used “in calculating the presumptively reasonable fee if it is clear that a reasonable, paying client would have paid” those rates. *Id.* (citing *Arbor Hill Concerned Citizens Neighborhood Ass’n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 191 (2d. Cir. 2008)).

Plaintiffs’ Counsel has requested hourly rates ranging from \$1,200, for senior partners, to \$413-\$250, for associates and staff, respectively. Breit Decl. ¶¶ 26-30. Plaintiffs’ Counsel has set the hourly rates for attorneys and staff members based on a variety of factors, including: the experience, skill, and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation, and ability of the attorneys and staff members. *Id.* ¶ 25.

These rates are also consistent with hourly rates found reasonable in the Second Circuit. *See MSC Mediterranean Shipping Co. Holding S.A. v. Forsyth Kownacki LLC*, No. 16-8103, 2017

WL 1194372, at \*3 (S.D.N.Y. Mar. 30, 2017) (approving hourly rates of over \$1,000 an hour as “not uncommon” in complex litigation); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at \*25 (S.D.N.Y. Nov. 8, 2010) (approving attorney billing rates similar to those of Plaintiffs’ Counsel and emphasizing that “the median billing rate for partners at many leading law firms exceeds \$900/hour”) (emphasis in original). Plaintiffs’ Counsel’s rates are reasonable because the attorneys involved in this litigation brought their significant experience in class action, complex, and automotive defect litigation to bear, which ultimately resulted in significant and meaningful benefits to Plaintiffs and the Class. Plaintiffs’ Counsel’s rates have been approved in other class action fee applications. *See, e.g., Meek v. Skywest, Inc.*, No. 17-cv-1012 (N.D. Cal. Aug. 18, 2023), ECF No. 204; *Bentley v. LG Electronics U.S.A., Inc.*, No. 2:19-cv-13554 (D.N.J. Dec. 18, 2020), ECF No. 67; *Contant v. Bank of America Corp.*, No. 1:17-cv-03139 (S.D.N.Y. Nov. 20, 2020), ECF Nos. 462-463; *Cotter et al. v. Lyft, Inc.*, No. 13-cv-04065 (N.D. Cal. Mar. 16, 2017), ECF No. 310.

Furthermore, “[h]igher rates are approved where the party applying for fees supports the hourly rate with evidence such as counsel’s extensive expertise, experience before the federal bar, and specialization required to litigate the matter.” *Cidoni v. Woodhaven Ctr. of Care*, No. 221CV03654JMAJMW, 2023 WL 2465167, at \*4 (E.D.N.Y. Mar. 10, 2023). Here, as demonstrated by the firm biographies previously submitted to this Court, Plaintiffs’ Counsel has precisely this experience and specialization to warrant approval of high hourly rates, and used this experience and specialization to efficiently prosecute this action in fewer hours than Plaintiffs believe would have been required of less experienced counsel and to ultimately achieve this Settlement.

The hours and rates submitted by Plaintiffs' Counsel yield a lodestar of \$1,281,706.90. Breit Decl. ¶ 31. As discussed fully below, *supra* section II.C., Plaintiffs' Counsel request a positive multiplier of 1.59 to the total lodestar. In addition, Plaintiffs' Counsel, based on their experience in other automobile defect class actions, anticipate they will incur a total of at least \$500,000 in additional lodestar in interfacing directly with Settlement Class Members, which includes owners and lessees of 707,188 Settlement Class Vehicles, throughout the settlement process, drafting final approval papers and preparing for and attending the final fairness hearing in support of the Settlement. Breit Decl. ¶ 32. Including this additional lodestar, which is expected to be reasonably incurred, would result in a lodestar multiplier of 1.59.

**B. The *Goldberger* Factors Illustrate the Reasonableness of the Fee.**

Regardless of the method used to calculate an appropriate fees award, courts examine the reasonableness of a fee under the following factors: ““(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.”” *Goldberger*, 209 F.3d at 50. Each of the *Goldberger* factors confirms that Class Counsel's fee request is reasonable.

**1. Time and Labor Expended by Class Counsel**

The first *Goldberger* factor, the time expended by counsel, weighs in favor of the requested fee. Class Counsel spent 1,548.7 hours over more than three years vigorously litigating this Action.

These substantial efforts included:

- Completing extensive investigation prior to filing multiple class action complaints;
- Responding to letter briefs regarding proposed motions to dismiss and opposing VWGoA's motion to dismiss;



- Engaging in numerous meet-and-confers with VWGoA, including settlement negotiations that spanned approximately nine months;
- Coordinating vehicle inspections that were conducted by experts from both Parties;
- Analyzing discovery produced by VWGoA produced pursuant to Federal Rule of Evidence 408 during the pendency of the settlement negotiations;
- Working with an expert engaged by Plaintiffs specifically to evaluate proposed settlement terms;
- Preparing for and attending private mediation conducted by Bradley A. Winters, Esq., an experienced and well-respected neutral mediator from JAMS; and
- Drafting a detailed Settlement Agreement and notice plan.

Breit Decl. ¶ 33. Furthermore, the legal work related to the Settlement is not complete. Class Counsel will expend additional hours and resources responding to Class Members' inquiries, shepherding the claims process to conclusion, drafting final approval papers, and preparing for and attending the final fairness hearing in support of the Settlement. No additional compensation will be sought for this work. Plaintiffs anticipate they will incur a total of at least \$500,000 in additional lodestar in further supporting the Settlement to its conclusion. Breit Decl. ¶ 32.

## **2. The Litigation's Complexities and Magnitude**

The second *Goldberger* factor, the magnitude and complexity of the litigation, also supports the fee request. “[C]lass action have a well-deserved reputation as being most complex.” *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). “The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.” *Milstein v. Huck*, 600 F.Supp.254, 167 (E.D.N.Y. 1984). This Action, which has already spanned more than three years, would have likely taken several additional years to

successfully prosecute, and would have incurred significant expense given the scope of expert work necessary to prove Plaintiffs' claims.

### 3. The Litigation Risks

The third factor, the risk of litigation, is “perhaps the foremost factor to be considered in determining whether to award an enhancement.” *Goldberger*, 209 F.3d at 54. “This factor is intended to recognize that cases taken on contingent fee basis entail risk of non-payment for the attorneys that prosecute them, and it embodies an assumption that contingency work is entitled to greater compensation than non-contingency work.” *Parker v. Time Warner Ent. Co., L.P.*, 631 F. Supp. 2d 242, 273 (E.D.N.Y. 2009), *aff'd sub nom. Lobur v. Parker*, 378 F. App'x 63 (2d Cir. 2010).

Here, Class Counsel faced significant risks in proving both liability and damages. Among other things, VWGoA denies all allegations of liability and has strenuously contended that Plaintiffs would be unable to prove that VWGoA made any material misrepresentations. *See* ECF No. 48-1, VWGoA's Mem. ISO Motion to Dismiss. In addition, VWGoA challenged Plaintiffs' statutory and common law fraud claims on several grounds, including with respect to whether Plaintiffs could establish that VWGoA had the requisite pre-sale knowledge. *Id.* These issues, which go to the merits of the case, would be central to VWGoA's defense, and pose significant hurdles for Plaintiffs to succeed. Plaintiffs also faced risks in establishing loss causation and 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 misrepresentations. VWGoA would have likely opposed the validity of Plaintiffs' damage model and its ability to be calculated with proof common to the Class. As with contested liability issues, issues relating to loss causation and damages would have likely come

down to an unpredictable and hotly disputed “battle of the experts.” Further, Plaintiffs’ case was particularly susceptible to a danger inherent in reliance on expert witness testimony, namely that VWGoA would almost certainly challenge Plaintiffs’ experts under *Daubert*. If, for some reason, the Court determined that even one of Plaintiffs’ experts should be excluded from testifying at trial, Plaintiffs’ case would become much more difficult to prove. If any of these arguments prevailed, Settlement Class Members could have recovered significantly less or, indeed, nothing. While Plaintiffs’ Counsel believe that Plaintiffs and their experts would be able to develop damages models, even if a class were certified, Plaintiffs faced risks of having to prove their claims at summary judgment, trial, and then defend any such victories if challenged in the Second Circuit.

#### 4. Quality of Representation

The fourth *Goldberger* factor, the quality of representation, supports Class Counsel’s fee request. “[T]he quality of representation is best measured by results.” *Goldberger*, 209 F.3d at 55. The results here reflect the quality of representation as the Settlement makes available up to 100% reimbursement of out-of-pocket expenses and a significantly extended warranty period. *See Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at \*21 (S.D.N.Y. Sept. 9, 2015) (“Courts have consistently recognized that the result achieved is major factor to be considered in making a fee award and in assessing the quality of representation.”).

Class action litigation presents unique challenges, and Class Counsel proved that they have the ability and resources to litigate this case zealously and effectively. In weighing the fourth *Goldberger* factor, “[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs’ counsel’s performance.” *In re MetLife Demutalization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). As demonstrated by the firm biographies previously submitted to this Court, Class Counsel are among the most experienced and skilled class action attorneys

handling consumer litigation in the country. ECF No. 72-4. It was through their experience and efforts that this excellent result was achieved. Class Counsel's ability to secure such substantial benefits for the Class in the face of formidable opposition reflects on the quality of Class Counsel's representation.

#### **5. Relationship of Requested Fee to Settlement**

The fifth *Goldberger* factor, the relation of the fee to the settlement, supports Class Counsel's fee request. The requested fee, as well as the requested Service Awards, will be paid directly by VWGoA, separate and apart from any relief provided to the Settlement Class. ECF No. 72-3 at 30-33. Thus, an award of the requested attorneys will not reduce the benefit to Class Members. *See Dupler*, 705 F. Supp. 2d at 244 (“[T]he Court notes that the requested attorneys’ fees in this case will not be drawn from a common fund, but rather will be paid directly by defendant. Whatever attorneys’ fees are awarded, therefore, will in no way diminish the benefit to the class under the Settlement, which the Court has already found fair, reasonable, and adequate.”).

#### **6. Considerations of Public Policy**

The final *Goldberger* factor is public policy. Reasonable fee awards must be provided in order to ensure that attorneys are incentivized to litigate class actions, which serve as private enforcement tools to police defendants who engage in misconduct. *See Flores v. Mamma Lombardi's of Holbrook, Inc.*, 104 F. Supp. 3d 290, 309 (E.D.N.Y. 2015) (noting the “primary public policy consideration” as “incentivizing *capable* counsel to similar cases”). “Attorneys who fill the private attorney general role must be adequately compensated for their efforts,” otherwise the public risks an absence of a “remedy because attorneys would be unwilling to take on the risk.” *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-05669 (BMC), 2012 WL 5874655, at \*7 (E.D.N.Y. Nov. 20, 2012) (Cogan, J.) (citing *Goldberger*, 209 F.3d at 51). Class Counsel's efforts

have helped to advance the important public policy of advocating for consumers who may not have the resources—or incentive—to pursue their claims on an individual basis. *See In re Sinus Buster Prod. Consumer Litig.*, No. 12-CV-2429 (ADS) (AKT, 2014 WL 5819921, at \*19 (E.D.N.Y. Nov. 10, 2014) (“Public policy generally favors the award of reasonable attorneys’ fees in class action settlements, especially where, as here, class members would be unlikely to pursue a case individually given that the costs substantially outweigh any potential recovery.”).

**C. The 1.59 Positive Multiplier Is Reasonable.**

Plaintiffs request a total fee of \$2,825,451,40, which represents the total requested amount minus \$24,548.60 in costs and expenses. Under the lodestar method, this \$2,825,451.40 amount represents a 1.59 positive multiplier.<sup>4</sup>

When following the lodestar method—as is the case here—“a district court may . . . increase the lodestar by applying a multiplier based on ‘other less objective factors,’ such as the risk of the litigation and the performance of the attorneys.” *Goldberger*, 209 F.3d at 47 (quoting *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999)). “Courts regularly award multipliers from two to six times the lodestar.” *Monserate v. Tequipment, Inc.*, No. 11 CV 6090, 2012 WL 5830557, at \*3 (E.D.N.Y. Nov. 16, 2012) (citing cases). Here, Plaintiffs seek a positive multiplier less than two, highlighting the reasonableness of the requested fee.

As explained above, there were serious risks associated with this litigation. *See supra* Section III.B.3. Plaintiffs’ Counsel undertook this case on a contingency basis, bearing the risks

---

<sup>4</sup> To date, Plaintiffs’ Counsel have amassed \$1,281,706.90 in total lodestar. Based upon their experience in other automotive defect class settlements, Plaintiffs’ Counsel reasonably expects to incur an additional \$500,000 in lodestar through further work in overseeing the settlement’s administration and interfacing with Class Members regarding the settlement, further briefing in support of the settlement, and in preparing for and attending the final approval hearing in support of the settlement. *See supra* Section III.2. This figure renders a 1.59 multiplier, when compared to the total requested fee, minus expenses (\$2,825,451.40).

of loss. *See Parker*, 631 F. Supp. 2d at 273 (noting that attorneys who prosecute litigation on a contingency fee basis are generally entitled to greater compensation). Since this litigation's inception, VWGoA has vehemently denied that the alleged defect exists. VWGoA moved to dismiss the CACAC on multiple bases. While the Parties agreed to settle this Action, had the litigation continued, VWGoA would likely have continued to deny the existence of the defect and vigorously defended this case. Moreover, as a proposed class action, Plaintiffs' Counsel recognized that there would have been additional hurdles and risks associated with certifying this action, as well as surviving summary judgment, convincing a jury of their claims, and (if victorious at trial) overcoming an appeal. These significant risks were borne entirely by Plaintiffs' counsel.

Further, Plaintiffs' Counsel obtained meaningful results for Plaintiffs and the Class. *See supra*, Section III.B.4. Plaintiffs' Counsel engaged in contested, vigorous, arm's length settlement negotiations before reaching this Settlement through mediation. The results obtained in this Settlement are significant, providing Class Members up to a full reimbursement for incurred out-of-pocket expenses related to the defect, while also providing all Class Members an extended warranty on the Class Vehicles.

Plaintiffs' Counsel brought their years of collective class action experience to bear in weighing the significant risks associated with continuing this litigation against the meaningful benefits conferred upon Class Members immediately through this Settlement. Based upon Plaintiffs' Counsel's significant experience, quality of representation in this litigation, and meaningful Settlement benefits obtained, the 1.59 lodestar multiplier is appropriate here. This requested multiplier is *less than* the range of lodestar multipliers previously approved throughout

the Second Circuit. *See Monserrate*, 2012 WL 5830557, at \*3 (noting that courts “regularly” approve multipliers between two and six).<sup>5</sup>

**D. Class Counsel’s Litigation Costs Were Necessarily and Reasonably Incurred.**

Class Counsel’s request includes reimbursement of \$24,548.60 in litigation costs, which included filing fees and mediation fees, and traditional case expenses such as legal research, printing and mail services, and expert fees. Breit Decl. ¶¶ 40-46. “In connection with settlement of a class action, counsel’s reasonable out-of-pocket expenses are properly awarded.” *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d at 363. These costs were necessary to the litigation, reasonable in amount, and the type of costs typically billed to paying clients.

**E. The Requested Service Award for the Settlement Class Representatives Is Reasonable.**

Plaintiffs’ Counsel respectfully requests a Service Award for the Settlement Class Representatives in the amount of \$5,000 each, for a total of \$45,000. “[S]ervice awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.” *Massiah*, 2012 WL 5874655, at \*8 (Cogan, J.); *see also Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200-01 (S.D.N.Y. 1997); *see also Sheppard v. Consol. Edison Co. of New York*, No. 94-CV-0403(JG), 2002 WL 2003206, at \*5 (E.D.N.Y. Aug. 1, 2002).

---

<sup>5</sup> It is worth noting once again that, because VWGoA has agreed to directly pay any awarded attorneys’ fees and expenses up to \$2,850,000 total, the requested fee and lodestar multiplier will not negatively impact or “swallow up” the settlement funds reserved for the Class Members. *See Monserrate*, 2012 WL 5830557, at \*3 (citing *Fears v. Wilhelmina Model Agency, Inc.*, No. 02 CV 4911, 2007 WL 1944343, at \*5 (S.D.N.Y. July 5, 2007)).

Plaintiffs' litigation efforts led to an exceptional recovery for the Class. Plaintiffs invested their time into this litigation. Specifically, Plaintiffs invested personal time to seek out and speak with Plaintiffs' Counsel, search for relevant evidence, review and approve documents for filing, keep apprised of the progress of the litigation, prepare for mediation, evaluate the settlement proposals during and following mediation, and read through and discuss drafts of the Settlement Agreement before ultimately approving and executing the Agreement. Breit Decl. ¶ 48.

Plaintiffs' efforts were made to provide benefits to hundreds of thousands of Settlement Class Members warranting the Court's approval of the requested Service Awards. The requested Service Awards are reasonable and within the range of incentive payments awarded in other class actions in this District. *E.g.*, *Massiah*, 2012 WL 5874655, at \*8 (Cogan, J.) (approving \$5,000 service awards for the class representatives).

The total amount of the Service Awards requested across the nine Settlement Class Representatives (\$45,000) is not substantially disproportionate to the anticipated benefits to the Settlement Class Members. The Class Members reimbursement for services performed by authorized Volkswagen dealers and Audi dealers are not capped and could exceed the individual Service Award amount of \$5,000. Thus, the Service Awards requested are not substantially disproportionate to the anticipated benefits to the Class.

Plaintiffs' Counsel respectfully requests this Court approve the \$5,000 Service Awards for each of the nine Settlement Class Representatives, which were agreed to by the Parties in the Settlement Agreement based upon Plaintiffs' personal contributions to the initiation and successful prosecution of this Action and investment of time and effort on behalf of the Settlement Class Members. Moreover, the payment of these Service Awards, once approved by the Court, will not negatively impact the total benefits to the Class.



**IV. CONCLUSION**

For the above reasons, Plaintiffs respectfully request that the Court grant the Motion and award Class Counsel \$2,850,000 in attorneys' fees, costs, and expenses, and approve the \$5,000 Service Award for each of the nine Settlement Class Representatives individually.

Dated: August 31, 2023

Respectfully submitted,

/s/Mitchell M. Breit  
Mitchell M. Breit  
**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**  
405 East 50th Street  
New York, NY 10022  
T: 347-668-8445/F: 865-522-0049  
mbreit@milberg.com

Gregory F. Coleman  
**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**  
800 S. Gay Street, Suite 1100  
Knoxville, TN 37929  
T: 865-247-0080/F: 865-522-0049  
gcoleman@milberg.com

Russell D. Paul  
Jeffrey L. Osterwise  
Amey J. Park  
Abigail J. Gertner  
**BERGER MONTAGUE PC**  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
T: 215-875-3000/F: 215-875-4604  
rpaul@bm.net  
josterwise@bm.net  
apark@bm.net  
agertner@bm.net

Mark P. Bryant  
Emily Ward Roark  
**BRYANT LAW CENTER PSC**  
601 Washington Street

P.O. Box 1876  
Paducah, KY 42002-1876  
T: 270-442-1422/F: 270-443-8788  
mark@bryant.law  
emily@bryant.law

Tina Wolfson  
Christopher E. Stiner  
**AHDOOT & WOLFSON, PC**  
10728 Lindbrook Drive  
Los Angeles, CA 90024  
T: 310-474-9111  
twolfson@ahdootwolfson.com  
cstiner@ahdootwolfson.com

Jason 'Jay' Barnes  
Eric Johnson  
An Truong  
**SIMMONS HANLY CONROY**  
12 Madison Avenue  
New York, NY 10016-7416  
T: 212-784-6400/F: 212-213-5949  
jaybarnes@simmonsfirm.com  
ejohnson@simmonsfirm.com  
atruong@simmonsfirm.com

*Plaintiffs' Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 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, 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**

**DECLARATION OF MITCHELL BREIT IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR FEE AND  
EXPENSE AWARD AND INCENTIVE PAYMENT**

I, Mitchell Breit, hereby declare as follows:

1. I am counsel for Plaintiffs in this action. I am admitted to this Court and I am a member of good standing of the bar of the state of New York. I make this Declaration in Support of Plaintiffs' Unopposed Motion for Fee and Expense Award and Incentive Payment (the "Motion"). 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 ("Milberg"), along with Berger Montague PC, Bryant Law Center PSC, Ahdoot & Wolfson, PC, and Simmons Hanly Conroy LLC (collectively, "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.

3. In the sections that follow, Class Counsel explains the (1) litigation background, (2) qualifications of experience of Class Counsel, (3) billing rates of attorneys, (4) reasonableness of Class Counsel's requested attorneys' fees, (5) reasonableness of Class Counsel's requested expenses, and (6) reasonableness of Service Awards.

### **PROCEDURAL HISTORY**

4. 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.

5. 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”).

6. 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).

7. 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 brief. ECF Nos. 48, 50, 53.

8. 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).

9. 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.

10. Following lengthy, protracted, and vigorous arm's-length negotiations, which spanned approximately nine months, and a successful mediation before an experienced and well-respected neutral mediator, Bradley A. Winters, Esq., from JAMS, the Parties were able to reach agreement on the material terms of the Class Settlement and memorialized those terms in a formal Settlement Agreement.

11. The Settlement Agreement is the product of vigorous litigation and a fully informed decision by Class Counsel after engaging in motion practice, informational exchanges between the Parties, in-depth factual investigation, and a comprehensive evaluation of factual and legal issues underlying Plaintiffs' claims.

12. 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.

13. Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement on April 18, 2023. ECF No. 72. The Court granted Preliminary Approval of Class Action Settlement on April 25, 2023. ECF No. 76.

**CLASS COUNSEL EXPERIENCE AND QUALIFICATIONS**

14. Class Counsel has significant experience in litigation, certification, and settlement of class action lawsuits. This experience, along with Class Counsel's history of litigating the instant case, provides Class Counsel with a nuanced understanding of the legal and factual issues involved and informs our conclusion that the Settlement constitutes the best possible outcome for the Settlement Class.

**Milberg**

15. I have a legal career spanning more than 40 years, with extensive experience in consumer and environmental protection, litigating class actions and mass torts of national scope that have brought relief to victims of corporate wrongdoing.

16. My legal experience includes litigating the BP Gulf Oil Spill and Toyota Unintended Acceleration cases; settling a large overdraft fee class action against Bank of America; acting as lead counsel in the settlements of environmental claims involving Honeywell, Inc. and ConocoPhillips, Inc.; and serving on the Plaintiffs' Executive Committee in the ReNu MoistureLoc litigation. I was also appointed as Liaison Counsel in the New York State consolidated Bextra-Celebrex litigation and was co-counsel in cases that ultimately achieved major public health victories against the tobacco industry.

17. I frequently speak at national litigation conferences involving toxic and mass torts, class actions, and groundwater contamination, including Mealey's, Harris Martin, Practicing Law Institute, and bar association conferences. I have been named to New York Metro Super Lawyers and to the Best Lawyers in America for multiple years. I have been an Adjunct Professor of Law at Brooklyn Law School, am a Board Member of Public Justice, and am a member of the American Association for Justice.



18. My colleague, Gregory F. Coleman, is a Senior Partner at Milberg with over 30 years of experience. He has been named one of the Top 100 Trial Lawyers by the American Trial Lawyers Association, among other awards. He served as co-lead counsel in a defective products case against Electrolux where he successfully obtained a settlement on behalf of a class of more than one million members regarding defectively manufactured dryers. He also served as lead trial counsel in an ERISA class action against AK Steel Corporation where he successfully obtained a settlement on behalf of a class of over 3,000 retirees of AK Steels Butler Works Plant in Pennsylvania in 2011.

19. Milberg has decades of experience handling complex class actions involving consumer protection and privacy cases. The firm's lawyers have been regularly recognized as leaders in the plaintiffs' bar by the National Law Journal, Legal 500, Chambers USA, and Super Lawyers, and have held – and currently hold – leadership positions across the country, including but not limited to, *Clark v. Lumber Liquidators*, Case No. 1:15-cv-00748 (N.D. Ga.); *Floyd v. Honda Motor Co., Inc.*, Case No. 18-55957 (C.D. Cal; 9th Cir.); *Anderson v. Ford Motor Co.*, Case No. 6:2017-cv-03244 (W.D. Mo.); *Berman v. General Motors*, Case No. 18-cv-14371 (M.D. Fla.); *In re: Blackbaud, Inc., Consumer Data Breach Litigation*, Case No. 3:20-mn-02972-JMC, MDL No. 2972 (D.S.C.); *In re Allergan Biocell Textured Breast Implant Prods. Liab. Litig.*, 2:19-md-02921-BRM-ESK (D.N.J.); *In re Elmiron Products Liability Litigation*, MDL No. 2973 (D.N.J.); *Glenn v. Hyundai Motors America*, Case No. 8:15-cv-02052 (C.D. Cal.); *Hungerman v. Fluidmaster, Inc.*, Case No. 1:14-cv-10257 (W.D. Penn.); and *O'Keefe v. Pick Five Imports, Inc.*, Case No. 8:18-cv-01496 (M.D. Fla.).

**Berger Montague**

20. Russell Paul graduated from the Columbia University School of Law in 1989. He is a shareholder in the Consumer Protection Department of Berger Montague and is head of its Automobile Defect Practice. Mr. Paul is currently representing millions of consumers in automotive defect class actions around the country against Fiat Chrysler, Ford, General Motors, Honda, Kia Hyundai, Mitsubishi, Nissan, Mercedes-Benz, Subaru, Toyota, and Volkswagen. Within the past several years, he has been appointed to leadership positions in many automotive defect class actions, including *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF No. 40 (Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF No. 49 (Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF No. 60 (Interim Class Counsel Executive Committee); *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF No. 26 (Interim Co-Lead Counsel); and *Wood, et al., v. FCA US LLC*, 5:20-cv-11054-JEL-APP (E.D. Mich.) (appointed as member of Plaintiffs' Steering Committee).

21. While adjusting its rates to track market increases, Berger Montague's rates have steadily remained reasonable and competitive, and have been consistently approved by many federal and state courts over the past several years. *See, e.g., Weiss v. SunPower Corporation*, No. 21-cv-384151 (Santa Clara County Superior Court July 9, 2021), granted Apr. 4, 2022; *Stringer v. Nissan of North America, Inc.*, No. 3:21-cv-00099 (M.D. Tenn. Feb. 5, 2021), granted Mar. 23, 2022, Dkt. 126; *In re Woodbridge Invs. Litig.*, No. 18-cv-103 (C.D. Cal. Jan. 4, 2018), granted Dec. 17, 2021, Dkt. 207; *Patrick v. Volkswagen Group of America, Inc.*, No. 8:19-cv-01908 (C.D. Cal. Oct. 4, 2019) granted Sept. 28, 2021, Dkt. 72; *Tomaszewski v. Trevena, Inc.*, No. 2:18-cv-4378 (E.D. Pa. Oct. 10, 2018), granted Aug. 2, 2021, Dkt. 125; *NECA-IBEW Pension Trust Fund v. Precision Castparts Corp.*, No. 3:16-CV-01756 (D. Or. Sept. 2, 2016),

granted May 7, 2021, Dkt. 169; *Howell Family Trust DTD 01/27/2004 v. Hollis Greenlaw*, No. 3:18-cv-02864 (N.D. Tex. July 3, 2018), granted April 7, 2021, Dkt. 100; *Bentley v. LG Electronics U.S.A., Inc.*, No. 2:19-cv-13554 (D.N.J. June 7, 2019), granted Dec. 18, 2020, Dkt. 67; *Contant v. Bank of America Corp.*, Case No. 1:17-cv-03139 (S.D.N.Y. Apr. 28, 2017), granted Nov. 20, 2020, Dkts. 462 and 463; *Norman (originally Weckwerth) v. Nissan of North America, Inc.*, No. 3:18-cv-00588 (M.D. Tenn. June 26, 2018), granted Mar. 10, 2020, Dkt. No. 181; *Norman (originally Madrid) v. Nissan of North America, Inc.*, No. 3:18-cv-00534 (M.D. Tenn. June 8, 2018) granted Mar. 10, 2020, Dkt. No. 123; *Cohen v. Accordia Life and Annuity Co.*, No. 4:18-cv-00458 (S.D. Iowa Nov. 30, 2018), granted Oct. 27, 2020, Dkt. 62; *In re Patriot National, Inc. Sec. Litig.*, No. 1:17-cv-01866 (S.D.N.Y. Mar. 14, 2017), granted Nov. 6, 2019, Dkt. 151; *Cole v. NIBCO, Inc.*, No. 13-cv-7871 (D.N.J. Dec. 27, 2013), granted Apr. 12, 2019, Dkt. 230; *Alaska Electrical Pension Fund v. Bank of America Corp.*, No. 1:14-cv-07126 (S.D.N.Y. Sept. 4, 2014), granted Nov. 30, 2018, Dkt. 742; and *In re: Domestic Drywall Antitrust Litig.*, No. 2:13-md-02437 (E.D. Pa. Apr. 8, 2013), granted July 17, 2018, Dkt. 768.

### **Bryant Law Center**

22. Mark Bryant has over 50 years of experience in litigation and 20 years of class action and Mass Tort experience. The following are representative cases in which Mr. Bryant has played a leadership role:

- *Sigman v. CSX Corp, et al.* (United States District Court, Southern District of West Virginia 3:15-cv-13328) (case resolved in 2018 by United States District Judge Robert Maxwell in mediation);
- *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) (member of trial team; favorable jury verdict for plaintiffs);
- *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)* (multimillion-dollar settlement for plaintiffs);

- *Kirk Petska v. Canadian National/ Illinois Central Railroad* (Circuit Court Perry County, Illinois 2004- L-27) (multiple appeals resulting in undisclosed settlement for plaintiffs);
- *Mayo v. Wal-Mart Stores, Inc. and Sam's East, Inc.* 5:06-cv-00093-TBR (Western District of Kentucky) (mediation resulting in national class settlement);
- *In Re: Matter of Bayer Corporation* (Franklin, Kentucky Circuit Court 07-CI-00148) (counsel for the Attorney General of Kentucky, case settled in December 2019);
- *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) (Kentucky Supreme Court rules contract unconscionable which led to mediation resulting in resolution of all claims);
- *In re Google Cookie Placements Cons. Priv. Litig.*, MDL No. 2358 (D. Del.) (Plaintiffs' Steering Committee); and
- *In re Facebook, Inc. Internet Tracking Litig.*, 12-md-02314 (N.D. Cal.) (Plaintiffs' Steering Committee).

### **Ahdoot & Wolfson**

23. Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Since co-founding Ahdoot Wolfson in 1998, Ms. Wolfson has led many class actions to successful results, including numerous automotive defect cases. *See, e.g., Berman v. General Motors, LLC*, No. 2:18-cv-14371-RLR (S D. Fla.) (Hon. Robin L. Rosenberg) (\$40 million settlement for alleged oil consumption defect); *Mercado v. Audi of America, Inc.*, No. 5:18-cv-02388-JWH-SPS (C.D. Cal.) (Hon. John W. Holcomb) (uncapped settlement for warranty extension and repair reimbursement for alleged brake defect); *Boehm v. BMW of North America, LLC*, No. 2:17-cv-12827-MCA-LDW (D.N.J.) (Hon. Madeline Cox Arleo) (uncapped settlement for warranty extension and repair reimbursement for alleged fuel pump defect). Ms. Wolfson and her firm currently serve in leadership roles on numerous automotive defect cases, including *Clark v. American Honda Motor Co.*, No. 2:20-cv-03147-AB-MRW (C.D. Cal.) (Hon. André Birotte Jr.) (co-lead counsel in class action alleging unintended and uncontrolled deceleration in certain Acura vehicles), and *In re ZF-*

*TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-02905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt) (executive committee in class action alleged airbag defect in over 15 million vehicles from various automakers). Ms. Wolfson is a member of the California, New York, and District of Columbia Bars. She 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. 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.

**Simmons Hanly Conroy**

24. Simmons Hanly Conroy, LLC attorneys Jay Barnes and An Truong have significant experience litigating complex class action lawsuits. Mr. Barnes is a shareholder at SHC and oversees the firm's class action practice. Mr. Barnes has nearly two decades of experience in complex litigation and has served in various leadership roles in national class actions and MDLs. *See In re Google Cookie Placements Cons. Priv. Litig.*, MDL No. 2358 (D. Del.) (Plaintiffs' Steering Committee Member); *In re Nickelodeon Cons. Priv. Litig.*, MDL No. 2443 (D.N.J.) (Co-lead Counsel); *In re Facebook, Inc. Internet Tracking Litig.*, 12-md-02314 (N.D. Cal.) (Chairman of Plaintiffs' Executive Committee and Class Counsel); *In re Meta Pixel Healthcare Litig.*, 22-cv-03580 (N.D. Cal.) (Co-lead Counsel); *In re Google RTB Cons. Priv. Litig.*, 21-cv-02155 (N.D. Cal.) (Plaintiffs' Executive Committee Member); *Calhoun v. Google, LLC*, 22-cv-05146 (N.D. Cal.) (Co-lead Counsel). Ms. Truong is a shareholder located in SHC's New York Office and has

over ten years of experience. She currently serves on the Law & Briefing Committee in the national MDL *In re: Allergan Biocell Textured Breast Implant Products Liability Litig.*, MDL No. 2921 (D.N.J.), and is a member of the litigation teams in a number of national class action lawsuits where she spearheads briefings, depositions, and discovery matters. *See In re Google RTB Privacy Litig.*, 20-cv-02155 (N.D. Cal.), *In re Meta Pixel Healthcare Litig.*, 20-cv-05146 (N.D. Cal.), *In re Google Medical Priv. Litig.*, 23-cv-02431 (N.D. Cal.). Mr. Barnes and Ms. Truong’s hourly rates reasonably reflect their experience and skill, which have been approved by courts in other litigation. *See In re Facebook Internet Tracking Litig.*, 12-md-02314 (N.D. Cal.), Dkt. 289; *Doe v. Partners Healthcare System, Inc.*, No. 19-1651 (Suffolk Cnty., MA); *Cody Meek v. Skywest, Inc. and Skywest Airlines, Inc.*, 17-cv-1012 (N.D. Cal.), Dkts. 198-1, 204.

**BILLING RATES OF CLASS COUNSEL**

25. The billing rates for each attorney and paraprofessional involved in this matter are the firms’ standard billing rates for the periods of time in which the work was performed. Our rates are based on our analysis of the market rate for attorneys with comparable qualifications, background, experience, and reputation. I believe our rates are commensurate with that experience and they are routinely approved by federal courts throughout the country.

26. Milberg’s hourly rates for the professionals that have worked on this matter are below, along with a summary of the hours billed by each professional:

<b>TIMEKEEPER</b>	<b>HOURLY RATE</b>	<b>TIME</b>	<b>LODESTAR</b>
Gregory F. Coleman – Senior Partner	\$1,100.00	168.5	\$185,350.00
Mitchell Breit – Partner	\$1,100.00	79.3	\$87,350.00
Mark E. Silvey – Partner	\$997.00	87	\$86,736.00

Virginia Whitener – Associate	\$413.00	39.7	\$16,396.10
Adam A. Edwards – Partner	\$997.00	11.6	\$11,565.20
Alex R. Straus – Partner	\$829.00	4.7	\$3,896.30
William Ladnier – Senior Associate	\$733.00	12.6	\$9,235.80
Cathy Bryant – Paralegal	\$225.00	15	\$3,375.00
Lisa A. White – Partner	\$775.00	5	\$3,875.00
Dawn L. Holt – Paralegal	\$225.00	17.3	\$3,892.50
Arthur Stock - Partner	\$997.00	1	\$997.00
Lisa Maxwell – Paralegal	\$225.00	10.2	\$2,295.00
Renee Pothier – Paralegal	\$225.00	1.2	\$270.00
		<b>442.9</b>	<b>\$415,116.90</b>

27. Berger Montague’s hourly rates for the professionals that have worked on this matter are below, along with a summary of the hours billed by each professional:

<b>TIMEKEEPER</b>	<b>HOURLY RATE</b>	<b>TIME</b>	<b>LODESTAR</b>
Abigail Gertner – Senior Counsel	\$700.00	51.1	\$35,770.00
Amey Park – Associate	\$610.00	34.4	\$20,984.00
Caitlin Wolfinger – Paralegal	\$375.00	3.3	\$1,237.50
Donna Giovanetti – Paralegal	\$260.00	1.4	\$364.00
Eleanor Magnus – Paralegal	\$260.00	0.1	\$26.00
Mary York – Paralegal	\$420.00	8.9	\$3,738.00
Natalie Lesser – Senior Counsel	\$595.00	5.2	\$3,094.00

Michela Wallin – Shareholder	\$685.00	1	\$685.00
Peter Hammer – Business Development Research Specialist	\$585.00	0.2	\$117.00
Russell Paul – Senior Shareholder	\$875.00	116.2	\$101,675.00
Shanon Carson – Executive Shareholder	\$990.00	11.3	\$11,187.00
		<b>233.1</b>	<b>\$178,877.50</b>

28. Bryant Law Center’s hourly rates for the professionals that have worked on this matter are below, along with a summary of the hours billed by each professional:

<b>TIMEKEEPER</b>	<b>HOURLY RATE</b>	<b>TIME</b>	<b>LODESTAR</b>
Mark Bryant – Managing Partner Attorney	\$1,000.00	32.25	\$32,250.00
Dick Roberts – Attorney	\$850.00	1.1	\$935.00
Emily Roark – Partner Attorney	\$850.00	14.75	\$12,537.50
Jim Malone – Chief Investigator	\$500.00	44.75	\$22,375.00
Joe Roark – Attorney	\$850.00	2	\$1,700.00
Teris Swanson – Attorney	\$700.00	69	\$48,300.00
Paralegal	\$300.00	22.75	\$6,825.00
		<b>186.6</b>	<b>\$124,922.50</b>



29. Ahdoot & Wolfson's hourly rates for the professionals that have worked on this matter are below, along with a summary of the hours billed by each professional:

<b>TIMEKEEPER</b>	<b>HOURLY RATE</b>	<b>TIME</b>	<b>LODESTAR</b>
Tina Wolfson – Partner	\$1,200.00	50.7	\$60,840.00
Christopher Stiner – Partner	\$850.00	61.5	\$52,275.00
Bradley King – Partner	\$850.00	56.2	\$47,770.00
Deborah De Villa – Associate	\$675.00	6	\$4,050.00
Sarper Unal – Associate	\$550.00	3.5	\$1,925.00
Ruhandy Glezakos – Associate	\$450.00	29.5	\$13,275.00
Samantha Benson – Paralegal	\$250.00	18.1	\$4,525.00
Windy Loritsch – Paralegal	\$250.00	3.1	\$775.00
Heidi Liivamagi – Paralegal	\$250.00	0.2	\$50.00
Laura Lowe – Paralegal	\$250.00	4.5	\$1,125.00
Dawn DiLeggi – Paralegal	\$250.00	4.3	\$1,075.00
Amir Shakeraneh – Legal Assistant	\$150.00	14.7	\$2,205.00
		<b>252.3</b>	<b>\$189,890.00</b>

30. Simmons Hanly Conroy's hourly rates for the professionals that have worked on this matter are below, along with a summary of the hours billed by each professional:

<b>TIMEKEEPER</b>	<b>HOURLY RATE</b>	<b>TIME</b>	<b>LODESTAR</b>
Mitchell Breit <sup>1</sup> – Partner	\$1,100.00	52.5	\$57,750.00

<sup>1</sup> I was previously an attorney at Simmons Hanly Conroy. I joined Milberg in July 2021 and my first time entry for this Action as an attorney at Milberg was on July 30, 2021.

Jay Barnes – Partner	\$1,100.00	36.8	\$40,480.00
An Truong – Senior Associate	\$800.00	344.5	\$275,600.00
		<b>433.5</b>	<b>\$373,830.00</b>

31. Thus, the total number of hours spent on this Action is 1,548.7, and the total lodestar of Class Counsel is **\$1,281,706.90**.<sup>2</sup>

32. In addition, Class Counsel, based on their experience in other automobile defect class actions, anticipate they will incur a total of at least \$500,000 in additional lodestar in interfacing directly with Settlement Class Members, which includes owners and lessees of 707,188 Settlement Class Vehicles, throughout the settlement process, drafting final approval papers and preparing for and attending the final fairness hearing in support of the Settlement.

33. Class Counsel’s substantial efforts in this Action include: (1) completing extensive investigation prior to filing multiple class action complaints; (2) responding to letter briefs regarding proposed motions to dismiss and opposing Defendant’s motion to dismiss; (3) engaging in numerous meet-and-confers with Defendants, including settlement negotiations that spanned approximately nine months; (4) coordinating vehicle inspections that were conducted by experts from both Parties; (5) analyzing discovery produced by VWGOA produced pursuant to Federal Rule of Evidence 408 during the pendency of the settlement negotiations; (6) working with an expert engaged by Plaintiffs specifically to evaluate proposed settlement terms; (7) preparing for and attending private mediation conducted by Bradley A. Winters, Esq., an experienced and well-respected neutral mediator from JAMS; and (8) drafting a detailed settlement agreement and notice plan.

---

<sup>2</sup> To the extent the Court requires additional information regarding the lodestar, Class Counsel will provide such information.

**REASONABLENESS OF CLASS COUNSEL’S REQUESTED FEE**

34. Class Counsel utilizes a time management system where attorneys and paraprofessionals contemporaneously track their time.

35. As fully discussed in the Motion, Class Counsel is seeking an award of \$2,850,000.00, inclusive of the \$24,548.60 in costs and expenses. Plaintiffs request a total fee of \$2,825,451.40, which represents the total requested amount minus \$24,548.60 in costs and expenses. Under the lodestar method, this \$2,825,451.40 amount represents a 1.59 positive multiplier.

36. Class Counsel’s extensive experience and expertise aided in achieving substantial benefits for the Class in this Action: : (a) for current owners and lessees of certain Settlement Class Vehicles, a warranty extension of the New Vehicle Limited Warranties (“NVLW”) applicable to the Settlement Class Vehicles’ sunroof to cover a percentage of the cost of a Covered Repair within 7 years or 80,000 miles (whichever occurs first) from the vehicle’s In-Service Date by an authorized Volkswagen dealer or Audi dealer; (b) for both former and current owners and lessees of Settlement Class Vehicles, reimbursement for a percentage of eligible out-of-pocket expenses previously paid for up to two Covered Repairs prior to the Notice Date and within 7 years or 80,000 miles (whichever occurs first) from the Settlement Class Vehicle’s In-Service Date; (c) extension of service actions; and (d) updated maintenance recommendations and schedule for the Volkswagen Settlement Class Vehicles.

37. Further, Class Counsel’s fees in this case were contingent upon obtaining a recovery. If Class Counsel were not successful, the resources that the firms invest in this action would have been lost.

38. Finally, Class Counsel’s requested fees will be paid directly by Defendant and will not impact the Settlement Benefits available to Class Members.

39. Based upon Class Counsel’s significant experience, quality of representation in this litigation, and meaningful Settlement benefits obtained, as well as the risk of litigation, support applying a 2.6 positive multiplier to the lodestar.

**REASONABLENESS OF CLASS COUNSEL’S REQUESTED EXPENSES**

40. Class Counsel’s request includes reimbursement of \$24,548.60 in litigation costs. All of the costs incurred and detailed below are typical out-of-pocket expenses incurred during litigation. In my professional judgement, each expense was reasonable and necessary and incurred in furtherance of the successful outcome in this case. All of these are costs that Class Counsel would normally charge to a fee-paying client.

41. Milberg’s expenses include:

<b>Expense</b>	<b>Amount</b>
Mediation Fees	\$4,179.46
Court fees	\$500.00
<b>Total</b>	<b>\$4,679.46</b>

42. Berger Montague’s expenses include:

<b>Expense</b>	<b>Amount</b>
Filing & Misc.	\$745.00
Printing	\$4.30
Computer Research	\$219.41
Delivery & Freight	\$23.37
<b>Total</b>	<b>\$992.08</b>

43. Bryant Law Center’s expenses include:

<b>Expense</b>	<b>Amount</b>
Copies	\$10.75

Research/Pacer Fees	\$72.30
Conference Calls	\$52.91
Contract Attorney Research	\$81.00
<b>Total</b>	<b>\$216.96</b>

44. Ahdoot & Wolfson's expenses include:

Expense	Amount
Court fees	\$1,861.00
Copying/printing	\$2.10
Delivery services/litigation support	\$605.88
Legal research fees	\$284.90
Postage	\$115.92
<b>Total</b>	<b>\$2,869.80</b>

45. Simmon Hanly Conroy's expenses include:

Expense	Amount
Copying/Printing/Scanning	\$13.10
Court Costs	\$258.50
Expert Witness Fee	\$7,500.00
Misc./Rental Reimbursement	\$7,677.88
Postage	\$96.91
Service of Process	\$186.25
Travel	\$57.66
<b>Total</b>	<b>\$15,790.30</b>

46. Each of these expenses were reasonable and necessary to the Plaintiffs' prosecution of this Action.

#### **REASONABLENESS OF SERVICE AWARDS**

47. The Parties have agreed that Class Counsel will seek a Service Award not to exceed \$5,000 for each of the nine Settlement Class Representatives, which will likewise be paid by Defendant separate and apart from any relief provided to the Settlement Class. ECF No. 72-3, at 30-33.

48. Plaintiffs were responsive and cooperative throughout their time in this litigation. They consistently invested personal time to seek out and speak with Plaintiffs' Counsel, search for relevant evidence, review and approve documents for filing, kept apprised of the progress of the litigation, prepared for mediation, evaluated the settlement proposals during and following mediation, and read through and discussed drafts of the Settlement Agreement before ultimately approving and executing the 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 31 day of August, 2023

/s/ Mitchell Breit  
Mitchell Breit  
**MILBERG COLEMAN BRYSON**  
**PHILLIPS GROSSMAN, PLLC**  
405 East 50th Street  
New York, NY 10022  
T: 347.668.8445  
mbreit@milberg.com